ANDREW FLORES, ESQ (SBN:272958)
LAW OFFICE OF ANDREW FLORES
427 C Street, Suite 220
San Diego CA, 92101
P:619.356.1556
F:619.274.8053
Afloreslaw@gmail.com

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

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' NOTICED MOTION OF APPLICATION TO VACATE VOID JUDGMENT

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

Related Case: 37-2022-00000023-CU-MC-CTL

TO EACH PARTY AND TO THE ATTORNEY OF THE RECORD FOR EACH PARTY:

Plaintiffs', AMY SHERLOCK, and on behalf of her minor children, T.S. and S.S. and ANDREW FLORES, hereby requests that this Court take judicial notice of the following documents pursuant to Evidence Code section 452 and 452 in support of Plaintiffs' the application to vacate void judgment.

Exhibit	Description
1	City of San Diego Ordinance No. 20043 Approved on 04/27/2011
2	City of San Diego Ordinance No. 20356 Approved on 03/25/2014
3	California Senate Bill No. 643 (SB 643) Approved on 10/09/2015
4	California Assembly Bill No. 266 (AB 266) Approved on 10/09/2015
5	California Assembly Bill No. 243 (AB 243) Approved on 10/09/2015
6	*Razuki v. Malan et al,* Austin $7M Valuation Transcript dated 11/30/2018
7	*Razuki v. Malan et al,* Austin $100K Weekends Transcript dated 08/14/2018
8	Darryl Cotton 6176 Federal Blvd. Grant Deed dated 02/27/1998
9	*City of San Diego v. Tree Club et al,* Stipulated Judgment dated 10/27/2014
10	*City of San Diego v. CCSquared et al,* Stipulated Judgment dated 06/17/2015
11	Declaration of Larry Geraci, dated 02/27/2018
12	DSD Ownership Disclosure Statement (DS-318) dated 10/31/2016
13	DSD General Application (DS-3032) dated 10/31/2016
14	DSD Affidavit for Medical Marijuana CUP (DS-190) dated 10/31/2016
15	DSD Financially Responsible Party (DS-3242) dated 10/31/2016
16	*Geraci v. Cotton,* Complaint dated 03/21/2017
17	Planning Commission Minutes for 6220 Federal Blvd. dated 12/06/2018
18	*Geraci v. Cotton,* Transcript dated 07/09/2019
19	*Geraci v. Cotton,* Transcript dated 07/09/2019
20	*Geraci v. Cotton,* Notice of Entry of Judgment dated 08/20/2019
21	*Geraci v. Cotton,* Cotton's Motion for New Trial (MNT) dated 09/13/2019

22	*Geraci v. Cotton,* Geraci's Opposition to MNT dated 09/23/2019
23	*Geraci v. Cotton,* Hearing Transcript dated 10/25/2019
24	*Geraci v. Cotton,* Minute Order Denying MNT dated 10/25/2019
25	*City of San Diego v. Stonecrest et al,* Judgment dated 01/06/2015
26	*Razuki v. Malan et al,* Razuki Declaration dated 07/16/2018
27	*Razuki v. Malan et al,* 4th DCA Opinion dated 02/24/2021
28	Sherlock's Ramona Operations Certificate dated 01/13/2015
29	Planning Commission Minutes for 8863 Balboa dated 07/09/2015
30	*Sherlock et al v. Austin et al,* Minute Order (Conversion) dated 08/19/2022
31	*Harcourt et al v. Razuki et al,* Complaint dated 06/07/2017
32	*Razuki v. Malan et al,* Complaint dated 07/10/2018
33	*United States v. Razuki et al,* Criminal Complaint dated 11/19/2018
34	Austin letter re 8863 Balboa (Malan) ownership dated 04/13/2018
35	*Razuki v. Malan et al,* Austin Declaration dated 07/30/2018 at 404:12-20
36	*Geraci v. Cotton,* trial transcript dated 07/08/2019 at 438:8-28
37	*Geraci v. Cotton,* transcript dated 07/08/2019 at 442:17-443:23
38	Austin Letter to the Planning Commission re Knopf dated 01/14/2015
39	Golden State Greens billboard image at 2950 Garnet Ave. dated 04/22/2024
40	SD Union Tribune article on 01/29/2015 re first permit issued on 01/29/2015
41	*Sherlock et al v. Austin,* 4th DCA, Austin's antiSLAPP Brief dated 02/14/2023
42	*Razuki v. Malan et al,* Cross Complaint dated 09/20/2018
43	*Sherlock et al v. Austin et al,* Complaint dated 12/03/21
44	*Sherlock et al v. Austin et al,* Order Granting antiSLAPP dated 08/12/2022
45	*Sherlock et al v. Austin,* 4th DCA Upholds Austin antiSLAPP dated 09/18/2023
46	Cleveland "we don't have them" email with cc to Lara Gates dated 11/13/2023
47	*Geraci v. Cotton* trial transcript Austin not naming Geraci dated 07/08/2019

Dated: May 7, 2024

_____

Andrew Flores

Attorney for Plaintiffs'
AMY SHERLOCK
HER MINOR CHILDREN T.S. & S.S
ANDREW FLORES

Exhibit 1

ORDINANCE NUMBER O- 20043 (NEW SERIES)

DATE OF FINAL PASSAGE APR 27 2011

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2, DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 13 TO "MEDICAL MARIJUANA REGULATIONS: PATIENTS AND CAREGIVERS," AMENDING SECTIONS 42.1301 AND 42.1302; REPEALING SECTIONS 42.1303, 42.1304, 42.1305, 42.1306 AND 42.1307; AMENDING AND RENUMBERING SECTION 42.1308 TO SECTION 42.1303; REPEALING SECTIONS 42.1309, 42.1310, 42.1311, AND 42.1312; AND AMENDING AND RENUMBERING SECTION 42.1313 TO SECTION 42.1304, AND BY AMENDING CHAPTER 4, ARTICLE 2, BY ADDING A NEW DIVISION 15, TITLED "MEDICAL MARIJUANA CONSUMER COOPERATIVES," AND ADDING NEW SECTIONS 42.1501, 42.1502, 42.1503, 42.1504, 42.1505, 42.1506, 42.1507, 42.1508, 42.1509, 42.1510, 42.1511, 42.1512, AND 42.1513 ALL RELATING TO MEDICAL MARIJUANA REGULATIONS FOR QUALIFIED PATIENTS, CAREGIVERS, AND MEDICAL MARIJUANA CONSUMER COOPERATIVES.

WHEREAS, on October 6, 2009, the City Council created a citizen advisory task force known as the Medical Marijuana Task Force (MMTF) for the purpose of recommending guidelines for patients and caregivers, the structure and operation of collectives and cooperatives, and police enforcement related to medical marijuana; and

WHEREAS, the MMTF produced two reports, one addressing land use and zoning issues dated November 12, 2009, and one addressing regulations outside of land use and zoning dated April 21, 2009; and

WHEREAS, on May 26, 2010, the Public Safety and Neighborhood Services Committee directed the City Attorney to prepare an ordinance incorporating the MMTF recommendations for regulations outside land use and zoning, to add a requirement that all cooperatives organize

as statutory entities, and to add additional labeling requirements on medical marijuana in the ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 2, Division 13 of the San Diego Municipal Code is amended by amending the title of Division 13, by amending sections 42.1301 and 42.1302, by repealing sections 42.1303, 42.1304, 42.1305, 42.1306, 42.1307, 42.1309, 42.1310, 42.1311, and 42.1312, by amending and renumbering section 42.1308 to section 42.1303, and by amending and renumbering section 42.1313 to section 42.1304, to read as follows:.

Division 13: Medical Marijuana Regulations: Patients and Caregivers

§ 42.1301 Purpose and Intent

(a) It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), to protect the public health, safety, and welfare.

(b) Nothing in this Division is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

(c) Nothing in this Division is intended to reduce the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).

(d) This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

§ 42.1302 Definitions

For the purpose of this Division the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Processed marijuana means harvested *marijuana* that is in a form other than a live plant.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief in accordance with state law, including California Health and Safety Code section 11362.5.

SDPD means the City of San Diego Police Department.

State identification card means the card issued to a patient or caregiver in accordance with California Health and Safety Code sections 11362.71-11362.76.

§ 42.1303 State Identification Card Holders: Permissible Amounts of Marijuana

A person in possession of a current and valid *state identification card* and who is within the jurisdictional limits of the City, is not subject to arrest by the *SDPD* for possession of *marijuana*, or detention by the *SDPD* longer than necessary to verify his or her status, or seizure by the *SDPD* of *marijuana* in his or her possession, if the amount of *marijuana* possessed is within the following limits:

(a) *Processed Marijuana - Qualified Patients.*

An individual who is a *qualified patient* may possess the total amount of *processed marijuana*, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

(b) *Processed Marijuana - Primary Caregivers.*

An individual who is a *primary caregiver* may possess no more than the amount specified in section 42.1303(a) for each *qualified patient* for whom the individual serves as a verified *primary caregiver*, except that such amount shall not exceed two pounds, or an amount consistent with the physician's recommendation, whichever is less.

(c) Indoor Plants - *Qualified Patients.*

A *qualified patient* may possess a maximum of twenty-four unharvested *marijuana* plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

(d) Indoor Plants - *Primary Caregivers.*

A *primary caregiver* may possess no more than the amount of *marijuana* specified in section 42.1303(c) and growing in the space specified in 42.1303(c), for each *qualified patient* for whom the individual serves as a *primary caregiver*, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

(e) Outdoor/Greenhouse Plants.

No unsupervised outdoor *marijuana* cultivation shall be permitted. Growing *marijuana* shall only be permitted in a fully enclosed

yard with a minimum six-foot fence perimeter or a greenhouse or structure that must be locked and contained. The amount of *marijuana* grown in the enclosed yard with a minimum six-foot fence perimeter or greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to sections 42.1303(c) and 42.1303(d).

(f) Possession of *marijuana* in amounts which exceed those set forth in section 42.1303(a)-(d) by persons with *state identification cards* will be evaluated by *SDPD* on a case-by-case basis according to the totality of the circumstances, taking into account facts such as whether the amount possessed is consistent with a physician's recommendation.

§ 42.1304 Smoking

Qualified patients, including those with *state identification cards*, are prohibited from smoking *marijuana* in any public place or in any place open to the public. Any person who violates this section is guilty of an infraction.

Section 2. That Chapter 4, Article 2 of the San Diego Municipal Code is hereby amended by adding new Division 15, and by adding new sections 42.1501, 42.1502, 42.1503, 42.1504, 42.1505, 42.1506, 42.1507, 42.1508, 42.1509, 42.1510, 42.1511, 42.1512, and 42.1513, to read as follows:

Division 15: Medical Marijuana Consumer Cooperatives

§ 42.1501 Purpose and Intent

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing and strictly regulating the cooperative cultivation and exchange of medical *marijuana* among *qualified patients, primary caregivers,* and *state identification card* holders consistent with state law. It is further the intent of this Division to ensure that *marijuana* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the sale, distribution, possession of *marijuana*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program (California Health and Safety Code sections 11362.7-11362.83). Further, the California Corporations Code may allow some conduct for consumer cooperatives that is not otherwise permissible under the California Health and Safety Code and this Division, such as the distribution of profits to members; in those circumstances, it is the intent of the City that the state and municipal laws governing medical *marijuana* control.

§ 42.1502 Definitions

For the purpose of this Division, the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Medical marijuana consumer cooperative means a cooperative organized as a consumer cooperative under state law for the purpose of collectively or cooperatively cultivating *marijuana* for medical purposes in accordance with state law.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief, in accordance with state law, including California Health and Safety Code section 11362.5.

Reasonable compensation means compensation for directors, managers, and *responsible persons* of the *medical marijuana consumer cooperative*

commensurate with reasonable wages and benefits paid to employees of IRS qualified non-profit organizations who have similar descriptions and duties.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210, and includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a *medical marijuana consumer cooperative*. It also includes an employee who is in apparent charge of the *medical marijuana consumer cooperative.*

State identification card means the card issued to a *qualified patient* or *primary caregiver* in accordance with California Health and Safety Code sections 11362.71-11362.76.

Violent felony means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.

§ 42.1503 Cooperatives–Organization

All persons who organize to collectively and cooperatively cultivate medical *marijuana* pursuant to state law shall organize as a "Consumer Cooperative Corporation" pursuant to California Corporations Code Title 1, Division 3, Part 2.

§ 42.1504 Cooperatives–Permit Required

(a) It is unlawful for any person to operate any cooperative, collective, dispensary, or establishment which collectively or cooperatively cultivates medical *marijuana* without a permit issued pursuant to this Division.

(b) In addition to any other information requested by the City, a permit applicant must provide evidence that the applicant is in compliance with section 42.1503.

(c) The *medical marijuana consumer cooperative* shall designate one of its officers or managers to act as its responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *medical marijuana consumer cooperative.*

(d) The issuance of a permit pursuant to this Division does not relieve any person from obtaining any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.

(e) A permit applicant must obtain a conditional use permit as required by Chapter 12, Article 6, Division 3, prior to obtaining a permit under this Division.

§ 42.1505 Exemptions

(a) This Division does not apply to persons collectively or cooperatively cultivating medical *marijuana* in the following facilities licensed by the State of California pursuant to California Health and Safety Code Division 2:

(1) A clinic licensed pursuant to Chapter 1;

(2) A health facility licensed pursuant to Chapter 2;

(3) A residential care facility for persons with chronic, life-threatening illnesses licensed pursuant to Chapter 3.01;

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2; or

(5) A hospice or a home health agency licensed pursuant to Chapter 8.

(b) This Division does not apply to the cultivation of *marijuana* by a *qualified patient* at that patient's home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.

§ 42.1506 Cooperatives–Cost Recovery Fees

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *medical marijuana consumer cooperatives*.

§ 42.1507 Cooperatives–Background Checks

(a) All *responsible persons* in the *medical marijuana consumer cooperative* shall undergo fingerprinting prior to acting as a *responsible person*. The fingerprints shall be provided to and kept on file with the City.

(b) The City may conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years, cannot act as a *responsible person* in the *medical marijuana consumer cooperative*.

(c) It is unlawful for any *responsible person* in a *medical marijuana consumer cooperative* to act as a responsible person for the *medical marijuana consumer cooperative* if he or she:

(1) fails to provide their fingerprints to the City; or

(2) has been convicted of a *violent felony* or crime of moral turpitude within the past seven years.

(d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person.*

§ 42.1508 Cooperatives–Verification and Documentation

(a) *Responsible persons* shall ensure that all transactions involving money, in-kind contributions, reimbursements, *reasonable compensation*, and *marijuana* are fully documented, including documenting each member's contribution of labor, resources, or money to the *medical marijuana consumer cooperative*, and the source of their *marijuana.*

(b) Upon the City's request, *responsible persons* for the *medical marijuana consumer cooperative* shall provide to the City an audit of its operations for the previous calendar year, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles.

§ 42.1509 Cooperatives–Not-for-Profit

Responsible persons shall ensure that:

(a) No *medical marijuana consumer cooperative* operates for profit for itself or its members. Cash and in-kind contributions, reimbursements, and *reasonable compensation* provided by members towards the *medical marijuana consumer cooperative's* actual expenses for the growth,

cultivation, and provision of medical *marijuana* shall be allowed in accordance with state law.

(b) *Medical marijuana consumer cooperative responsible persons*, including directors, managers, and employees, are limited to receiving *reasonable compensation* and shall not receive a bonus.

(c) Members who bring medical *marijuana* from their own personal grows to the *medical marijuana consumer cooperative*, may be compensated by cash or trade in-kind. Members may be compensated for their expenses as provided by state law at the time the harvest is brought to the *medical marijuana consumer cooperative.*

§ 42.1510 Cooperatives–Age Limitations

(a) No person under the age of eighteen is allowed at or in any *medical marijuana consumer cooperative* unless the person is a *qualified patient* or *state identification card* holder and accompanied by their parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.

(b) No person under the age of eighteen may be employed by or act as a *responsible person* on behalf of the *medical marijuana consumer cooperative.*

§ 42.1511 Marijuana–Transportation

All persons transporting medical *marijuana* in connection with a *medical marijuana consumer cooperative* shall do so in accordance with state law.

§ 42.1512 Marijuana–Packaging and Labeling

Responsible persons for the *medical marijuana consumer cooperative* shall ensure that medical *marijuana*, edible products containing medical *marijuana*, and concentrates comply with the following packaging and labeling requirements:

(a) *Marijuana*

(1) Must be sealed in an airtight manner; and

(2) must have a label affixed to the package containing the following information:

a. Patient's name;

b. Dispensing date;

c. Name and address of dispensing cooperative;

d. Name of product;

e. Product ingredients;

f. Product must be used as recommended;

g. Product must be kept out of the reach of children;

h. Product users must not operate heavy machinery while under the influence of *marijuana*;

i. Sale or transfer of product to non-patients is prohibited;

j. Product is intended for medical use only. Cal. Health & Safety Code § 11362.5; and

k. Any additional use instructions and warnings that may be applicable.

(b) Edible Products and Concentrates

(1) Must be labeled with the following:

a. Patient's name;

b. Dispensing date;

c. Name and address of dispensing cooperative;

d. A warning label; and

e. The source of the food production.

§ 42.1513 Interior Signage

A sign shall be posted on a wall in the *medical marijuana consumer cooperative* which states the following:

CANNABIS PATIENT ADVISORY

THIS IS A WARNING REGARDING EDIBLE CANNABIS/MARIJUANA PRODUCTS

CAUTION – Edible products containing cannabis extracts (THC – Tetra Hydro Cannabinol) have serious risks associated with the consumption. KEEP OUT OF THE REACH OF CHILDREN.

Common Names: Cannabis Sativa, Cannabis Indica

Uses: Edible cannabis products must always be consumed with caution! The fact that most edibles are produced in kitchens which have not been certified by the health department creates a risk of serious illness and/or an agonizing painful

death. THE CITY OF SAN DIEGO CANNOT REGULATE THIS POTENTIALLY DANGEROUS PRODUCT! Edible cannabis products provide thirty-seven additional variations of the THC – (Tetra Hydro Cannabinol) molecule over the benefits received from the inhalation of medical cannabis. Patients with terminal cancer, and those suffering from respiratory problems will benefit from orally consuming cannabis since inhalation is impossible for them; however, there are associated side risks. DO NOT OPERATE A MOTOR VEHICLE OR MACHINERY WITHIN EIGHT HOURS OF CONSUMING EDIBLE CANNABIS PRODUCTS.

Side Effects: Severe Extreme Anxiety attacks lasting for up to four hours may occur without proper use of this product. Unless you have experience with this substance, do not drive within seven hours of consumption.

Non-Health Department Certified Kitchens: Food products and other ingestible items containing cannabis are usually not produced in Health Department Certified Kitchens. Consuming these products is a risk.

Dosages: It is difficult to regulate the doses of THC in edible products. It is advised that each new lot be tested by consuming only small portions over a period of several hours.

Anxiety Sufferers: Patients suffering from anxiety should consult a physician before considering the use of edible products containing THC. The increased risk of anxiety attacks may be associated with their consumption.

This warning sign was drafted by the Medical Marijuana Task Force (San Diego Resolution R-305305, Medical Marijuana Task Force Report to Council

No. 10-060 (Apr 21, 2010)). The City of San Diego is not responsible for the accuracy of the statements contained in this sign and cannot verify its contents.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Mary T. Nuesca
Mary T. Nuesca
Chief Deputy City Attorney

MTN:amt
03/14/11
03/29/11 REV.
Or.Dept:PSNS

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 12 2011.

Note: This ordinance was returned unsigned by the Mayor's Office to the Office of City Clerk on April 27, 2011, at 4:20 P.M. See San Diego City Charter Section 295 (a) (2).

ELIZABETH S. MALAND
City Clerk

By
Deputy City Clerk

Approved: _____
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

Exhibit 2

(O-2014-90)
REV.COR.

ORDINANCE NUMBER O- 20356 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 25 2014

ITEM # 50
3/11/14
2ND READING

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222, TABLE 131-02B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322, TABLE 131-03B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422, TABLE 131-04B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BYAMENDING SECTION 131.0522, TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622, TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY ADDING A NEW SECTION 141.0614 AND RENUMBERING THE CURRENT SECTION 141.0614 TO 141.0615; AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 2, DIVISION 3 BY AMENDING SECTION 152.0312; AMENDING CHAPTER 15, ARTICLE 3, DIVISION 3 BY AMENDING SECTIONS 153.0309 AND 153.0310; AMENDING CHAPTER 15, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 156.0308, TABLE 156-0308-A; AMENDING CHAPTER 15, ARTICLE 14, DIVISION 3 BY AMENDING SECTION 1514.0305, TABLE 1514-03J; AMENDING CHAPTER 15, ARTICLE 17, DIVISION 3 BY AMENDING SECTIONS 1517.0301 AND 1517.0302; AND AMENDING CHAPTER 15, ARTICLE 19, APPENDIX A, ALL RELATED TO MEDICAL MARIJUANA CONSUMER COOPERATIVES.

WHEREAS, in 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, that allows the use of marijuana for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined; and

WHEREAS, in 2003, the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical marijuana; prohibited the distribution of marijuana for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate marijuana for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical marijuana; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, under federal law, the possession, transfer, or sale of marijuana remains a criminal act; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in article XI, section 7 of the California Constitution; and

WHEREAS, the City Council now desires to exercise its police powers solely to provide for the zoning of medical marijuana consumer cooperatives in such a manner as to limit the impact on the City generally and residential neighborhoods in particular; and

WHEREAS, these regulations are intended to apply to commercial retail facilities; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 11, Article 3, Division 1, of the San Diego Municipal Code is amended by amending section 113.0103, to read as follows:

§113.0103 Definitions

Medical marijuana consumer cooperative means 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, set forth in California Health and Safety Code sections 11362.5 through 11362.83. A *medical marijuana consumer cooperative* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

MHPA through *Mining Waste* [No change in text.]

Minor-oriented facility means any after school program, teen center, club for boys and/or girls, children's theater, children's museum, or other establishment where the *primary use* is devoted to people under the age of 18.

Mobilehome through *Planned Urbanized Communities* [No change in text.]

Playground means any outdoor *premises* or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by any person less than eighteen (18) years old.

Premises to *Yard* [No change in text.]

Section 2. That Chapter 12, Article 6, Division 3, of the San Diego Municipal Code is amended by amending section 126.0303, to read as follows:

§126.0303 When a Conditional Use Permit Is Required

An application for the following types of uses in certain zones may require a

Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulation Table in Chapter 13. The decision process is described in Section 126.0304.

(a) Conditional Use Permits Decided by Process Three

Agricultural equipment repair shops through Major transmission, relay, or communication switching station [No change in text.]

Medical marijuana consumer cooperatives

Museums through *Wireless communication facilities* (under circumstances described in Section 141.0420) [No change in text.]

(b) through (c) [No change in text.]

Section 3. That Chapter 13, Article 1, Division 2, of the San Diego Municipal Code is amended by amending section 131.0222, Table 131-02B, to read as follows:

§131.0222 Use Regulations Table for Open Space Zones

The uses allowed in the open space zones are shown in Table 131-02B.

Legend for Table 131-02B

[No change in text.]

Table 131-02B
Use Regulations Table of Open Space Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**					
	1st & 2nd >>	OP-		OC-	OR[1]-		OF[11]-
	3rd >>	1-	2-	1-	1-		1-
	4th >>	1	1	1	1	2	1
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]					
Medical Marijuana Consumer Cooperatives		-	-	-	-		-
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs,* Separately Regulated *Signs* Uses**: Theater *Marquees* [No change in text.]		[No change in text.]					

Footnotes for Table 131-02B [No change in text.]

Section 4. That Chapter 13, Article 1, Division 3, of the San Diego Municipal Code is amended by amending section 131.0322, Table 131-03B, to read as follows:

§131.0322 Use Regulations Table for Agricultural Zones

The uses allowed in the agricultural zones are shown in Table 131-03B.

Legend for Table 131-03B

[No change in text.]

Table 131-03B
Use Regulations Table of Agricultural Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]			
Medical Marijuana Consumer Cooperatives		-		-	
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs*, Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]			

Footnotes for Table 131-03B [No change in text.]

Section 5. That Chapter 13, Article 1, Division 4, of the San Diego Municipal Code is amended by amending section 131.0422, Table 131-04B, to read as follows:

§131.0422 Use Regulations Table for Residential Zones

The uses allowed in the residential zones are shown in the Table 131-04B.

Legend for Table 131-04B

[No change in text.]

Table 131-04B
Use Regulations Table of Residential Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**																					
	1st & 2nd >>	RE-			RS-													RX-		RT-			
	3rd >>	1-			1-													1-		1-			
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]																					
Medical Marijuana Consumer Cooperatives		-			-													-		-			
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]																					

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**										
	1st & 2nd >>	RM-										
	3rd >>	1-			2-			3-			4-	5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]											
Medical Marijuana Consumer Cooperatives		-			-			-			-		-
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]											

Footnotes for Table 131-04B [No change in text.]

Section 6. That Chapter 13, Article 1, Division 5, of the San Diego Municipal Code is amended by amending section 131.0522, Table 131-05B, to read as follows:

§131.0522 Use Regulations Table for Commercial Zones

The uses allowed in the commercial zones are shown in the Table 131-05B.

Legend for Table 131-05B

[No change in text.]

Table 131-05B
Use Regulations Table for Commercial Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**									
	1st & 2nd >>	CN[(1)]-			CR-		CO-		CV-		CP-
	3rd >>	1-			1-	2-	1-		1-		1-
	4th >>	1	2	3	1	1	1	2	1	2	1
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]									
Medical Marijuana Consumer Cooperatives		-		-	C		-		-		-
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]									

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator 1st &> 2nd>> 3rd >> 4th >>	Zone																	
		CC-																	
		1-			2-			3-		4-					5-				
		1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]																	
Medical Marijuana Consumer Cooperatives		-			C			-		-					-				
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs*, Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]																	

Footnotes to Table 131-05B [No change in text.]

Section 7. That Chapter 13, Article 1, Division 6, of the San Diego Municipal Code is amended by amending section 131.0622, Table 131-06B, to read as follows:

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in the Table 131-06B.

Legend for Table 131-06B

[No change in text.]

Table 131-06B
Use Regulations Table for Industrial Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**							
	1st & 2nd> >	**IP-**		**IL-**			**IH-**		**IS-**
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]							
Medical Marijuana Consumer Cooperatives		-	-	-	-	C	-	-	C
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs*, Separately Regulated *Signs* Uses**, Community Entry *Signs* [No change in text.]		[No change in text.]							
Neighborhood Identification *Signs*		[No change in text.]							
Comprehensive Sign Program through Theater *Marquees* [No change in text.]		[No change in text.]							

Footnotes to Table 131-06B [No change in text.]

Section 8. That Chapter 14, Article 1, Division 6, of the San Diego Municipal Code is amended by adding a new section 141.0614 and by renumbering the current section 141.0614 to section 141.0615, to read as follows:.

§141.0614 Medical Marijuana Consumer Cooperatives

Medical marijuana consumer cooperatives may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than four *medical marijuana consumer cooperatives* are permitted in each City Council District. *Medical marijuana consumer cooperatives* are subject to the following regulations.

(a) *Medical marijuana consumer cooperatives* shall maintain the following minimum separation between uses, as measured between *property lines*, in accordance with Section 113.0225:

(1) 1,000 feet from *public parks*, *churches*, child care centers, *playgrounds*, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, other *medical marijuana consumer cooperatives*, residential care facilities, or schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(2) 100 feet from a residential zone.

(b) Consultations by medical professionals shall not be a permitted *accessory use* at a *medical marijuana consumer cooperative.*

(c) Lighting shall be provided to illuminate the interior of the *medical marijuana consumer cooperative*, facade, and the immediate surrounding area, including any *accessory uses*, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

(d) Security shall be provided at the *medical marijuana consumer cooperative* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premises* during business hours. The security guard should only be

engaged in activities related to providing security for the facility, except on an incidental basis.

(e) *Signs* shall be posted on the outside of the *medical marijuana consumer cooperative* and shall only contain the name of the business, limited to two colors.

(f) The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the *medical marijuana consumer cooperative* in character size at least two inches in height.

(g) The *medical marijuana consumer cooperative* shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

(h) The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to medical marijuana without a human intermediary.

(i) A permit shall be obtained as required pursuant to Chapter 4, Article 2, Division 15.

(j) A Conditional Use Permit for a *medical marijuana consumer cooperative* shall expire no later than five (5) years from the date of issuance.

§141.0615 Nightclubs and Bars over 5,000 Square Feet in Size

[No change in text.]

Section 9. That Chapter 15, Article 1, Division 1, of the San Diego Municipal Code is amended by amending section 151.0103, to read as follows:

§151.0103 Applicable Regulations

(a) [No change in text.]

(b) The following regulations apply in all planned districts:

(1) through (7) [No change in text.]

(8) Medical marijuana consumer cooperative regulations contained in Section 141.0614, when that use is specifically allowed by the Planned District Ordinance.

Section 10. That Chapter 15, Article 2, Division 3, of the San Diego Municipal Code is amended by amending section 152.0312, to read as follows:

§152.0312 Subdistrict D Permitted Uses

(a) through (b) [No change in text.]

(c) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(d) All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed in Section 152.0405(b) (Outdoor Display, Operation and Storage) shall be operated entirely within enclosed buildings or walls or fences as required in Section 152.0405.

Section 11. That Chapter 15, Article 3, Division 3, of the San Diego Municipal Code is amended by amending sections 153.0309 and 153.0310, to read as follows:

§153.0309 Employment Center (EC)

(a) Permitted Uses

No building, improvement or portion thereof shall be erected, constructed, converted, established, altered or enlarged; nor shall any lot or premises be used except for one or more of the following purposes:

(1) through (10) [No change in text.]

(11) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(12) The following manufacturing uses only when secondary and supportive to the primary manufacturing use of the premises:

(A) through (D) [No change in text.]

(13) The following uses and classes of uses shall be prohibited from locating in the Employment Center Zone:

(A) through (F) [No change in text.]

(14) The following manufacturing uses shall be prohibited:

(A) through (H) [No change in text.]

(b) through (c) [No change in text.]

§153.0310 Special Use Area (SP)

(a) [No change in text.]

(b) Permitted Uses

The following uses are permitted in the Special Use Area:

(1) through (11) [No change in text.]

(12) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(13) Any other use, including accessory uses, which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses enumerated above and consistent with the purpose and intent of this zone. The adopted resolution embodying such findings shall be filed in the office of the City Clerk.

(c) through (d) [No change in text.]

Section 12. That Chapter 15, Article 6, Division 3, of the San Diego Municipal Code is amended by amending section 156.0308, Table 156-0308-A, to read as follows:

§156.0308 Base District Use Regulations

(a) through (b) [No change in text.]

	Table 156-0308-A: CENTRE PLANNED DISTRICT USE REGULATIONS														
	LEGEND: P = Permitted by Right; C = Conditional Use Permit Required; -- = Use Not Permitted; L = Limited Use; N = Neighborhood Use Permit Required; S = Site Development Permit Required; MS = Main Street; CS= Commercial Street; E= Employment Overlay														
Use Categories/ Subcategories	C	NC	ER	BP	WM[7]	MC	RE	I[7]	T[7]	PC	PF[10]	OS	CC[7]	Additional Regulations	*MS/CS & E Overlays*
Public Park/ Plaza/Open Space through **Commercial Services,** Maintenance & Repair [No change in text.]	[No change in text.]														
Medical Marijuana Consumer Cooperatives	-	-	-	-	C	-	-	C	C	-	-	-	C	§141.0614	

	Table 156-0308-A: CENTRE PLANNED DISTRICT USE REGULATIONS														
	LEGEND: P = Permitted by Right; C = Conditional Use Permit Required; -- = Use Not Permitted; L = Limited Use; N = Neighborhood Use Permit Required; S = Site Development Permit Required; MS = Main Street; CS= Commercial Street; E= Employment Overlay														
Use Categories/ Subcategories	C	NC	ER	BP	WM[7]	MC	RE	I[7]	T[7]	PC	PF[10]	OS	CC[7]	Additional Regulations	*MS/CS & E Overlays*
Commercial Services, Off-Site Services through **Other Use Requirements,** *Outdoor Activities* [No change in text.]	[No change in text.]														

Footnotes to Table 156-0308-A [No change in text.]

Section 13. That Chapter 15, Article 14, Division 3, of the San Diego Municipal Code is amended by amending section 1514.0305, Table 1514-03J, to read as follows:

§1514.0305 Commercial Zones (MV-CO, MV-CV, MV-CR)

(a) through (b) [No change in text.]

Legend for Table 1514-03J

[No change in text.]

Table 1514-03J
Commercial Zones Use Table

COMMERCIAL	**MV-CO**	**MV-CV**	**MV-CR**
Accessory Uses through Medical appliance sales [No change in text.]	[No change in text.]		
Medical marijuana consumer cooperatives	CUP[3]	CUP[3]	CUP[3]
COMMERCIAL, Music Stores through **COMMERCIAL,** Wholesaling or warehousing of goods and merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 sq. ft. For automobile dealership, the area shall not exceed 15,000 sq. ft. [No change in text.]			
Any other use which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses, including accessory uses, enumerated in this section and consistent with the purpose and intent of this planned district. The adopted resolution embodying such finding shall be filed in the office of the City Clerk. [No change in text.]			

Footnotes Table 1514-03J
(1) through (2) [No change in text.]
(3) When the multiple use option is utilized, medical marijuana consumer cooperatives are prohibited.

(2) through (4) [No change in text.]

(c) through (l) [No change in text.]

Section 14. That Chapter 15, Article 17, Division 3 of the San Diego Municipal Code is amended by amending sections 1517.0301 and 1517.0302, to read as follows:

§1517.0301 Permitted Uses

(a) Industrial Subdistrict

No building or improvement or portion thereof shall be erected, constructed, converted, established or enlarged, nor shall any premises be used except for one or more of the following purposes:

(1) through (9) [No change in text.]

(10) Medical marijuana consumer cooperatives

Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(b) Commercial Subdistricts

(1) through (7) [No change in text.]

(8) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

§1517.0302 Otay International Center Precise Plan Subdistrict

In the Otay International Center Precise Plan Subdistrict identified on Map Drawing No. C-680.2, the property development regulations as set forth within the Otay International Center Precise Plan shall apply, and no building or

improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the land uses permitted on the parcel by the Precise Plan, except that medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

Section 15. That Chapter 15, Article 19, of the San Diego Municipal Code is amended by amending Appendix A, to read as follows:

Appendix A: Uses

Legend: P = Permitted
- = Not Permitted
L = Subject to Limitations
C = Conditional Use Permit in accordance with Chapter 12, Article 6, Division 3
SP = Special Permit
Special Permit for Alcohol Sales and Distribution - See Appendix C

Permitted Uses	**Residential Zones**		**Commercial Zones**			**Industrial Zones**	
	SF	**MF**	**1**	**2**	**3**	**I-1**	**I-2**
Residential through **Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated:** Medical Appliance Sales [No change in text.]							
Medical Marijuana Consumer Cooperatives	-	-	C	C	C	C	-
Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated: Motor Vehicle, Parts and Accessories, Retail Sale of New Items Only through **The following business and professional establishments**: Addressing and Secretarial Services [No change in text.]	[No change in text.]						
Any other use which the Planning Commission may find to be similar in character or compatible to the uses permitted in the specific zone or zones. The adopted resolution embodying such finding shall be filed in the Office of the City Clerk. Any other use allowed with a Conditional Use Permit decided in accordance with Process Five as identified in Section 151.0401(f) (General Provisions). [No change in text.]	[No change in text.]						

Footnotes for Appendix A: Uses [No change in text.]

Section 16. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 17. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 18. That if the Otay Mesa Planned District Ordinance, San Diego Municipal Code Chapter 15, Article 15 is repealed, that repeal shall prevail over the amendments set forth in Section 14 of this Ordinance.

Section 19. That if Ordinance No. O-20312, which is available for review at the Office of the City Clerk, which amended the San Diego Municipal Code relating to the Barrio Logan Community Plan Update, and which will be suspended at the time of this ordinance's anticipated effective date, is made effective upon a vote of the People at the Citywide Primary Election to be held on June 3, 2014, those amendments shall prevail over the provisions of this Ordinance, where the two conflict. In addition, if Ordinance No. O-20312 is approved, medical marijuana consumer cooperatives shall be shown as not permitted in Table 131-04B, zone RT-1-5, and Table 131-05B, zones CN-1-4, CC-3-6, CC-4-6, and CC-5-6, because residential uses will be allowed in those zones, and shall be shown as allowed with a Conditional Use Permit in Table 131-05B, zones CO-2-1 and CO-2-2.

Section 20. That City staff is directed to return to the appropriate committee, one year from adoption, to discuss how effective the ordinance is in providing safe access, while negating avoidable negative impacts.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
02/06/14
02/26/14 Rev. Copy
02/27/14 Rev.Cor.
Or.Dept:DSD
Doc. No. 557668_8

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 11 2014.

ELIZABETH S. MALAND
City Clerk
By
Deputy City Clerk

Approved: 3/25/2014
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222, TABLE 131-02B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322, TABLE 131-03B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422, TABLE 131-04B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BYAMENDING SECTION 131.0522, TABLE 131-05B; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622, TABLE 131-06B; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY ADDING A NEW SECTION 141.0614 AND RENUMBERING THE CURRENT SECTION 141.0614 TO 141.0615; AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 2, DIVISION 3 BY AMENDING SECTION 152.0312; AMENDING CHAPTER 15, ARTICLE 3, DIVISION 3 BY AMENDING SECTIONS 153.0309 AND 153.0310; AMENDING CHAPTER 15, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 156.0308, TABLE 156-0308-A; AMENDING CHAPTER 15, ARTICLE 14, DIVISION 3 BY AMENDING SECTION 1514.0305, TABLE 1514-03J; AMENDING CHAPTER 15, ARTICLE 17, DIVISION 3 BY AMENDING SECTIONS 1517.0301 AND 1517.0302; AND AMENDING CHAPTER 15, ARTICLE 19, APPENDIX A, ALL RELATED TO MEDICAL MARIJUANA CONSUMER COOPERATIVES.

§113.0103 Definitions

Abutting property through *Marquee* [No change in text.]

Medical marijuana consumer cooperative means 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, set forth in California Health and Safety Code sections 11362.5 through 11362.83. A *medical marijuana consumer cooperative* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

MHPA through *Mining Waste* [No change in text.]

Minor-oriented facility means any after school program, teen center, club for boys and/or girls, children's theater, children's museum, or other establishment where the *primary use* is devoted to people under the age of 18.

Mobilehome through *Planned Urbanized Communities* [No change in text.]

Playground means any outdoor *premises* or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by any person less than eighteen (18) years old.

Premises to *Yard* [No change in text.]

§126.0303 When a Conditional Use Permit Is Required

An application for the following types of uses in certain zones may require a Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulation Table in Chapter 13. The decision process is described in Section 126.0304.

(a) Conditional Use Permits Decided by Process Three

Agricultural equipment repair shops through Major transmission, relay, or communication switching station [No change in text.]

Medical marijuana consumer cooperatives

Museums through *Wireless communication facilities* (under circumstances described in Section 141.0420) [No change in text.]

(b) through (c) [No change in text.]

§131.0222 Use Regulations Table for Open Space Zones

The uses allowed in the open space zones are shown in Table 131-02B.

Legend for Table 131-02B

[No change in text.]

Table 131-02B
Use Regulations Table of Open Space Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**					
	1st & 2nd >>	OP-		OC-	OR[1]-		OF[11]-
	3rd >>	1-	2-	1-	1-		1-
	4th >>	1	1	1	1	2	1
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]					
Medical Marijuana Consumer Cooperatives		=	=	=	=		=
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs,* Separately Regulated *Signs* Uses**: Theater *Marquees* [No change in text.]		[No change in text.]					

Footnotes for Table 131-02B [No change in text.]

§131.0322 Use Regulations Table for Agricultural Zones

The uses allowed in the agricultural zones are shown in Table 131-03B.

Legend for Table 131-03B

[No change in text.]

Table 131-03B
Use Regulations Table of Agricultural Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]			
Medical Marijuana Consumer Cooperatives		=		=	
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]			

Footnotes for Table 131-03B [No change in text.]

§131.0422 Use Regulations Table for Residential Zones

The uses allowed in the residential zones are shown in the Table 131-04B.

Legend for Table 131-04B

[No change in text.]

Table 131-04B
Use Regulations Table of Residential Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**																					
	1st & 2nd >>	RE-			RS-													RX-		RT-			
	3rd >>	1-			1-													1-		1-			
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]																					
Medical Marijuana Consumer Cooperatives		=			=														=		=		

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**																					
	1st & 2nd >>	RE-			RS-													RX-		RT-			
	3rd >>	1-			1-													1-		1-			
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]																					

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**											
	1st & 2nd >>	RM-											
	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]											
Medical Marijuana Consumer Cooperatives		=			=			=			=		=
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs*, Separately Regulated *Signs* Uses,** Theater *Marquees* [No change in text.]		[No change in text.]											

Footnotes for Table 131-04B [No change in text.]

§131.0522 Use Regulations Table ~~of~~ for Commercial Zones

The uses allowed in the commercial zones are shown in the Table 131-05B.

Legend for Table 131-05B

[No change in text.]

Table 131-05B
Use Regulations Table for Commercial Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**									
	1st & 2nd >>	CN[(1)]-			CR-		CO-		CV-		CP-
	3rd >>	1-			1-	2-	1-		1-		1-
	4th >>	1	2	3	1	1	1	2	1	2	1
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]									
Medical Marijuana Consumer Cooperatives		=			=	C	=		=		=
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]									

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zone**																			
	1st &> 2nd>>	CC-																			
	3rd >>	1-			2-			3-		4-					5-						
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5		
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]																			
Medical Marijuana Consumer Cooperatives		=			C			=		=					=						
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses**, Theater *Marquees* [No change in text.]		[No change in text.]																			

Footnotes to Table 131-05B [No change in text.]

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in the Table 131-06B.

Legend for Table 131-06B

[No change in text.]

Table 131-06B
Use Regulations Table for Industrial Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**							
	1st & 2nd> >	**IP-**		**IL-**			**IH-**		**IS-**
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
Open Space through **Commercial Services, Separately Regulated Commercial Services Uses**, Massage Establishments, Specialized Practice [No change in text.]		[No change in text.]							
Medical Marijuana Consumer Cooperatives		=	=	=	=	C	=	=	C
Commercial Services, Separately Regulated Commercial Services Uses, Nightclubs & Bars over 5,000 square feet in size through ***Signs***, **Separately Regulated *Signs* Uses,** Community Entry *Signs* [No change in text.]		[No change in text.]							
~~Neigboorhood~~ Neighborhood Identification *Signs*		[No change in text.]							
Comprehensive Sign Program through Theater *Marquees* [No change in text.]		[No change in text.]							

Footnotes to Table 131-06B [No change in text.]

§141.0614 Medical Marijuana Consumer Cooperatives

Medical marijuana consumer cooperatives may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than four *medical marijuana consumer cooperatives* are permitted in each City Council District. *Medical marijuana consumer cooperatives* are subject to the following regulations.

(a) *Medical marijuana consumer cooperatives* shall maintain the following minimum separation between uses, as measured between *property lines*, in accordance with Section 113.0225:

(1) 1,000 feet from *public parks*, *churches*, child care centers, *playgrounds*, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, other *medical marijuana consumer cooperatives*, residential care facilities, or schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(2) 100 feet from a residential zone.

(b) Consultations by medical professionals shall not be a permitted *accessory use* at a *medical marijuana consumer cooperative*.

(c) Lighting shall be provided to illuminate the interior of the *medical marijuana consumer cooperative*, facade, and the immediate surrounding area, including any *accessory uses*, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

(d) Security shall be provided at the *medical marijuana consumer cooperative*, which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premises* during business hours. The security guard

should only be engaged in activities related to providing security for the facility, except on an incidental basis.

(e) *Signs* shall be posted on the outside of the *medical marijuana consumer cooperative* and shall only contain the name of the business, limited to two colors.

(f) The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the *medical marijuana consumer cooperative* in character size at least two inches in height.

(g) The *medical marijuana consumer cooperative* shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

(h) The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to medical marijuana without a human intermediary.

(i) A permit shall be obtained as required pursuant to Chapter 4, Article 2, Division 15.

(j) A Conditional Use Permit for a *medical marijuana consumer cooperative* shall expire no later than five (5) years from the date of issuance.

§ ~~141.0614~~ 141.0615 Nightclubs and Bars over 5,000 Square Feet in Size

[No change in text.]

§151.0103 Applicable Regulations

(a) [No change in text.]

(b) The following regulations apply in all planned districts:

(1) through (7) [No change in text.]

(8) Medical marijuana consumer cooperative regulations contained in Section 141.0614, when that use is specifically allowed by the Planned District Ordinance.

§152.0312 Subdistrict D Permitted Uses

(a) through (b) [No change in text.]

(c) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(d) All uses except off-street parking, outdoor dining facilities, signs and the storage and display of those items listed in Section 152.0405(b) (Outdoor Display, Operation and Storage) shall be operated entirely within enclosed buildings or walls or fences as required in Section 152.0405.

§153.0309 Employment Center (EC)

(a) Permitted Uses

No building, improvement or portion thereof shall be erected, constructed, converted, established, altered or enlarged; nor shall any lot or premises be used except for one or more of the following purposes:

(1) through (10) [No change in text.]

(11) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(~~11~~12) The following manufacturing uses only when secondary and supportive to the primary manufacturing use of the premises:

(A) through (D) [No change in text.]

(~~12~~13) The following uses and classes of uses shall be prohibited from locating in the Employment Center Zone:

(A) through (F) [No change in text.]

(~~13~~14) The following manufacturing uses shall be prohibited:

(A) through (H) [No change in text.]

(b) through (c) [No change in text.]

§153.0310 Special Use Area (SP)

(a) [No change in text.]

(b) Permitted Uses

The following uses are permitted in the Special Use Area:

(1) through (11) [No change in text.]

(12) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(~~12~~13) Any other use, including accessory uses, which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses enumerated above and consistent with the purpose and intent of this zone. The adopted resolution embodying such findings shall be filed in the office of the City Clerk.

(c) through (d) [No change in text.]

§156.0308 Base District Use Regulations

(a) through (b) [No change in text.]

	Table 156-0308-A: CENTRE PLANNED DISTRICT USE REGULATIONS														
	LEGEND: P = Permitted by Right; C = Conditional Use Permit Required; -- = Use Not Permitted; L = Limited Use; N = Neighborhood Use Permit Required; S = Site Development Permit Required; MS = Main Street; CS= Commercial Street; E= Employment Overlay														
Use Categories/ Subcategories	C	NC	ER	BP	WM[7]	MC	RE	I[7]	T[7]	PC	PF[10]	OS	CC[7]	Additional Regulations	*MS/CS & E Overlays*
Public Park/ Plaza/Open Space through **Commercial Services,** Maintenance & Repair [No change in text.]	[No change in text.]														
Medical Marijuana Consumer Cooperatives	--	--	--	--	C	--	--	C	C	--	--	--	C	§141.0614	
Commercial Services, Off-Site Services through **Other Use Requirements,** *Outdoor Activities* [No change in text.]	[No change in text.]														

Footnotes to Table 156-0308-A [No change in text.]

§1514.0305 Commercial Zones (MV-CO, MV-CV, MV-CR)

(a) through (b) [No change in text.]

Legend for Table 1514-03J

[No change in text.]

Table 1514-03J
Commercial Zones Use Table

COMMERCIAL	MV-CO	MV-CV	MV-CR
Accessory Uses through Medical appliance sales [No change in text.]	[No change in text.]		
Medical marijuana consumer cooperatives	CUP[3]	CUP[3]	CUP[3]
COMMERCIAL, Music Stores through **COMMERCIAL**, Wholesaling or warehousing of goods and merchandise, provided that the floor area occupied for such use per establishment does not exceed 5,000 sq. ft. For automobile dealership, the area shall not exceed 15,000 sq. ft. [No change in text.]			
Any other use which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses, including accessory uses, enumerated in this section and consistent with the purpose and intent of this planned district. The adopted resolution embodying such finding shall be filed in the office of the City Clerk. [No change in text.]			

~~Footnotes Table 1514-03J~~ **Footnotes Table 1514-03J**
(1) through (2) [No change in text.]
(3) When the multiple use option is utilized, medical marijuana consumer cooperatives are prohibited.

(2) through (4) [No change in text.]

(c) through (l) [No change in text.]

§1517.0301 Permitted Uses

(a) Industrial Subdistrict

No building or improvement or portion thereof shall be erected, constructed, converted, established or enlarged, nor shall any premises be used except for one or more of the following purposes:

(1) through (9) [No change in text.]

(10) Medical marijuana consumer cooperatives

Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

(b) Commercial Subdistricts

(1) through (7) [No change in text.]

(8) Medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

§1517.0302 Otay International Center Precise Plan Subdistrict

In the Otay International Center Precise Plan Subdistrict identified on Map Drawing No. C-680.2, the property development regulations as set forth within the Otay International Center Precise Plan shall apply, and no building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the land uses permitted on the parcel by the Precise Plan, except that medical marijuana consumer cooperatives are permitted in accordance with Section 141.0614.

Article 19: Southeastern San Diego Planned District

Appendix A: Uses

Legend: P = Permitted
- = Not Permitted
L = ~~subject~~ Subject to Limitations
C = Conditional Use Permit in accordance with Chapter 12, Article 6, Division 3
SP = Special Permit
Special Permit for Alcohol Sales and Distribution - See Appendix C

Permitted Uses	Residential Zones		Commercial Zones			Industrial Zones	
	SF	MF	1	2	3	I-1	I-2
Residential through **Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated:**, Medical Appliance Sales [No change in text.]							
Medical Marijuana Consumer Cooperatives	-	-	C	C	C	C	-
Commercial Establishments engaged in the Retail, Wholesale, Service or Office Uses for the following unless otherwise indicated: Motor Vehicle, Parts and Accessories, Retail Sale of New Items Only through **The following business and professional establishments**: Addressing and Secretarial Services [No change in text.]	[No change in text.]						
Any other use which the Planning Commission may find to be similar in character or compatible to the uses permitted in the specific zone or zones. The adopted resolution embodying such finding shall be filed in the Office of the City Clerk. Any other use allowed with a Conditional Use Permit decided in accordance with Process Five as identified in Section 151.0401(f) (General Provisions). [No change in text.]	[No change in text.]						

Footnotes for Appendix A: Uses [No change in text.]

SMT:als
02/06/14
02/26/14 Rev.Copy
02/27/14 Rev.Cor.
Or.Dept:DSD
Doc. No. 558503_6

Passed by the Council of The City of San Diego on MAR 11 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☑	☐	☐	☐
District 2 (Vacant)	☐	☐	☐	☐
Todd Gloria	☑	☐	☐	☐
Myrtle Cole	☐	☐	☑	☐
Mark Kersey	☐	☑	☐	☐
Lorie Zapf	☑	☐	☐	☐
Scott Sherman	☑	☐	☐	☐
David Alvarez	☑	☐	☐	☐
Marti Emerald	☑	☐	☐	☐

Date of final passage MAR 25 2014.

AUTHENTICATED BY: KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on FEB 25 2014, and on MAR 25 2014.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20356

Exhibit 3

Senate Bill No. 643

CHAPTER 719

An act to amend Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 643, McGuire. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommended cannabis to patients for medical purposes without a good faith examination, as specified. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

The people of the State of California do enact as follows:

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Board of Vocational Nursing and Psychiatric Technicians.

(10) Respiratory Care Board of California.

(11) Physical Therapy Board of California.

(12) Physician Assistant Committee of the Medical Board of California.

(13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.

(14) Medical Board of California.

(15) State Board of Optometry.

(16) Acupuncture Board.

(17) Cemetery and Funeral Bureau.

(18) Bureau of Security and Investigative Services.

(19) Division of Investigation.

(20) Board of Psychology.

(21) California Board of Occupational Therapy.

(22) Structural Pest Control Board.

(23) Contractors' State License Board.

(24) Naturopathic Medicine Committee.

(25) Professional Fiduciaries Bureau.

(26) Board for Professional Engineers, Land Surveyors, and Geologists.

(27) Bureau of Medical Marijuana Regulation.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its

investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either

a fine of up to twenty-five thousand dollars ($25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars ($25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242 or 2525.3.

SEC. 5. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars ($5,000) or by civil penalties of up to five thousand dollars ($5,000) and shall constitute unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical

cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. Section 19302.1 is added to the Business and Professions Code, to read:

19302.1. (a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the

transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. Section 19319 is added to the Business and Professions Code, to read:

19319. (a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. Section 19320 is added to the Business and Professions Code, to read:

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. Section 19322 is added to the Business and Professions Code, to read:

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. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit

cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, "employee" does not include a supervisor.

(C) For purposes of this paragraph, "supervisor" means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:

(1) Cultivation.

(2) Extraction and infusion methods.

(3) The transportation process.

(4) Inventory procedures.

(5) Quality control procedures.

SEC. 10. Section 19323 is added to the Business and Professions Code, to read:

19323. (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.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority, through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(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.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:

19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.5. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

(1) The licensee receiving the product.

(2) The transaction date.

(3) The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.

(b) (1) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:

(A) The quantity, or weight, and variety of products shipped.

(B) The estimated times of departure and arrival.

(C) The quantity, or weight, and variety of products received.

(D) The actual time of departure and arrival.

(E) A categorization of the product.

(F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensaries.

(2) (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.

(B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.

(3) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

(4) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.

(5) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.

(6) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.

(7) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. (a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau's collection of the fees, civil fines, and penalties imposed pursuant to this chapter.

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.

SEC. 15. Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 8. Licensed Transporters

19337. (a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

(2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the license.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 11. Taxation

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.

(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 20. This act shall become operative only if Assembly Bill 266 and Assembly Bill 243 of the 2015–16 Session are enacted and take effect on or before January 1, 2016.

O

Exhibit 4

AB-266 Medical marijuana. (2015-2016)

Assembly Bill No. 266

CHAPTER 689

An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.

[Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 266, Bonta. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill, among other things, would enact the Medical Marijuana Regulation and Safety Act for the licensure and regulation of medical marijuana and would establish within the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Director of Consumer Affairs. The bill would require the director to administer and enforce the provisions of the act.

This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products.

This bill would impose certain fines and civil penalties for specified violations of the act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account.

(2) Under existing law, certain persons with identification cards, who associate within the state in order collectively or cooperatively to cultivate marijuana for medical purposes, are not solely on the basis of that fact subject to specified state criminal sanctions.

This bill would repeal these provisions upon the issuance of licenses by licensing authorities pursuant to the Medical Marijuana Regulation and Safety Act, as specified, and would instead provide that actions of licensees with the relevant local permits, in accordance with the act and applicable local ordinances, are not offenses subject to arrest, prosecution, or other sanction under state law.

(3) This bill would provide that its provisions are severable.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.
This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would provide that it shall become operative only if SB 643 and AB 243 of the 2015–16 Regular Session are also enacted and become operative.
Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of the following:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary Education.

(l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(m) The Board of Registered Nursing.

(n) The Board of Behavioral Sciences.

(o) The State Athletic Commission.

(p) The Cemetery and Funeral Bureau.

(q) The State Board of Guide Dogs for the Blind.

(r) The Bureau of Security and Investigative Services.

(s) The Court Reporters Board of California.

(t) The Board of Vocational Nursing and Psychiatric Technicians.

(u) The Landscape Architects Technical Committee.

(v) The Division of Investigation.

(w) The Bureau of Automotive Repair.

(x) The Respiratory Care Board of California.

(y) The Acupuncture Board.

(z) The Board of Psychology.

(aa) The California Board of Podiatric Medicine.

(ab) The Physical Therapy Board of California.

(ac) The Arbitration Review Program.

(ad) The Physician Assistant Committee.

(ae) The Speech-Language Pathology and Audiology Board.

(af) The California Board of Occupational Therapy.

(ag) The Osteopathic Medical Board of California.

(ah) The Naturopathic Medicine Committee.

(ai) The Dental Hygiene Committee of California.

(aj) The Professional Fiduciaries Bureau.

(ak) The State Board of Chiropractic Examiners.

(al) The Bureau of Real Estate.

(am) The Bureau of Real Estate Appraisers.

(an) The Structural Pest Control Board.

(ao) The Bureau of Medical Marijuana Regulation.

(ap) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 205.1 is added to the Business and Professions Code, to read:

205.1. Notwithstanding subdivision (a) of Section 205, the Medical Marijuana Regulation and Safety Act Fund is a special fund within the Professions and Vocations Fund, and is subject to subdivision (b) of Section 205.

SEC. 4. Chapter 3.5 (commencing with Section 19300) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 3.5. Medical Marijuana Regulation and Safety act
Article 1. Definitions

19300. This act shall be known and may be cited as the Medical Marijuana Regulation and Safety Act.

19300.5. For purposes of this chapter, the following definitions shall apply:

(a) "Accrediting body" means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) "Applicant," for purposes of Article 4 (commencing with Section 19319), means the following:

(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.

(c) "Batch" means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(d) "Bureau" means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) "Cannabinoid" or "phytocannabinoid" means a chemical compound that is unique to and derived from cannabis.

(f) "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) "Certificate of accreditation" means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) "Chief" means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) "Commercial cannabis activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(l) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) "Dispensary" means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) "Dispensing" means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) "Distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) "Distributor" means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) "Dried flower" means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) "Fund" means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) "Identification program" means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) "Labor peace agreement" means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(w) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) "Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) "Transporter" means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) "Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) "Lot" means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, "lot" means a specifically identified amount produced in a unit of time or a quantity in a manner that ensures its having uniform character and quality within specified limits.

(ae) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) "Manufacturing site" means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) "Permit," "local license," or "local permit" means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) "Person" means 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.

(ak) "State license," "license," or "registration" means a state license issued pursuant to this chapter.

(al) "Topical cannabis" means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

19300.7. License classifications pursuant to this chapter are as follows:

(a) Type 1 = Cultivation; Specialty outdoor; Small.

(b) Type 1A = Cultivation; Specialty indoor; Small.

(c) Type 1B = Cultivation; Specialty mixed-light; Small.

(d) Type 2 = Cultivation; Outdoor; Small.

(e) Type 2A = Cultivation; Indoor; Small.

(f) Type 2B = Cultivation; Mixed-light; Small.

(g) Type 3 = Cultivation; Outdoor; Medium.

(h) Type 3A = Cultivation; Indoor; Medium.

(i) Type 3B = Cultivation; Mixed-light; Medium.

(j) Type 4 = Cultivation; Nursery.

(k) Type 6 = Manufacturer 1.

(l) Type 7 = Manufacturer 2.

(m) Type 8 = Testing.

(n) Type 10 = Dispensary; General.

(o) Type 10A = Dispensary; No more than three retail sites.

(p) Type 11 = Distribution.

(q) Type 12 = Transporter.

Article 2. Administration

19302. There is in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

19303. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

19304. The bureau shall make and prescribe reasonable rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and duties conferred upon it by this chapter, not inconsistent with any statute of this state, including particularly this chapter and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

19305. Notice of any action of the licensing authority required by this chapter to be given may be signed and given by the director or an authorized employee of the department and may be made personally or in the manner prescribed by Section 1013 of the Code of Civil Procedure.

19306. (a) The bureau may convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this chapter, including best practices and guidelines to ensure qualified patients have adequate access to medical cannabis and medical cannabis products. The advisory committee members shall be determined by the chief.

(b) The advisory committee members may include, but not be limited to, representatives of the medical marijuana industry, representatives of medical marijuana cultivators, appropriate local and state agencies, appropriate local and state law enforcement, physicians, environmental and public health experts, and medical marijuana patient advocates.

19307. A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this chapter.

19308. For any hearing held pursuant to this chapter, the director, or a licensing authority, may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

19309. In any hearing before a licensing authority pursuant to this chapter, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena,

his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.

19310. The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.

Article 3. Enforcement

19311. Grounds for disciplinary action include:

(a) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter.

(b) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.

(c) Any other grounds contained in regulations adopted by a licensing authority pursuant to this chapter.

(d) Failure to comply with any state law, except as provided for in this chapter or other California law.

19312. Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

19313. Each licensing authority may take disciplinary action against a licensee for any violation of this chapter when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial cannabis activity.

19313.5. Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities and the Department of Food and Agriculture.

19314. All accusations against licensees shall be filed by the licensing authority within five years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within five years after such discovery.

19315. (a) Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

(b) Nothing in this chapter shall be interpreted to require the Department of Consumer Affairs to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) Nothing in this chapter shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority under the Fish and Game Code, the Water Code, the Food and Agricultural Code, or the Health and Safety Code.

19316. (a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.

(b) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would

otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(c) Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

19317. (a) The actions of a licensee, its employees, and its agents that are (1) permitted pursuant to both a state license and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances, and (2) conducted in accordance with the requirements of this chapter and regulations adopted pursuant to this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to both a state license and a local license or permit following the requirements of the applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

19318. (a) A person engaging in commercial cannabis activity without a license required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General on behalf of the people, the penalty collected shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

Article 4. Licensing

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

19321. (a) The Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health shall promulgate regulations for implementation of their respective responsibilities in the administration of this chapter.

(b) A license issued pursuant to this section shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(c) Notwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

(d) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Article 5. Medical Marijuana Regulation

19326. (a) A person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter.

(b) All licensees holding cultivation or manufacturing licenses shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor, as defined in Section 19300.5, for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary. Those licensees holding a Type 10A license in addition to a cultivation license or a manufacturing license shall send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. The licensing authority shall fine a licensee who violates this subdivision in an amount determined by the licensing authority to be reasonable.

(c) (1) Upon receipt of medical cannabis or medical cannabis products by a holder of a cultivation or manufacturing license, the Type 11 licensee shall first inspect the product to ensure the identity and quantity of the product and then ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 licensee prior to distributing the batch of medical cannabis or medical cannabis products.

(2) Upon issuance of a certificate of analysis by the Type 8 licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products shall undergo a quality assurance review by the Type 11 licensee prior to distribution to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. Licensed cultivators and manufacturers shall package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, as prescribed by the Department of Food and Agriculture, for the purpose of identifying and tracking medical cannabis or medical cannabis products. Medical cannabis and medical cannabis products shall be labeled as required by Section 19347. All packaging and sealing shall be completed prior to medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

(3) This section does not limit the ability of licensed cultivators, manufacturers, and dispensaries to directly enter into contracts with one another indicating the price and quantity of medical cannabis or medical cannabis products to be distributed. However, a Type 11 licensee responsible for executing the contract is authorized to collect a fee for the services rendered, including, but not limited to, costs incurred by a Type 8 licensee, as well as applicable state or local taxes and fees.

(d) Medical cannabis and medical cannabis products shall be tested by a registered testing laboratory, prior to retail sale or dispensing, as follows:

(1) Medical cannabis from dried flower shall, at a minimum, be tested for concentration, pesticides, mold, and other contaminants.

(2) Medical cannabis extracts shall, at a minimum, be tested for concentration and purity of the product.

(3) This chapter shall not prohibit a licensee from performing on-site testing for the purposes of quality assurance of the product in conjunction with reasonable business operations. On-site testing by the licensee shall not be certified by the State Department of Public Health.

(e) All commercial cannabis activity shall be conducted between licensees, when these are available.

19327. (a) A licensee shall keep accurate records of commercial cannabis activity.

(b) All records related to commercial cannabis activity as defined by the licensing authorities shall be maintained for a minimum of seven years.

(c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority or a state or local agency deems necessary to perform its duties under this chapter. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.

(d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.

(e) A licensee or its agent, or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section has engaged in a violation of this chapter.

(f) If a licensee or an employee of a licensee fails to maintain or provide the records required pursuant to this section, the licensee shall be subject to a citation and fine of thirty thousand dollars ($30,000) per individual violation.

19328. (a) A licensee may only hold a state license in up to two separate license categories, as follows:

(1) Type 1, 1A, 1B, 2, 2A, or 2B licensees may also hold either a Type 6 or 7 state license.

(2) Type 6 or 7 licensees, or a combination thereof, may also hold either a Type 1, 1A, 1B, 2, 2A, or 2B state license.

(3) Type 6 or 7 licensees, or a combination thereof, may also hold a Type 10A state license.

(4) Type 10A licensees may also hold either a Type 6 or 7 state license, or a combination thereof.

(5) Type 1, 1A, 1B, 2, 2A, or 2B licensees, or a combination thereof, may also hold a Type 10A state license.

(6) Type 10A licensees may apply for Type 1, 1A, 1B, 2, 2A, or 2B state license, or a combination thereof.

(7) Type 11 licensees shall apply for a Type 12 state license, but shall not apply for any other type of state license.

(8) Type 12 licensees may apply for a Type 11 state license.

(9) A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses are valid. All cultivation pursuant to this section shall comply with local ordinances. This paragraph shall become inoperative on January 1, 2026.

(b) Except as provided in subdivision (a), a person or entity that holds a state license is prohibited from licensure for any other activity authorized under this chapter, and is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

(c) (1) In a jurisdiction that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to subdivision (a) if it meets all of the following conditions:

(A) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and has continuously done so since that date.

(B) The business has been in full compliance with all applicable local ordinances at all times prior to licensure.

(C) The business is registered with the State Board of Equalization.

(2) A business licensed pursuant to paragraph (1) is not required to conduct all cultivation or manufacturing within the bounds of a local jurisdiction, but all cultivation and manufacturing shall have commenced prior to July 1, 2015, and have been in full compliance with applicable local ordinances.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

19329. A licensee shall not also be licensed as a retailer of alcoholic beverages pursuant to Division 9 (commencing with Section 23000).

19330. This chapter and Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

Article 7. Licensed Distributors, Dispensaries, and Transporters

19334. (a) State licenses to be issued by the Department of Consumer Affairs are as follows:

(1) "Dispensary," as defined in this chapter. This license shall allow for delivery pursuant to Section 19340.

(2) "Distributor," for the distribution of medical cannabis and medical cannabis products from manufacturer to dispensary. A Type 11 licensee shall hold a Type 12, or transporter, license and register each location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(3) "Transport," for transporters of medical cannabis or medical cannabis products between licensees. A Type 12 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(4) "Special dispensary status" for dispensers who have no more than three licensed dispensary facilities. This license shall allow for delivery where expressly authorized by local ordinance.

(b) The bureau shall establish minimum security requirements for the commercial transportation and delivery of medical cannabis and products.

(c) A licensed dispensary shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary. These security measures shall include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the dispensary if they are not engaging in activity expressly related to the operations of the dispensary.

(2) Establishing limited access areas accessible only to authorized dispensary personnel.

(3) Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

(d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.

(2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.

(3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.

(4) Any other breach of security.

Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Article 10. Licensed Manufacturers and Licensed Laboratories

19341. The State Department of Public Health shall promulgate regulations governing the licensing of cannabis manufacturers and testing laboratories. Licenses to be issued are as follows:

(a) "Manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.

(b) "Manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents. The State Department of Public Health shall limit the number of licenses of this type.

(c) "Testing," for testing of medical cannabis and medical cannabis products. Testing licensees shall have their facilities licensed according to regulations set forth by the division. A testing licensee shall not hold a license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter.

19342. (a) For the purposes of testing medical cannabis or medical cannabis products, licensees shall use a licensed testing laboratory that has adopted a standard operating procedure using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and

ISO/IEC 17025 to test medical cannabis and medical cannabis products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

(b) An agent of a licensed testing laboratory shall obtain samples according to a statistically valid sampling method for each lot.

(c) A licensed testing laboratory shall analyze samples according to either of the following:

(1) The most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(2) Scientifically valid methodology that is demonstrably equal or superior to paragraph (1), in the opinion of the accrediting body.

(d) If a test result falls outside the specifications authorized by law or regulation, the licensed testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(e) A licensed testing laboratory shall destroy the remains of the sample of medical cannabis or medical cannabis product upon completion of the analysis.

19343. A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

(a) Is registered by the State Department of Public Health.

(b) Is independent from all other persons and entities involved in the medical cannabis industry.

(c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.

(d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

(e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.

19344. (a) A licensed testing laboratory shall issue a certificate of analysis for each lot, with supporting data, to report both of the following:

(1) Whether the chemical profile of the lot conforms to the specifications of the lot for compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

(C) Cannabidiol (CBD).

(D) Cannabidiolic Acid (CBDA).

(E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(F) Cannabigerol (CBG).

(G) Cannabinol (CBN).

(H) Any other compounds required by the State Department of Public Health.

(2) That the presence of contaminants does not exceed the levels that are the lesser of either the most current version of the American Herbal Pharmacopoeia monograph or the State Department of Public Health. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

(A) Residual solvent or processing chemicals.

(B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.

(C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, P. aeruginosa, aspergillus spp., s. aureus, aflatoxin B1, B2, G1, or G2, or ochratoxin A.

(D) Whether the batch is within specification for odor and appearance.

(b) Residual levels of volatile organic compounds shall be below the lesser of either the specifications set by the United States Pharmacopeia (U.S.P. Chapter 467) or those set by the State Department of Public Health.

19345. (a) Except as provided in this chapter, a licensed testing laboratory shall not acquire or receive medical cannabis or medical cannabis products except from a licensed facility in accordance with this chapter, and shall not distribute, sell, deliver, transfer, transport, or dispense medical cannabis or medical cannabis products, from which the medical cannabis or medical cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

(b) A licensed testing laboratory may receive and test samples of medical cannabis or medical cannabis products from a qualified patient or primary caregiver only if he or she presents his or her valid recommendation for cannabis for medical purposes from a physician. A licensed testing laboratory shall not certify samples from a qualified patient or caregiver for resale or transfer to another party or licensee. All tests performed by a licensed testing laboratory for a qualified patient or caregiver shall be recorded with the name of the qualified patient or caregiver and the amount of medical cannabis or medical cannabis product received.

(c) The State Department of Public Health shall develop procedures to ensure that testing of cannabis occurs prior to delivery to dispensaries or any other business, specify how often licensees shall test cannabis and that the cost of testing shall be borne by the licensed cultivators, and require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the cannabis into compliance with quality assurance standards as promulgated by the State Department of Public Health.

(d) The State Department of Public Health shall establish a licensing fee, and laboratories shall pay a fee to be licensed. Licensing fees shall not exceed the reasonable regulatory cost of the licensing activities.

19347. (a) Prior to delivery or sale at a dispensary, medical cannabis products shall be labeled and in a tamper-evident package. Labels and packages of medical cannabis products shall meet the following requirements:

(1) Medical cannabis packages and labels shall not be made to be attractive to children.

(2) All medical cannabis product labels shall include the following information, prominently displayed and in a clear and legible font:

(A) Manufacture date and source.

(B) The statement "SCHEDULE I CONTROLLED SUBSTANCE."

(C) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

(D) The statement "FOR MEDICAL USE ONLY."

(E) The statement "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."

(F) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(G) For packages containing only dried flower, the net weight of medical cannabis in the package.

(H) A warning if nuts or other known allergens are used.

(I) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.

(J) Clear indication, in bold type, that the product contains medical cannabis.

(K) Identification of the source and date of cultivation and manufacture.

(L) Any other requirement set by the bureau.

(M) Information associated with the unique identifier issued by the Department of Food and Agriculture pursuant to Section 11362.777 of the Health and Safety Code.

(b) Only generic food names may be used to describe edible medical cannabis products.

Article 14. Reporting

19353. Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities and post the report on the authority's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal year:

(a) The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.

(b) The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.

(c) The average time for processing state license applications, by state license category.

(d) The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the licensing authorities.

19354. The bureau shall contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, to develop a study that identifies the impact that cannabis has on motor skills.

Article 15. Privacy

19355. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the office or licensing authorities for the purposes of administering this chapter are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter, or a local ordinance.

(b) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this chapter shall be maintained in accordance with Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and other state and federal laws relating to confidential patient information.

(c) Nothing in this section precludes the following:

(1) Employees of the bureau or any licensing authorities notifying state or local agencies about information submitted to the agency that the employee suspects is falsified or fraudulent.

(2) Notifications from the bureau or any licensing authorities to state or local agencies about apparent violations of this chapter or applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the regulatory authorities or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(d) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, notification, or the parameters of a specific court order or subpoena.

SEC. 5. Section 9147.7 of the Government Code is amended to read:

9147.7. (a) For the purpose of this section, "eligible agency" means any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

(b) The Joint Sunset Review Committee is hereby created to identify and eliminate waste, duplication, and inefficiency in government agencies. The purpose of the committee is to conduct a comprehensive analysis over 15 years, and on a periodic basis thereafter, of every eligible agency to determine if the agency is still necessary and cost effective.

(c) Each eligible agency scheduled for repeal shall submit to the committee, on or before December 1 prior to the year it is set to be repealed, a complete agency report covering the entire period since last reviewed, including, but not limited to, the following:

(1) The purpose and necessity of the agency.

(2) A description of the agency budget, priorities, and job descriptions of employees of the agency.

(3) Any programs and projects under the direction of the agency.

(4) Measures of the success or failures of the agency and justifications for the metrics used to evaluate successes and failures.

(5) Any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.

(d) The committee shall take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency shall be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. No eligible agency shall be extended in perpetuity unless specifically exempted from the provisions of this section. The committee may recommend that the Legislature extend the statutory sunset date for no more than one year to allow the committee more time to evaluate the eligible agency.

(e) The committee shall be comprised of 10 members of the Legislature. The Senate Committee on Rules shall appoint five members of the Senate to the committee, not more than three of whom shall be members of the same political party. The Speaker of the Assembly shall appoint five members of the Assembly to the committee, not more than three of whom shall be members of the same political party. Members shall be appointed within 15 days after the commencement of the regular session. Each member of the committee who is appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve during that committee member's term of office or until that committee member no longer is a Member of the Senate or the Assembly, whichever is applicable. A vacancy on the committee shall be filled in the same manner as the original appointment. Three Assembly Members and three Senators who are members of the committee shall constitute a quorum for the conduct of committee business. Members of the committee shall receive no compensation for their work with the committee.

(f) The committee shall meet not later than 30 days after the first day of the regular session to choose a chairperson and to establish the schedule for eligible agency review provided for in the statutes governing the eligible agencies. The chairperson of the committee shall alternate every two years between a Member of the Senate and a Member of the Assembly, and the vice chairperson of the committee shall be a member of the opposite house as the chairperson.

(g) This section shall not be construed to change the existing jurisdiction of the budget or policy committees of the Legislature.

(h) This section shall not apply to the Bureau of Medical Marijuana Regulation.

SEC. 6. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Subject to subdivision (b), qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) This section shall remain in effect only until one year after the Bureau of Medical Marijuana Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code), and is repealed upon issuance of licenses.

SEC. 7. Section 147.5 is added to the Labor Code, to read:

147.5. (a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 8. Section 31020 is added to the Revenue and Taxation Code, to read:

31020. The board, in consultation with the Department of Food and Agriculture, shall adopt a system for reporting the movement of commercial cannabis and cannabis products throughout the distribution chain. The system shall not be duplicative of the electronic database administered by the Department of Food and Agriculture specified in Section 19335 of the Business and Professions Code. The system shall also employ secure packaging and be capable of providing information to the board. This system shall capture, at a minimum, all of the following:

(a) The amount of tax due by the designated entity.

(b) The name, address, and license number of the designated entity that remitted the tax.

(c) The name, address, and license number of the succeeding entity receiving the product.

(d) The transaction date.

(e) Any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. The Legislature finds and declares that Section 4 of this act, which adds Section 19355 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 12. This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.

Exhibit 5

Bill Text: CA AB243 | 2015-2016 | Regular Session | Chaptered

California Assembly Bill 243 ***(Prior Session Legislation)***

Bill Title: Medical marijuana.

Spectrum: Partisan Bill (Democrat 3-0)

Status: *(Passed)* 2015-10-09 - Chaptered by Secretary of State - Chapter 688, Statutes of 2015. [AB243 Detail]

Download: California-2015-AB243-Chaptered.html

BILL NUMBER: AB 243 CHAPTERED
BILL TEXT

CHAPTER 688
FILED WITH SECRETARY OF STATE OCTOBER 9, 2015
APPROVED BY GOVERNOR OCTOBER 9, 2015
PASSED THE SENATE SEPTEMBER 11, 2015
PASSED THE ASSEMBLY SEPTEMBER 11, 2015
AMENDED IN SENATE SEPTEMBER 11, 2015
AMENDED IN SENATE SEPTEMBER 4, 2015
AMENDED IN SENATE SEPTEMBER 1, 2015
AMENDED IN SENATE AUGUST 17, 2015
AMENDED IN SENATE JULY 2, 2015
AMENDED IN ASSEMBLY JUNE 1, 2015
AMENDED IN ASSEMBLY APRIL 22, 2015
AMENDED IN ASSEMBLY APRIL 8, 2015

INTRODUCED BY Assembly Member Wood
(Principal coauthor: Assembly Member Rendon)
(Coauthor: Assembly Member Williams)

FEBRUARY 5, 2015

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to $10,000,000, and would appropriate $10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015-16 Regular Session are enacted and take effect on or before January 1, 2016.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a

combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars ($10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars ($10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian

wetlands, and aquatic habitats.
(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.
(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.
(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.
(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.
(D) The department may promulgate regulations to implement this section.
(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.
(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.
(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.
(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.
SEC. 7. Section 13276 is added to the Water Code, to read:
13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.
(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:
(1) Site development and maintenance, erosion control, and drainage features.
(2) Stream crossing installation and maintenance.
(3) Riparian and wetland protection and management.
(4) Soil disposal.
(5) Water storage and use.

(6) Irrigation runoff.
(7) Fertilizers and soil.
(8) Pesticides and herbicides.
(9) Petroleum products and other chemicals.
(10) Cultivation-related waste.
(11) Refuse and human waste.
(12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015-16 Regular Session are enacted and become operative.

Exhibit 6

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

SALAM RAZUKI,	
Plaintiff/Respondent,	
	FROM SAN DIEGO COUNTY
vs.	HON. EDDIE C. STURGEON
NINUS MALAN, et al.,	COA NO. D075028
	SUPERIOR COURT NO.
Defendants/Appellants.	37-2018-00034229-CU-BC-CTL

REPORTER'S TRANSCRIPT ON APPEAL

Friday, November 30, 2018

(Pages 704 through 858, Inclusive)

Volume 7

330 West Broadway, Department 67
San Diego, California

Reported By:
Leyla S. Jones
CSR No. 12750

income. The end game is the sale. If it's shut down, you can't sell it, at least not without a fire sale.

If I can get it operating and where it's operating breaking even, then have you a more viable asset to sell if you need money to be able to enforce whatever you're going to enforce in your decision.

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.

THE COURT: I assume the license is what's valuable.

MS. AUSTIN: The license is what's valuable, Your Honor.

THE COURT: And the last one sold for how much?

MS. AUSTIN: Seven million.

THE COURT: Mr. Brinig, you're going to get the last word, and then I'm going to move. I mean, I've got -- as you can see, I've got a whole courtroom. Anything you want to add?

Exhibit 7

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

SALAM RAZUKI,	
Plaintiff/Respondent,	
vs.	FROM SAN DIEGO COUNTY HON. EDDIE C. STURGEON
NINUS MALAN, et al.,	COA NO. D075028
Defendants/Appellants.	SUPERIOR COURT NO. 37-2018- 00034229-CU-BC-CTL

REPORTER'S TRANSCRIPT ON APPEAL

Tuesday, August 14, 2018

(Pages 302 through 325, Inclusive)

Volume 3

330 West Broadway, Department 67
San Diego, California

Reported By:
Leyla S. Jones
CSR No. 12750

But I don't any money flowing any way for the next six days. I'm sure that can happen.

MS. LEETHAM: And I only say that because the dispensary keeps very detailed logs of its -- so they can continue to run and manage --

THE COURT: I hope they make money.

MS. LEETHAM: Me too.

THE COURT: I think we all do.

MR. GORIA: Just on that point, Your Honor, are you talking about no exchange of money other than in the regular course of business or nothing?

THE COURT: I want nothing. I don't even want an electric bill paid. Nothing. In six days, the world won't end, until I can find out.

Counsel, speak. You give me that look.

MS. AUSTIN: I'm sorry, Your Honor. Because the dispensary runs on a limited amount of product in store for safety reasons, and so they regularly purchase product to put it in the store to sell. Over a weekend, that's a lot of -- could be a lot of product.

THE COURT: Give me an idea.

MS. AUSTIN: Hundred thousand dollars.

THE COURT: Jeez. Seriously?

MS. AUSTIN: Yes, Your Honor.

THE COURT: I'm new to the business, Counsel. They sell $100,000 worth --

MS. AUSTIN: They could. It's a weekend,

so you never know on a weekend.

THE COURT: Seriously? I may change my order a little bit. They need product, this side of the table.

MS. LEETHAM: Well, and that's the problem with the dispensary is keeping some cohesiveness to it. It's been up. It's been down.

THE COURT: Okay. Where does the hundred thousand dollars come from?

MS. LEETHAM: The dispensary. It's all internal. So it's at this point, I think, starting to sustain itself now that we have the new operators in. So it's coming internally. It's accounted for too.

MS. AUSTIN: It would be money they received from sales that would go back towards product. We could cap it -- I'd have to verify with our client, but I'm sure we could cap it a little bit lower if we had to.

THE COURT: Give me a suggestion.

MS. LEETHAM: I'd be more than happy to provide accounting for the limited number of days.

THE COURT: I know, but I want to set a cap. See what she says. Give me a number.

MS. LEETHAM: 80,000.

THE COURT: Done. And, Counsel, so they can have $80,000 for the next eight days. Obviously, the business is booming, I sense, here.

Exhibit 8

19

RECORDING REQUESTED BY
CHICAGO TITLE COMPANY
AND WHEN RECORDED MAIL TO

DARRYL COTTON
6176 Federal Blvd.
San Diego, CA 92114

1741

TG
11
-D

DOC # 1998-0102763

Feb 27, 1998 8:00 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 162.10
DC: DC

Escrow No. 8860609 - N20
Order No. 8860609 - P05

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

Assessor's Parcel No:
543-020-02

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS $155.10
☐ unincorporated area ☒ City of SAN DIEGO
☒ computed on the full value of the interest or property conveyed, or is
☐ computed on the full value less the value of liens or encumbrances remaining at time of sale, and
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

MARVIN H. JOSEPHSON AND MARILYN J. JOSEPHSON, CO-TRUSTEES OF THE JOSEPHSON FAMILY TRUST DATED SEPTEMBER 19, 1994

hereby **GRANT(S)** to

DARRYL COTTON , A Single Man

the following described real property in the City of SAN DIEGO
County of SAN DIEGO , State of California:
THAT PORTION OF BLOCK 25, TRACT NO. 2 OF ENCANTO HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1100, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 5, 1907, AS SHOWN ON MAP NO. 2121 OF JOFAINA VISTA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 20, 1928, NOW ABANDONED AND DESCRIBED AS LOT 20.

Dated February 3, 1998

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO } ss.

On FEBRUARY 18, 1998 before me,
MADELINE BROKER
a Notary Public in and for said County and State, personally appeared
MARVIN H. JOSEPHSON AND
MARILYN J. JOSEPHSON
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their ~~signature(s) on the instrument the person(s), or the entity upon behalf of~~ which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Madeline Broker
Signature of Notary

MARVIN H. JOSEPHSON, CO-TRUSTEE

MARILYN J. JOSEPHSON, CO-TRUSTEE

MADELINE BROKER
Commission # 1104535
Notary Public — California
San Diego County
My Comm. Expires Aug 26, 2000

AUGUST 26, 2000
Date My Commission Expires

FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name | Street Address | City, State & Zip

GD1 -05/30/97bk

Exhibit 9

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

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

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

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

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

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

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

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

///

6. The legal description of the PROPERTY is:

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

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

INJUNCTION

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

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

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

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

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

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

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

b. Proof that any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC.

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

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

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

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

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

MONETARY RELIEF

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

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

ENFORCEMENT OF JUDGMENT

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

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

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

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

RETENTION OF JURISDICTION

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

RECORDATION OF JUDGMENT

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

KNOWLEDGE AND ENTRY OF JUDGMENT

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

///

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

IT IS SO STIPULATED.

Dated: OCT. 21, 2014

JAN I. GOLDSMITH, City Attorney

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

Dated: 9/26, 2014

JL 6TH AVENUE PROPERTY, LLC

By
Member

Dated: 10-21-14, 2014

Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26, 2014

Jeffrey Kacha

Dated: 9/26, 2014

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

///

ORDER

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

Dated: 10/27/14

JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

Exhibit 10

No Fee GC §6103

FILED
Clerk of the Superior Court
JUN 17 2015

FILED
Clerk of the Superior Court
JUN 17 2015
By: H. CHAVARIN, Deputy
'15 JUN 11 PM 1:07

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

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

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

///

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

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

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

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

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

5. The legal description of the PROPERTY is:

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

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

INJUNCTION

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

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

Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana dispensary, collective or cooperative organized anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to the San Diego Municipal Code.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

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

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

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

b. Proof that any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC.

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

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

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

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

MONETARY RELIEF

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

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

///

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

ENFORCEMENT OF JUDGMENT

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

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

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

RETENTION OF JURISDICTION

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

RECORDATION OF JUDGMENT

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

KNOWLEDGE AND ENTRY OF JUDGMENT

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

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

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

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

Dated: 6-10, 2015

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

By
Jeffrey Kacha, General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci, aka Larry Geraci, an individual

///

Dated: 6/11/15, 2015

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

JUDGMENT

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

Dated: 6-17-16

JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT

Exhibit 11

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

DECLARATION OF LARRY GERACI IN SUPPORT OF MOTION BY PLAINTIFF/CROSS-DEFENDANT LARRY GERACI FOR A PRELIMINARY INJUNCTION OR OTHER ORDER TO COMPEL ACCESS TO THE SUBJECT PROPERTY FOR SOILS TESTING

[IMAGED FILE]

Hearing Date: **March 23, 2018**
Hearing Time: **9:00 a.m.**
Department: **C-73**

Complaint Filed: March 21, 2017
Trial Date: May 11, 2018

I, Larry Geraci, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

marijuana dispensary) in San Diego County. At the time I had not yet identified a property for the MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE. I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. And I hired a land use attorney, Gina Austin of Austin Legal Group.

3. The search to identify potential locations for the business took some time as there are a number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities, or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a potential site for acquisition and development for use and operation as a MMCC. And in approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might meet the requirements for an MMCC site.

4. For several months after the initial contact, my consultant, Jim Bartell, investigated issues related to whether the location might meet the requirements for an MMCC site, including zoning issues and issues related to meeting the required distances from certain types of facilities and residential areas. For example, the City had plans for street widening in the area that potentially impacted the ability of the Property to meet the required distances. Although none of these issues were resolved to a certainty, I determined that I was still interested in acquiring the Property.

5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if CUP approval was not obtained the purchase would not be consummated and I would lose my

investment. And I was willing to pay a price for the Property based on what I anticipated it might be worth if such approval was obtained. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical marijuana dispensary. We agreed on a down payment of $10,000.00 and a purchase price of $800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written Agreement, which was executed before a notary, is attached as Exhibit 2 to the Notice of Lodgment by Plaintiff/Cross-Defendant, Larry Geraci, in Support of Motion for a Preliminary Injunction or Other Order to Compel Access to the Subject Property for Soils Testing (hereinafter the "Geraci NOL"). I tendered the $10,000 deposit to Mr. Cotton the receipt of which he acknowledged in the Nov 2nd Written Agreement.

6. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

7. As noted above, I had already put together my team for the MMCC project. My design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Motion by Plaintiff/Cross-Defendant, Larry Geraci, for a Preliminary Injunction or Other Order to Compel Access to the Subject Premises for Soils Testing dated February 27, 2018) has been submitted concurrently herewith and describes in greater detail the CUP Application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

8. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions related to his desire to be involved in the *operation* of the business (not related to the purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits) in exchange for his providing various services to the business—but we never reached an agreement as to those matters related to the operation of my future MMCC business. Those discussions were not related to the purchase and sale of the Property, which we never agreed to amend or modify. After the November 2nd Written Agreement was signed, we had further discussions about this but those discussions broke down because Mr. Cotton made what I believe were demands for excessive compensation and even ownership of the business. I did not want to pay what he demanded for the services he might offer. He kept demanding more and more and I decided that I did not want him to have any involvement in the future business to be operated at the Property, let alone as a partner or

owner. I told him I did not want him as a partner in my business and we never reached any agreement on his involvement in the marijuana dispensary business to be operated at the Property.

9. Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the operation of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

10. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as Exhibit 3 to the Geraci NOL.

11. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 4 to the NOL.

12. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 5 to the NOL. Mr. Cotton's email was false as we had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement.

13. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

14. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the Nov 2nd Written Agreement.

15. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP application, we have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. We have not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The current status of the CUP Application is set forth in the Declaration of Abhay Schweitzer.

16. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m. email (referenced in paragraph 11 above - see Exhibit 4 to NOL) stating that he would be "entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

17. During the last approximately 16 months we have diligently pursued the processing of the CUP Application at great effort and expense. I have incurred substantial expenses to date in excess of $150,000.00 in pursuing the MMCC project and the related CUP application.

18. **I have been advised by Abhay Schweitzer that another issue has recently arisen in connection with the processing of the CUP Application and our attempts to obtain approval of and issuance of the CUP, namely, we have been required by the City to perform soils testing at the Subject Property. To conduct the soils testing we are required to file a permit with the San**

Diego County Department of Environmental Health because the exploratory borings exceed 20 feet below ground surface. To obtain the permit we must include a signed Property Owner Consent form evidencing consent by the property owner, Darryl Cotton. In late January I was advised by my counsel that Darryl Cotton had agreed to allow access to the property to conduct the soils testing analysis.

19. As the required soils testing analysis needs to be performed by an engineering company, Abhay Schweitzer has, on behalf of myself and my agent, Rebecca Berry, contracted with SCST, Inc. a professional engineering firm headquartered in San Diego to conduct the soils testing analysis. Mr. Schweitzer has advised me that SCST is comprised of over 130 professionals who provide geotechnical engineering, environmental science & Engineering, special inspection & materials testing, and facilities consulting service, and that SCST is comprised of skilled geotechnical engineers, civil and environmental engineers, environmental scientists, engineering geologists, multi-credential inspectors and technicians.

20. Abhay Schweitzer has further advised me that the soils testing analysis to be performed by SCST necessitates drilling down more than 20 feet below the surface and that, whenever exploratory borings exceed 20 feet below ground surface, a permit is required to be filed with the San Diego County Department of Environmental Health which in turn requires the property owner to sign a Property Owner Consent form. I am informed by Mr. Weinstein, counsel for Mr. Geraci and Ms. Berry, that Mr. Weinstein provided the Property Owner Consent form to Mr. Cotton to sign but Mr. Cotton has not signed and returned the form. **This action by the property owner, Mr. Cotton, is directly interfering with our attempts to obtain the necessary Conditional Use Permit by preventing the completion of the soils testing which is necessary to satisfy this requirement being imposed by the City to obtain the Conditional Use Permit.**

21. SCST cannot conduct the required soils testing analysis without the consent of Darryl Cotton, the property owner, on the Property Owner Consent form, and without access to the Property to conduct the soils testing. I understand from Mr. Schweitzer that once Mr. Cotton has signed that form and SCST is allowed access to the Property, SCST will conduct the required soils testing and submit the results to the City.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21 day of February, 2018.

LARRY GERACI

Exhibit 12

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

THE CITY OF SAN DIEGO

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit ☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit ☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ **Other** _____

Project Title | **Project No.** *For City Use Only*

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of **all** persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ **Yes** ☒ **No**

Name of Individual (type or print):
Darryl Cotton
☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
6176 Federal Blvd
City/State/Zip:
San Diego Ca 92114
Phone No: (619) 954-4447 | Fax No:
Signature : | Date: 10-31-2016

Name of Individual (type or print):
Rebecca Berry
☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
5982 Gullstrand St
City/State/Zip:
San Diego / Ca / 92122
Phone No: 8589996882 | Fax No:
Signature : Rebecca Berry | Date: 10-31-2016

Name of Individual (type or print):
☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
City/State/Zip:
Phone No: | Fax No:
Signature : | Date:

Name of Individual (type or print):
☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
City/State/Zip:
Phone No: | Fax No:
Signature : | Date:

Exhibit 13

Court's Ex. 034
Case # 37-2017-00010073-CU-BC-CTL
Rec'd
Dept. C-73 Clk

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000
THE CITY OF SAN DIEGO

General Application

FORM DS-3032
AUGUST 2013

Part I (Must be completed for all permits/approvals)

1. **Approval Type:** *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☑ Other: CUP

2. **Project Address/Location:** *Include Building or Suite No.*: 6176 Federal Blvd.
Project Title: Federal Blvd. MMCC
Project No.: *For City Use Only* 520606
Legal Description: *(Lot, Block, Subdivision Name & Map Number)* TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO
Assessor's Parcel Number: 543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land
Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Project Description:
The project consists of the construction of a new MMCC facility

3. **Property Owner/Lessee Tenant Name:** *Check one* ☐ Owner ☑ Lessee or Tenant
Rebecca Berry
Telephone: Fax:
Address: 5982 Gullstrand Street | City: San Diego | State: CA | Zip Code: 92122 | E-mail Address: becky@tfcsd.net

4. **Permit Holder Name** - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.
Name: Rebecca Berry
Telephone: Fax:
Address: 5982 Gullstrand Street | City: San Diego | State: CA | Zip Code: 92122 | E-mail Address: becky@tfcsd.net

5. **Licensed Design Professional** (if required): (check one) ☑ Architect ☐ Engineer License No.: C-19371
Name: Michael R Morton AIA
Telephone: Fax:
Address: 3956 30th Street | City: San Diego | State: CA | Zip Code: 92104 | E-mail Address:

6. **Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -**
a. Year constructed for all structures on project site: 1951
b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☑ Yes ☐ No
d. Does the project include any foundation repair, digging, trenching or other site work? ☑ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer Signature: [signature] (agent) Date: 10/28/2016

7. **Notice of Violation** - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. **Applicant Name:** *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other Person per M.C. Section 112.0102
Rebecca Berry
Telephone: Fax:
Address: 5982 Gullstrand Street | City: San Diego | State: CA | Zip Code: 92122 | E-mail Address: becky@tfcsd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Rebecca Berry Date: Oct 31 2016

Exhibit 14

City of San Diego
Development Services
1222 First Ave., MS-401
San Diego, CA 92101
(619) 446-5000

THE CITY OF SAN DIEGO

Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)

FORM DS-190
MARCH 2014

The purpose of this affidavit is for the property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative (MMCC) to affirm that all uses within 1,000 feet from the subject property line have been identified, including residential zones within 100 feet, as defined in San Diego Municipal Code (SDMC), Sections 113.0103 and 141.0614.

The proposed MMCC location must be 100 feet from any residential zone and not within 1,000 feet of the property line of the following:

1. Public park
2. Church
3. Child care center
4. Playground
5. City library
6. Minor-oriented facility
7. Other medical marijuana consumer cooperatives
8. Residential care facility
9. Schools

GENERAL INFORMATION

Project Name:	**Project No.:** *For City Use Only*
Federal Blvd. MMCC	520004
Project Address:	
6176 Federal Blvd., San Diego, CA 92114	
Date Information Verified by Owner or Authorized Agent:	
10/28/2016	

DECLARATION: *The property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative must complete the following section and sign their name where indicated.*

We are aware that the business described above is subject to the Medical Marijuana Consumer Cooperatives (MMCC) regulated by SDMC, Section 141.0614 and Chapter 4, Article 2, Division 15. We hereby affirm under penalty of perjury that the proposed business location is not within 1,000 feet, measured in accordance with SDMC, Section 113.0225, of the property line of any public park, church, child care center, playground, library owned and operated by the City of San Diego, minor-oriented facility, other medical marijuana consumer cooperative, residential care facility, or schools; and is 100 feet from any residential zone as identified on the 1000-foot radius map and spreadsheet submitted with the Conditional Use Permit application.

Property Owner or Authorized Agent Name: *Check one* ☑ Owner ☐ Agent			Telephone No.:
Mailing Address:	City:	State:	Zip Code:
Signature:	Date:		

Business Owner Name:			Telephone No.:
Rebecca Berry			(858) 999-6882
Mailing Address:	City:	State:	Zip Code:
5982 Gullstrand Street	San Diego	CA	92122
Signature: Rebecca Berry	Date: Oct 31 2016		

Exhibit 15

City of San Diego
Development Services
Attn: Deposit Accounts
1222 First Ave., MS-401
San Diego, CA 92101
THE CITY OF SAN DIEGO (619) 446-5000

Deposit Account/Financially Responsible Party

FORM
DS-3242
AUGUST 2014

Project Address/Location:	Project No.: FOR CITY USE ONLY	Internal Order No.: FOR CITY USE ONLY
6176 Federal Blvd. San Diego, CA. 92114	520606	

Approval Type: *Check appropriate box for type of approval requested:*

☐ Grading ☐ Public Right-of-Way ☐ Subdivision ☐ Neighborhood Use ☐ Coastal ☐ Neighborhood Development
☐ Site Development ☐ Planned Development ☑ Conditional Use ☐ Variance ☐ Vesting Tentative Map
☐ Tentative Map ☐ Map Waiver ☐ Other: _____

Is the project subject to a Reimbursement Agreement? ☐ No ☐ Yes
If yes, provide Reimbursement Agreement Application Project Number or Resolution/Ordinance No.: _____

Deposit Trust Fund Account Information: A deposit into a Trust Fund account with an initial deposit to pay for the review, inspection and/or project management services is required. The initial deposit is drawn against to pay for these services. The Financially Responsible Party will receive a monthly statement reflecting the charges made against the account, and an invoice when additional deposits are necessary to maintain a minimum balance. The payment of the invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.

FINANCIALLY RESPONSIBLE PARTY

Name/Firm Name:	Address:	E-mail:
Rebecca Berry	5982 Gullstrand Street	

City:	State:	Zip Code:	Telephone:	Fax No.:
San Diego	CA	92122		

Financially Responsible Party Declaration: I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.

☐ This is a continuation of existing Project No.: _____ Internal Order No.: _____

NOTE: Using an existing opened account may be allowed when:
1. Same location for both projects;
2. Same Financially Responsible Party;
3. Same decision process (Ministerial and discretionary projects may **not** be combined);
4. Same project manager is managing both projects; and
5. Preliminary Review results in a project application.

Please be advised: *Billing statements cannot distinguish charges between two different projects.*

Please Print Legibly.

Print Name: REBECCA BERRY Title: PRESIDENT

Signature*: Rebecca Berry Date: 10/31/16

***The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer).**

FOR CITY USE ONLY

Project Title: Federal Blvd. MMCC Date Requested: 10/31/16

☐ Keep existing Project No.: _____ as lead or ☐ Use new Project No.: _____ as lead

ACCOUNT CLOSURE AUTHORIZATION

Date Requested: _____ ☐ Completed ☐ Inactive ☐ Withdrawn ☐ Collections

Print Name: _____ Signature: _____

Exhibit 16

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2017-00010073-CU-BC-CTL **PLAINTIFF'S COMPLAINT FOR:** **1. BREACH OF CONTRACT;** **2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;** **3. SPECIFIC PERFORMANCE; and** **4. DECLARATORY RELIEF.**

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

informed and believe and based thereon allege that each of the fictitiously-named defendants is in some way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend this complaint to state the true names and/or capacities of such fictitiously-named defendants when the same are ascertained.

6. Plaintiff alleges on information and belief that at all times mentioned herein, each and every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged, were acting, whether individually or through their duly authorized agents and/or representatives, within the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge, permission, and consent of the remaining defendants, and each of them, and that said defendants ratified and approved the acts of all of the other defendants.

GENERAL ALLEGATIONS

7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

8. On or about November 2, 2016, GERACI paid to COTTON $10,000.00 good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license, known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and conditions of the written agreement.

9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long, time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than $300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

the PROPERTY to him by Defendant COTTON.

FIRST CAUSE OF ACTION

(For Breach of Contract against Defendant COTTON and DOES 1-5)

10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 9 above.

11. Defendant COTTON has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, COTTON has stated that, contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of $50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest. COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP application.

12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated $300,000.00 or more expended to date on the CUP process for the PROPERTY.

SECOND CAUSE OF ACTION

(For Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant COTTON and DOES 1-5)

13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 12 above.

14. Each contract has implied in it a covenant of good faith and fair dealing that neither party will undertake actions that, even if not a material breach, will deprive the other of the benefits of the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON has breached the implied covenant of good faith and fair dealing.

15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated $300,000.00 or more expended to date on the CUP process for the PROPERTY.

THIRD CAUSE OF ACTION

(For Specific Performance against Defendants COTTON and DOES 1-5)

16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 15 above.

17. The aforementioned written agreement for the sale of the PROPERTY is a valid and binding contract between Plaintiff GERACI and Defendant COTTON.

18. The aforementioned written agreement for the sale of the PROPERTY states the terms and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible to specific performance.

19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a writing that satisfies the statute of frauds.

20. The aforementioned written agreement for the purchase and sale of the PROPERTY is fair and equitable and is supported by adequate consideration.

21. Plaintiff GERACI has duly performed all of his obligations for which performance has been required to date under the agreement. GERACI is ready and willing to perform his remaining obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary thus satisfying that condition precedent, then to pay the remaining $790,000.00 balance of the purchase price.

22. Defendant COTTON is able to specifically perform his obligations under the contract, namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for receipt of payment from GERACI or assignee of the remaining $790,000.00 balance of the purchase price.

23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary and to specifically perform the contract upon satisfaction of the condition that such approval is in fact obtained.

24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana dispensary and tender the remaining balance of the purchase price.

25. The aforementioned written agreement for the purchase and sale of the PROPERTY constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy, and adequate legal remedy is presumed.

26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon specifically enforcing the written agreement for the purchase and sale of the PROPERTY from Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

FOURTH CAUSE OF ACTION

(For Declaratory Relief against Defendants COTTON and DOES 1-5)

27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 14 above.

28. An actual controversy has arisen and now exists between Defendant COTTON, on the one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written agreement contains terms and condition that conflict with or are in addition to the terms stated in the written agreement. GERACI disputes those conflicting or additional contract terms.

29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or his assignee. Such a declaration is necessary and appropriate at this time so that each party may ascertain their rights, duties, and obligations thereunder.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

1. For compensatory damages in an amount in excess of $300,000.00 according to proof at trial.

On the Third Cause of Action:

2. For specific performance of the written agreement for the purchase and sale of the PROPERTY according to its terms and conditions; and

3. If specific performance cannot be granted, then damages in an amount in excess of $300,000.00 according to proof at trial.

On the Fourth Cause of Action:

4. For declaratory relief in the form of a judicial determination of the terms and conditions of the written agreement and the duties, rights and obligations of each party under the written agreement.

On all Causes of Action:

5. For temporary and permanent injunctive relief as follows: that Defendants, and each of them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and all persons acting in concert with or participating with them, directly or indirectly, be enjoined and restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

6. For costs of suit incurred herein; and

///

///

///

7. For such other and further relief as the Court may deem just and proper.

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

EXHIBIT A

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

Exhibit 17

PLANNING COMMISSION OF THE CITY OF SAN DIEGO
MINUTES OF REGULAR SCHEDULED MEETING OF
DECEMBER 6, 2018
IN COUNCIL CHAMBERS – 12TH FLOOR
CITY ADMINISTRATION BUILDING
202 C STREET, SAN DIEGO, CA 92101

CHRONOLOGY OF THE MEETING:
Chairperson Stephen Haase called the meeting to order at 9:02 a.m. Vice-Chairperson Susan Peerson adjourned the meeting at 1:40 p.m.

ATTENDANCE DURING THE MEETING:

Chairperson Stephen Haase – present / left at 11:45 a.m.
Vice-Chairperson Susan Peerson – present
Commissioner James Whalen – present / left at 1:21 p.m.
Commissioner Douglas Austin – present / left at 12:11 p.m.
Commissioner William Hofman – present
Commissioner Granowitz – present
Dennis Otsuji – present

Staff
Shannon Thomas, City Attorney – present
Laura Black, Planning Department – present
PJ FitzGerald, Development Services Department – present / left at 11:45 a.m.
Tim Daly, Development Services Department – present / arrived at 11:45 a.m.
Louis Schultz, Development Services Department – present
Carmina Trajano, Recorder – present

Speaker slips in favor of the project submitted by Gina Austin, Brittany Biestfeld, Tiffany Hooper, Russell Betts and Travis Coulter.

Speaker slips in opposition to the project submitted by Kelly McCormick, Kathleen Lippitt, Judi Strang, Jim Bartell, Heather Riley, Cameron Barker, Bradford Hancourt, Michael Hayford, Remy Bowden, Abhay Schweitzer, Jeff Chine and Sean St. Peter.

COMMISSION ACTION:
MOTION BY COMMISSIONER HOFMAN APPROVING STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 2071481. Seconded by Commissioner Peerson. The motion passed by a vote of 7-0 with Commissioners Haase, Hofman, Austin, Granowitz, Peerson, Whalen and Otsuji voting yea.

ITEM-4: ***Appeal of Hearing Officer's decision on October 17, 2018***

FEDERAL BLVD. MARIJUANA OUTLET - PROJECT NO. 598124
City Council District: 4 Plan Area: Encanto Neighborhoods

Staff: Cherlyn Cac

Speaker slips in favor of the project submitted by Abhay Schweitzer, Jim Bartell, Cameron Barker, Marcela Escobar-Eck, Aaron Magagna, Cynthia Morgan-Reed, Bruno Vasquez, Laura Magagna, Elidia Dostal, Chris Mendiara, Nicholas Rossi.

Speaker slips in opposition to the project submitted by Marsha Lyon, Ken Malborough, Becky Johnson, Becky Johnson, Robert Robinson and Jessica McElfresh.

COMMISSION ACTION:
MOTION BY COMMISSIONER WHALEN APPROVING STAFF'S RECOMMENDATIONS TO DENY THE APPEAL, UPHOLD THE HEARING OFFICER'S DECISION, AND APPROVE CONDITIONAL USE PERMIT NO. 2114346. Seconded by Commissioner Hofman. The motion passed by a vote of 6-0-1 with Commissioners Haase, Hofman, Austin, Granowitz, Whalen and Otsuji voting yea and with Commissioner Peerson recusing.

Break time: 11:40 – 11:48 a.m.

ITEM-5: **MOUNT ETNA GENERAL/COMMUNITY PLAN AMENDMENT INITIATION- PROJECT NO. 615352**
City Council District: 6 Plan Area: Clairemont Mesa

Staff: Marlon Pangilinan

Exhibit 18

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 9, 2019

Reported By:
Margaret A. Smith
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057775

APPEARANCES
FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
CROSS-DEFENDANT REBECCA BERRY:
FERRIS & BRITTON
BY: MICHAEL R. WEINSTEIN, ESQUIRE
BY: SCOTT H. TOOTHACRE, ESQUIRE
BY: ELYSSA K. KULAS, ESQUIRE
501 West Broadway, Suite 1450
San Diego, California 92101
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
ATTORNEY AT LAW
BY: JACOB P. AUSTIN, ESQUIRE
1455 Frazee Road, Suite 500
San Diego, California 92108
619.357.6850
jpa@jacobaustinesq.com

FOR FIROUZEH TIRANDAZI:
OFFICE OF THE SAN DIEGO CITY ATTORNEY
BY: M. TRAVIS PHELPS
1200 Third Avenue, Suite 100
San Diego, California 92101
619.533.5800
mphelps@sandiego.gov

of the day?

MR. AUSTIN: That's the plan for the day, because then -- then the plan is Bartell in the morning and then Mr. Cotton.

THE COURT: Okay. So what we'll do is after we're done with the last of our witnesses, which sounds like it will be Hurtado, we'll let the jury go. And we may have some things that we'll bring up.

The deeper I dig into your proposed obstructions, Counsel, given the evidence that I'm hearing, I -- I'm developing a lot of questions about some of these instructions. For the time being, I'm erring generally on the side of including them. But we'll have that discussion Wednesday afternoon, and if necessary, Thursday morning.

All right.

MR. WEINSTEIN: Your Honor --

THE COURT: Do we have our jury?

THE BAILIFF: Yes, your Honor.

MR. WEINSTEIN: May I raise one issue?

THE COURT: Sure.

MR. WEINSTEIN: This relates to the expert opinion issue. We've never gotten to discussion of the lodgement that was made, which I've been questioned that it's formulated or based on the improper application of the law. I've reviewed those materials. I don't think they stand for them.

So I have questions being asked under the

supposition that these code sections mean something, and I think they don't mean what is being implied in the questions. And I know Ms. Austin responded to one of them. And I don't know that it's going to come up with Ms. Tirandazi. But I've reviewed those Code sections and the Business and Professions Code sections that have been referred to. I'd like to at least go on the record as to why I don't think what counsel is arguing is a correct statement of the law.

THE COURT: Do you need to do that now, or can we wait until the end of the day?

MR. WEINSTEIN: We can wait if it's not going to come up with Ms. Tirandazi.

THE COURT: You're talking about the two civil judgments against Mr. --

MR. WEINSTEIN: Yes. But it's beyond that. One argument -- 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 don't -- I tend to agree with you. I did not see any specific prohibition against Mr. Geraci in the future involving other properties assuming he plays by the rules from barring him from being able to obtain a permit.

MR. WEINSTEIN: Right. So then the follow-on argument that I think is being made is that he's not eligible for a CUP because of the Code sections that were cited, in particular Business and Professions Code

Section 26057, which deals with -- it's permissive. And it deals with a state license.

And the argument is bootstrapping it to say that it could somehow be a basis for not making him eligible for a CUP. And I think that's just an incorrect statement of the law.

THE COURT: All right.

MR. AUSTIN: He would be correct pre-2017, but in 2017, the San Diego Municipal Code adopted a Business and Professions Code, which I feel is --

THE COURT: Here's where, again, why this case is unusual in the Court's experience. Did you file a trial brief, Counsel?

MR. AUSTIN: I did not, your Honor.

THE COURT: So these authorities that you all are -- if you will, and I'm trying not to be flip or pejorative -- or that you're presenting with me, that you're throwing at me for the first time, have never been reflected in a brief that I can review, and if necessary, do some of my own research. You're bringing them up in part during an examination of the witnesses and in part in argument when we have a few moments outside the presence of the jury. I have no idea whether these authorities support the position either one of you are advocating.

So the usual process is I get a brief, I have a chance to review it, and then I entertain argument at appropriate times. That's not happening at all in this

Exhibit 19

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 9, 2019

Reported By:
Margaret A. Smith
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057775

APPEARANCES
FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
CROSS-DEFENDANT REBECCA BERRY:
FERRIS & BRITTON
BY: MICHAEL R. WEINSTEIN, ESQUIRE
BY: SCOTT H. TOOTHACRE, ESQUIRE
BY: ELYSSA K. KULAS, ESQUIRE
501 West Broadway, Suite 1450
San Diego, California 92101
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
ATTORNEY AT LAW
BY: JACOB P. AUSTIN, ESQUIRE
1455 Frazee Road, Suite 500
San Diego, California 92108
619.357.6850
jpa@jacobaustinesq.com

FOR FIROUZEH TIRANDAZI:
OFFICE OF THE SAN DIEGO CITY ATTORNEY
BY: M. TRAVIS PHELPS
1200 Third Avenue, Suite 100
San Diego, California 92101
619.533.5800
mphelps@sandiego.gov

MR. TOOTHACRE: She.
THE COURT: I'm sorry. Is she right outside?
MR. TOOTHACRE: I believe so.
THE COURT: Madam Deputy, may I ask you to get the next witness.
THE BAILIFF: Your Honor, this witness is being accompanied by her attorney.
THE COURT: Thank you very much. Counsel, you can make yourself comfortable in the audience section.
Ma'am, if you could follow the directions of my clerk, please.

Firouzeh Tirandazi,
being called on behalf of the plaintiff/cross-defendant, having been first duly sworn, testified as follows:

THE CLERK: Please state your full name and spell your first and last name for the record.
THE WITNESS: My name is Firouzeh Tirandazi. F-i-r-o-u-z-e-h. Last name Tirandazi, T-i-r-a-n-d-a-z-i.
THE COURT: All right. Counsel, whenever you're ready.
MR. TOOTHACRE: Thank you, your Honor.
(Direct examination of Firouzeh Tirandazi)
BY MR. TOOTHACRE:
Q Good morning, Ms. Tirandazi.
A Good morning.

requirements.

Q Okay. Turning to page 3, Form DS-3242.

Is that a deposit account/financial responsibility -- financially responsible party form?

A Yes.

Q And what is the City's purpose in having this form?

A This is the -- signed by the individual that is responsible for all costs associated with the processing of the application.

Q Okay. And is it the financially responsible party who has the authority to withdraw an application if they so desire?

A It's defined in the Code in terms of who can withdraw an application.

Q I'm sorry. One more time?

A It's defined in the Municipal Code in terms of who can withdraw an application.

Q Okay. Does the City recognize that the financially responsible party is the party that can withdraw an application?

A Typically, it's the -- the permit holder and the applicant, and that's defined in the Municipal Code.

Q Okay. I would like to refer you to Exhibit 65, which I believe is in evidence, your Honor.

THE COURT: It is.

MR. TOOTHACRE: Thank you. It's in the next book.

BY MR. TOOTHACRE:

Q Do you recognize that document, Ms. Tirandazi?

A Yes.

Q And what is this document?

A The email?

Q Yes.

A It's a --

Q Is that an email that you drafted?

A Yes.

Q And who -- who was it drafted to?

A Abhay Schweitzer.

Q Okay.

A And Becky.

Q Focusing on the first paragraph, what was the information you were trying to convey?

A To convey that the project is in the CO-2-1 zone and the medical marijuana consumer cooperative is not permitted in this zone and that staff would be recommending denial.

Q And was that your interpretation on March 14th, 2017?

A That is correct.

Q Okay. And subsequently, do you know whether or not the Municipal Code was amended to allow medical marijuana project at that location?

A Yes, I was made aware after.

Q After that particular day?

A Yes.

Q Do you recall who made you aware?

A I -- I don't.

Q Okay. Was there a bulletin or an email?

A I believe it was a -- from the Code team. I believe I was updated by the Code team. I don't remember specifically.

Q Fair enough.

Let me have you refer to Exhibit 66, which is in evidence, your Honor.

THE COURT: Yes. It is.

BY MR. TOOTHACRE:

Q And I'll ask you if you recognize that document, Ms. Tirandazi.

A Yes.

Q And what is this document?

A So this is a standard letter that's prepared by our support staff that provides the point of contact for the project with the noticing requirements, the posting of the notice, and letting them know that their application has been deemed complete in the process.

Q The bottom paragraph, if you can call that up, you indicate that you recommend that they contact Ken Marlbrough.

Who is Ken Marlbrough?

A He, per this letter, is the chair of the Encanto neighborhoods community planning group.

Q And what does the community planning group have to do with the application of the CUP?

A The recommendation of the planning group is forwarded to the decision maker.

Q And the last paragraph on page 2 indicates if they have any questions with the notice -- the posted notice requirements to contact you. Is that correct?

A That is correct.

Q Okay. Let me have you refer to Exhibit 68?

MR. TOOTHACRE: Your Honor, I'd like to offer 68.

THE COURT: It is in evidence.

(Premarked Joint Exhibit 68, Email to Darryl Cotton from Firouzeh Tirandazi re PTS 520606 - Federal Blvd MMCC, dated 3/16/17 and prior email thread, was admitted into evidence.)

BY MR. TOOTHACRE:

Q Do you recognize that document, Ms. Tirandazi?

A Yes.

Q And is this an email string between yourself and Mr. Cotton?

A Okay. What is the question? I'm sorry?

Q Is this an email string between yourself and Mr. Cotton?

A I'm looking at the first page. And it seems to be, yes.

Q Okay. On the first page, the first paragraph, you indicate that, "As requested, please find the attached ownership disclosure statement signed by you." paren, "property owner," end paren, "and Rebecca Berry,"

Exhibit 20

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

NOTICE OF ENTRY OF JUDGMENT

[IMAGED FILE]

Action Filed: March 21, 2017
Trial Date: June 28, 2019

///

///

///

///

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, August 19, 2019, judgment was entered in the above-captioned cause. A conformed copy of said judgment is attached hereto and incorporated herein by reference as though fully set forth.

FERRIS & BRITTON
A Professional Corporation

Dated: August 20, 2019

By: Michael R Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2017-00010073-CU-BC-CTL Judge: Hon. Joel R. Wohlfeil Dept.: C-73 **JUDGMENT ON JURY VERDICT [PROPOSED BY PLAINTIFF/CROSS-DEFENDANTS]**
DARRYL COTTON, an individual, Cross-Complainant, v. LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE, Cross-Defendants.	**[IMAGED FILE]** Action Filed: March 21, 2017 Trial Date: June 28, 2019

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and certain trial exhibits admitted into evidence.

During trial and following the opening statement of Plaintiff/Cross-Complainant's counsel, the Court granted the Cross-Defendants' nonsuit motion as to the fraud cause of action against Cross-Defendant Rebecca Berry only in Cross-Complainant's operative Second Amended Cross-Complaint. A copy of the Court's July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this action is attached as Exhibit "A."

After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues on two special verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as follows:

SPECIAL VERDICT FORM NO. 1

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

Answer: YES

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

Answer: NO

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Answer: YES

4. Did all the condition(s) that were required for Defendant's performance occur?

Answer: NO

5. Was the required condition(s) that did not occur excused?

Answer: YES

6. Did Defendant fail to do something that the contract required him to do?

Answer: YES

or

Did Defendant do something that the contract prohibited him from doing?

Answer: YES

7. Was Plaintiff harmed by Defendant's breach of contract?

Answer: YES

Breach of the Implied Covenant of Good Faith and Fair Dealing

8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

Answer: YES

9. Was Plaintiff harmed by Defendant's interference?

Answer: YES

10. What are Plaintiffs damages?

Answer: $ 260,109.28

A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

///

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

Answer: NO

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Answer: NO

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Given the jury's responses, Question 25 regarding Cross-Complainant's damages became inapplicable as a result of the jury's responses.

///

A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON the sum of $260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of this judgment until paid, together with costs of suit in the amount of $_____;

2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant REBECCA BERRY; and

3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant LARRY GERACI.

IT IS SO ORDERED.

Dated: 8-19, 2019

Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT

Judge Joel R. Wohlfeil

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 07/03/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Margaret Smith CSR# 9733
BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017
CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

---

EVENT TYPE: Civil Jury Trial

APPEARANCES
Michael R Weinstein, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Scott H Toothacre, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Jacob Austin, counsel, present for Defendant,Cross - Complainant,Appellant(s).
Darryl Cotton, Defendant is present.
Larry Geraci, Plaintiff is present.
Rebecca Berry, Cross - Defendant is present.

8:55 a.m. This being the time previously set for further Jury trial in the above entitled cause, having been continued from July 2, 2019, all parties and counsel appear as noted above and court convenes. The jurors are not present.

Outside the presence of the jury, Court and counsel discuss exhibits.

9:01 a.m. Court is in recess.

9:03 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are present except for juror no. 4.

An unreported sidebar conference is held. (6 minutes) Juror no. 4 arrives.

9:09 a.m. Attorney Weinstein presents opening statement on behalf of Plaintiff/Cross-Defendant Larry Geraci, et al.

9:55 a.m. Attorney Austin presents opening statement on behalf of Defendant/Cross-Complainant Darryl Cotton.

10:15 a.m. All jurors are admonished and excused for break and Court is in recess.

10:24 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jury is not present.

Outside the presence of the jury, Plaintiff makes a Motion for Non-suit on the Cross-Complaint against Rebecca Berry. The Court hears oral argument. Motion for Non-Suit is denied as to Declaratory Relief claim. Motion for Non-Suit is granted as to Fraud claim.

10:30 a.m. Court is in recess.

10:31 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

10:32 a.m. **LARRY GERACI** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendant:

1) Letter of Agreement with Bartell & Associates dated 10/29/15
5) Text Messages between Larry Geraci and Darryl Cotton from 7/21/16-5/8/17
8) Email to Larry Geraci from Darryl Cotton dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross, dated 9/21/16
9) Email to Larry Geraci from Darryl Cotton, dated 9/26/16
10) Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16
14) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/4/16
15) Email to Rebecca Berry from Abhay Schweitzer, dated 10/6/16
17) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/18/16
18) Email thread between Neil Dutta from Abhay Schweitzer, dated 10/19/16
21) Email from Larry Geraci to Darryl Cotton, dated 10/24/16
30) City of San Diego Ownership Disclosure Statement signed, dated 10/31/16
38) Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/2/16
39) Excerpt from Jessica Newell Notary Book, dated 11/2/16
40) Email to Darryl Cotton from Larry Geraci attaching Nov. 2 Agreement, dated 11/2/16
41) Email from Darryl Cotton to Larry Geraci, dated 11/2/16
42) Email to Darryl Cotton from Larry Geraci, dated 11/2/16

11:44 a.m. All jurors are admonished and excused for lunch and Court remains in session.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit on Breach of Contract claim against Darryl Cotton. The Court hears oral argument. Motion for Non-Suit is denied without prejudice.

11:50 a.m. Court is in recess.

1:19 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are not present.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit. The Court hears argument. The Motion for Non-Suit is denied without prejudice as pre-mature. Court and counsel discuss scheduling.

1:25 p.m. Court is in recess.

1:33 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

1:34 p.m. Larry Geraci, previously sworn, resumes the stand for further direct examination by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendants:

43) Email to Becky Berry from Abhay Schweitzer, dated 11/7/16 with attachment
44) Email to Darryl Cotton from Larry Geraci, dated 11/14/16
46) Authorization to view records, signed by Cotton, 11/15/16
59) Email to Darryl Cotton from Larry Geraci, dated 2/27/17
62) Email to Darryl Cotton from Larry Geraci, dated 3/2/17
63) Email to Larry Geraci from Darryl Cotton, dated 3/3/17
64) Email to Darryl Cotton from Larry Geraci, dated 3/7/17
69) Email to Larry Geraci from Darryl Cotton, dated 3/17/17 at 2:15 p.m.
72) Email to Larry Geraci from Darryl Cotton, dated 3/19/17 at 6:47 p.m.
137) Federal Blvd.- Summary of All Expense Payments, excel spreadsheet

2:29 p.m. An unreported sidebar conference is held. (3 minutes)

2:36 p.m. Cross examination of Larry Geraci commences by Attorney Austin on behalf of Defendant/Cross-Complainant, Darryl Cotton.

2:53 p.m. All jurors are admonished and excused for break and Court is in recess.

3:08 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

3:09 p.m. Larry Geraci is sworn and examined by Attorney Austin on behalf of Defendant/Cross-Complainant, Defendant.

3:47 p.m. Redirect examination of Larry Geraci commences by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

3:48 p.m. The witness is excused.

3:49 p.m. **REBECCA BERRY** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

The following Court's exhibit(s) is marked for identification and admitted on behalf of

Plaintiff/Cross-Complainant:

34) Forms submitted to City of San Diego dated 10/31/16; Form DS-3032 General Application dated 10/31/16

4:00 p.m. Cross examination of Rebecca Berry commences by Attorney Austin on behalf of Defendant/Cross-complainant, Darryl Cotton.

4:15 p.m. The witness is excused.

4:16 p.m. All jurors are admonished and excused for the evening and Court remains in session.

Outside the presence of the jury, Court and counsel discuss scheduling.

4:22 p.m. Court is adjourned until 07/08/2019 at 09:00AM in Department 73.

EXHIBIT B

ORIGINAL

FILED
Clerk of the Superior Court
JUL 16 2019
By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,

Plaintiff,

v.

DARRYL COTTON,

Defendant.

DARRYL COTTON,

Cross-Complainant,

v.

LARRY GERACI,

Cross-Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

✓ Yes ___ No

If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer no further questions, and have the presiding juror sign and date this form.

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

___ Yes ✓ No

If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your answer to question 2 is no, answer question 3.

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

✓ Yes ___ No

If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer no further questions, and have the presiding juror sign and date this form.

4. Did all the condition(s) that were required for Defendant's performance occur?

___ Yes ✓ No

If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your answer to question 4 is no, answer question 5.

5. Was the required condition(s) that did not occur excused?

✓ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no, answer no further questions, and have the presiding juror sign and date this form.

6. Did Defendant fail to do something that the contract required him to do?

✓ Yes ____ No

or

Did Defendant do something that the contract prohibited him from doing?

✓ Yes ____ No

If your answer to either option for question 6 is yes, answer question 7. If your answer to both options is no, do not answer question 7 and answer question 8.

7. Was Plaintiff harmed by Defendant's breach of contract?

✓ Yes ____ No

If your answer to questions 4 or 5 is yes, please answer question 8.

Breach of the Implied Covenant of Good Faith and Fair Dealing

8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

✓ Yes ___ No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date this form.

9. Was Plaintiff harmed by Defendant's interference?

✓ Yes ___ No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes, answer no further questions, and have the presiding juror sign and date this form.

10. What are Plaintiff's damages?

$ 260,109.28

Dated: 7/16/19

Signed: [signature]
Presiding Juror

After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in the courtroom.

EXHIBIT C

ORIGINAL

FILED
Clerk of the Superior Court
JUL 16 2019
By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,

Plaintiff,

v.

DARRYL COTTON,

Defendant.

DARRYL COTTON,

Cross-Complainant,

v.

LARRY GERACI,

Cross-Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

____Yes ✓ No

If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not answer questions 2 – 7 and answer question 8.

2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract required him to do?

____Yes ____No

If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your answer to question 2 is no, answer question 3.

3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant things that the contract required him to do?

____Yes ____No

If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not answer questions 4 – 7 and answer question 8.

4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

____Yes ____No

If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your answer to question 4 is no, answer question 5.

5. Was the required condition(s) that did not occur excused?

____Yes ____No

If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not answer questions 6 – 7 and answer question 8.

6. Did Cross-Defendant fail to do something that the contract required him to do?

____Yes ____No

or

Did Cross-Defendant do something that the contract prohibited him from doing?

____Yes ____No

If your answer to either option for question 6 is yes, answer question 7. If your answer to both options is no, do not answer question 7 and answer question 8.

7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

____Yes ____No

Please answer question 8.

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

___Yes ___✓No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

____Yes ____No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

____Yes ____No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

____Yes ____No

If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do not answer question 12 and answer question 13.

12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor in causing harm to Cross-Complainant?

____Yes ____No

Please answer question 13.

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

____Yes ✓ No

If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do not answer questions 14 – 18 and answer question 19.

14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?

____Yes ____No

If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do not answer questions 15 – 18 and answer question 19.

15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

____Yes ____No

If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do not answer questions 16 – 18 and answer question 19.

16. Did Cross-Complainant reasonably rely on this promise?

____Yes ____No

If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do not answer questions 17 – 18 and answer question 19.

17. Did Cross-Defendant perform the promised act?

____Yes ____No

If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do not answer question 18 and answer question 19.

18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in causing harm to Cross-Complainant?

____Yes ____No

Please answer question 19.

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

____Yes ✓ No

If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant made it?

____Yes ____No

If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

21. Did Cross-Defendant have reasonable grounds for believing the representation was true when Cross-Defendant made it?

____Yes ____No

If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

____Yes ____No

If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

23. Did Cross-Complainant reasonably rely on the representation?

____Yes ____No

If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor in causing harm to Cross-Complainant?

____Yes ____No

If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

25. What are Cross-Complainant's damages?

$_____

Dated: 7/16/19

Signed: [signature]
Presiding Juror

After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in the courtroom.

Exhibit 21

TIFFANY & BOSCO P.A.
MEGAN E. LEES (SBN 277805)
mel@tblaw.com
MICHAEL A. WRAPP (SBN 304002)
maw@tblaw.com
EVAN P. SCHUBE (*Pro Hac Vice* AZ SBN 028849)
eps@tblaw.com
1455 Frazee Road, Suite 820
San Diego, CA 92108
Tel. (619) 501-3503

Attorneys for Defendant/Cross-Complainant Darryl Cotton

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: The Honorable Joel R. Wohlfeil
Dept.: C-73

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR NEW TRIAL

Action Filed: March 21, 2017
Trial Date: June 28, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

Senate Bills

Sen. Bill #643 2015-2016 Reg. Sess.,

San Diego Municipal Code

Ordinance 20356
§27.3501
§27.3510
§27.3563
§112.0102(b)
§112.0102(c)
§112.0501(c)
§126.0303
§126.303(a)
§141.0614

INTRODUCTION

Mr. Cotton seeks a new trial on three grounds. First, the alleged November 2, 2016 agreement is illegal and void because Larry Geraci's ("Mr. Geraci") failure to disclose his interest in both the Property[1] and the Conditional Use Permit ("CUP") violates local law and policies, as well as state law. More particularly, the San Diego Municipal Code (the "SDMC") requires those disclosures to be made. Further, Mr. Geraci entered into two stipulated judgments with the City of San Diego ("City") that mandated he complied with the City's CUP requirements, which he purposefully failed to do in his performance of the alleged November 2, 2016 agreement. For his claims against Mr. Cotton, Mr. Geraci asks this Court to assist him in violating the SDMC and the policy of AUMA, which the Court is prohibited from doing. As a result, the jury's finding that the alleged November 2, 2016 agreement is a valid contract is contrary to law.

Second, the jury applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's as it relates to the alleged November 2, 2016 agreement and subsequent acknowledgement e-mail. The jury found the parties entered into a contract on November 2, 2016 and discounted the acknowledgement e-mail based upon Mr. Geraci's testimony that he only replied to the first line of Mr. Cotton's e-mail. Mr. Geraci's objective conduct demonstrates that either (i) he agreed to a 10% interest that he later refused existed, or (ii) there was an agreement to agree. Had the jury applied an objective standard to the conduct of ***both parties***, it would not – nor could it – have reached the verdict it did. The judgment entered in accordance with the jury's verdict is contrary to law.[2]

Third, Mr. Geraci used the attorney-client privilege as a shield during discovery and a sword at trial, which prohibited Mr. Cotton from receiving a fair and impartial trial. During discovery, Mr. Cotton sought documents and communications by and between Mr. Geraci and Gina Austin ("Ms. Austin") relating to the drafting of various agreements related to the purchase of the Property. Mr. Geraci objected to the request and never produced communications related to the same based upon attorney-client privilege. At trial, however, Mr. Geraci waived the attorney-client privilege, for the first

[1] The term "Property" shall mean and refer to the real property located at 6176 Federal Boulevard, San Diego, California.

[2] The "agreement to agree" argument is a defense to the breach of contract claim made by Mr. Geraci. The argument should not, and cannot, be considered a judicial admission to the separate issue of Mr. Cotton's claim as to the oral joint venture agreement.

time, and both he and Ms. Austin testified as to their communications. Mr. Cotton was unable to cross-examine either witness with the relevant documents Mr. Geraci withheld during discovery on the ground of attorney-client privilege. The requested communications went to one of the central issues of the case – whether the alleged November 2, 2016 agreement was an agreement, or an agreement to agree. The use of the attorney-client privilege as a sword at trial was made even more improper given the content of the testimony by Mr. Geraci and Ms. Austin, both of whom accused Mr. Cotton of a crime – extortion. As a result, Mr. Cotton did not receive a fair and impartial trial.

ARGUMENT

A. STANDARD FOR MOTION FOR NEW TRIAL.

A verdict may be vacated, in whole or in part, and a new trial granted on all or part of the issues, when either the verdict is contrary to the law, there is an error in law at the trial, there is insufficient evidence to support the verdict, or an irregularity in the proceedings. Cal. Code Civ. Proc. § 657(6)-(7). A party may raise illegality of contract on a motion for new trial. *Lewis & Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 148 (citing *Pacific Wharf & Storage Co. v. Standard American Dredging Co.* (1920) 184 Cal. 21, 23-24)); *Gray v. Robinson* (1939) 33 Cal.App.2d 177, 182 (irregularity in the proceedings); *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566 (litigant cannot claim privilege during discovery, then testify at trial as to the same matter); *see also Webber v. Webber* (1948) 33 Cal.2d 153, 164 (affidavit not required where motion for new trial "relies wholly upon facts appearing upon the face of the record"). On a motion for new trial, the Court sits as the 13th juror and is "vested with the plenary power – and burdened with a correlative duty – to independently evaluate the evidence." *Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775, 784.

B. RELEVANT BACKGROUND.

Mr. Geraci, an IRS Enrolled Agent, Has Two Judgments Prohibiting the Operation of a Marijuana Dispensary Unless He Complies With the SDMC

Mr. Geraci has been an enrolled agent with the IRS ("Enrolled Agent"), which "means he has a federal license that allows him to represent clients before the IRS," since 1999. (Reporter's Transcript of Trial ("RT") July 3, 2019 at 14:22-16:24; 56:25-57:11, the relevant excerpts of which are attached

hereto as **Exhibit A**.[3]) Prior to his involvement with the Property and during the time in which he was an Enrolled Agent, Mr. Geraci was involved in at least two illegal marijuana dispensaries (the "Illegal Marijuana Dispensaries"). (*See id.* (Mr. Geraci testifying that he has been an enrolled agent since 1999); Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6] (the "Tree Club Judgment") and Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6] (the "CCSquared Judgment") (collectively referred to herein as "Geraci Judgments") true and correct copies of which are attached hereto as **Exhibits B and C**, respectively, and incorporated herein by this reference.)

Pursuant to the terms of the Geraci Judgments, Mr. Geraci could only operate or maintain a marijuana dispensary after providing written proof to the City that "any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC." (**Exhibit B** (Tree Club Judgment) at ¶¶ 10(b), 17 (emphasis added); Exhibit – (CCSquared Judgment) at¶ 9(b).) Unlike paragraphs 9 through 14, paragraph 10(b) in the Tree Club Judgment is not limited to the "PROPERTY." (*See id.*) Unlike paragraphs 8 and 10 in the CCSquared Judgment, paragraph 9 is not limited to the "PROPERTY." (**Exhibit C** (CCSquared Judgment).[4]) Additionally, Mr. Geraci was fined $25,000 in the Tree Club Judgment and $75,000 in the CCSquared Judgment. (**Exhibit B** (Tree Club Judgment) at ¶ 17; **Exhibit C** (CCSquared Judgment) at ¶ 15.)

State Marijuana Laws

In 2003, the State of California (the "State") enacted the Medical Marijuana Program Act (the "MMPA"), which established certain requirements for Medical Marijuana Consumer Cooperatives ("MMCC"). On October 9, 2015, the State passed the Medical Marijuana Public Safety and Environmental Protection Act, 2015 California Senate Bill No. 643, California 2015-2016 Regular Session (hereinafter cited to as "S.B. 643"). Pursuant to S.B. 643, an application must be denied if the applicant does not qualify for licensure. (S.B. 643 at § 10 (adding Cal. Bus. & Prof. Code § 19323(a), (b)(8).) An applicant does not qualify if he has been sanctioned by a city for unauthorized commercial

[3] For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of testimony at trial on July 3, 2019 cited herein are contained in **Exhibit A**. Each excerpt of testimony is clearly identified by a slipsheet and bookmarked for this Court's ease or reference and expedient access.

[4] The CCSquared Judgment was a global settlement of two separate civil actions.

marijuana activity. (*Id.*) Although Section 12, which added § 19324, provides that an applicant shall not be denied a state license if the denial is based upon certain conditions, neither of the two conditions specified applies to § 19323(b)(8). (*Id.* at § 12.) In the Geraci Judgments, the City sanctioned Mr. Geraci for unauthorized commercial marijuana activity. (*See* **Exhibits B and C**.)

On November 8, 2016, the voters of California approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). (Control, Regulate, and Tax Adult Use Of Marijuana Act, 2016 Cal. Legis. Serv. Prop. 64 (hereinafter cited as "Prop. 64").) The purpose and intent of AUMA was to: (i) strictly control the cultivation and sale of marijuana "through a system of state licensing, regulation, and enforcement; (ii) allow local governments to enforce state laws and regulations; and (iii) bring marijuana into a regulated and legitimate market to create a transparent and accountable system. (Prop. 64 at §§ 2, 3.) In order to create more legitimacy and transparency, among other things, AUMA requires the disclosure of all persons who have an interest in the license. (*Id.* at § 6.1 (adding §§ 26001(a) (providing broad definition of applicant), 26055(a) (licensing authorities may issue state licenses only to qualified applicants), and 26057 (prohibiting certain applicants from obtaining a license).)

Local Marijuana Laws

After the enactment of the MMPA, the City adopted Ordinance No. 20356 ("Ordinance 20356"). Pursuant to Ordinance 20356, a CUP is required to operate an MMCC. (*See id.* at § 126.0303(a); § 141.0614.) In February 2017, the City adopted Ordinance No. 20793, which requires a conditional use permit for a marijuana outlet. (Ordinance No. 20793) at p. 4 (§ 126.0303).) The approval of a CUP is governed by Process Three, which requires approval by a hearing officer and allows the hearing officer's decision to be appealed to the Planning Commission. SDMC § 112.0501 (providing overview of Process Three).

The City's CUP requirements mandate the disclosure of anyone who holds an interest in the relevant property or a CUP. (*See* **TE 30** (Ownership Disclosure Statement), a true and correct copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference.) SDMC § 112.0102(b) (application shall be made on forms provided by city manager and accompanied by all the information required by the same); SDMC § 112.0102(c) (information requested on forms updated "to comply with

revisions to local, state, or federal law, regulation, or policy. As evidenced by the SDMC, there are at least two reasons for the information mandated by the application forms.

The first reason for the disclosure requirements is conflict of interest laws. (RT July 8, 2019 at 33:10-34:1, the relevant excerpts of which are attached hereto as **Exhibit E**;[5] *see also* SDMC § 27.3563 (prohibiting conflicts of interest).) The City's ethics ordinances (collectively, the "Ethics Ordinances") were adopted "to embrace clear and unequivocal standards of disclosure and transparency in government so as to avoid conflicts of interest." SDMC § 27.3501. The Ethics Ordinances require, among others, that a City official disclose his or her economic interests. *Id.* at § 27.3510. The Ethics Ordinances make it unlawful for any city official to make a municipal decision in which he or she knows, or has reason to know, that they have a disqualifying financial interest. *Id.* at § 27.3561; *see also id.* at §§ 27.3562-63. The Ethics Ordinance applies to hearing officers who make decisions on CUP applications. SDMC § 27.3503 (*see* definitions of "City Official" and "High Level Filer," the latter includes, by cross-reference to Govt. Code § 87200, hearing officers).

The second reason relates to the requirements for obtaining a license for a Marijuana Outlet ("MO"), which requires the applicant/responsible persons to undergo background checks after the issuance of a CUP. SDMC § 112.0102(c); *id.* at §§ 42.1502 (defining responsible persons), 42.1504 (requiring a permit to operate a marijuana outlet), and 42.1507 (requiring background check); (*see also* RT July 9, 2019 at 113:18-114:3 (Ms. Tirandazi, a City employee, testifying that background checks are required after the CUP process) the relevant excerpts of which are attached hereto as **Exhibit F**.[6])

Failure to Disclose Ownership Interest and Geraci Judgments

Mr. Geraci identified the Property and began talking with Mr. Cotton because the Property "may qualify for a dispensary." (**Exhibit A** at 59:18-19.) On October 31, 2016, Ms. Austin – a self-proclaimed expert in cannabis licensing – e-mailed Abhay Schweitzer instructing him to keep Mr. Cotton's name off the CUP application "unless necessary" because Mr. Cotton had "legal issues

[5] For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of testimony at trial on July 8, 2019 cited herein are contained in **Exhibit E**. Each excerpt of testimony is clearly identified by a slipsheet and bookmarked for this Court's ease or reference and expedient access.

[6] For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of testimony at trial on July 9, 2019 cited herein are contained in **Exhibit F**. Each excerpt of testimony is clearly identified by a slipsheet and bookmarked for this Court's ease or reference and expedient access.

with the City." (Trial Exhibit ("TE") 36, a true and correct copy of which is attached hereto as **Exhibit G** and incorporated herein by this reference; **Exhibit E** at 11:28-13:23) (Ms. Austin characterizing herself as a marijuana expert), *Id.* at 54:10-55:11.) On the same date, Mr. Geraci caused a Form DS-3032 General Application (the "CUP General Application") to be filed with the City. (*See* TE 34, a true and correct copy of which is attached hereto as **Exhibit H** and incorporated herein by this reference, at 34-001.) Rebecca Berry ("Ms. Berry") was identified as the "Lessee or Tenant" and the Permit Holder. (*Id.*) Mr. Geraci is not identified anywhere in the CUP General Application. (*See id.*) Section 7 of the CUP General Application requires the disclosure of, among other things, the Geraci Judgments (*id.* at § 7); however, they were not disclosed. (*See id.*)

On the same date, Ms. Berry executed and submitted the Ownership Disclosure Statement to the City. (*See* **Exhibit D**). As set forth in the Ownership Disclosure Statement, the list "must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of interest." (*Id.*) The Ownership Disclosure Statement also required the disclosure of "Other Financially Interested Persons." (*Id.*) The disclosure requirements are mandatory and do not include exceptions for Enrolled Agents. (*See id.*) Notwithstanding, Mr. Geraci is not identified in the Ownership Disclosure Statement. (*Id.*)

Both Mr. Geraci and Ms. Berry testified that the exclusion of Mr. Geraci was purposeful; he was not disclosed because he was as an Enrolled Agent. (**Exhibit A** at 193:19-194:5.) Mr. Geraci also claimed that the lack of disclosure was "for convenience of administration." (*See Plaintiff/Cross-Defendant Larry Geraci's Answers to Special Interrogatories, Set Two, Propounded by Defendant/Cross-Complainant Darryl Cotton* (hereinafter, the "Discovery Responses"), a true and correct copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference, at 12:8-16.) However, Ms. Austin instructed the consultants to leave Mr. Cotton's name off the CUP application unless necessary because of Mr. Cotton's "legal issues with the City." Mr. Geraci also had "legal issues with the City" and he was not disclosed. (**Exhibit E** at 54:24-55:11.)

<u>Mr. Geraci's Objective Manifestations</u>

On November 2, 2016, Messrs. Geraci and Cotton executed the alleged November 2, 2016 agreement, which the jury determined constituted a contract. (TE 38, a true and correct copy of which

is attached hereto as **Exhibit J** and incorporated herein by this reference.) Shortly after receiving a copy of the alleged agreement, Mr. Cotton sent an e-mail stating the 10% equity position in the dispensary was not included in the document and requesting an acknowledgment that a provision regarding the same would be included in "any final agreement." (TE 42, a true and correct copy of which is attached hereto as **Exhibit K** and incorporated herein by this reference.) Mr. Geraci responded, "no problem at all." (*Id.*)

Mr. Geraci then caused certain draft agreements to be exchanged with Cotton. (*See* TE 59 and 62, true and correct copies of which are attached hereto as **Exhibits L and M**, respectively, and incorporated herein by this reference.) The draft agreements did not state they were amending a prior agreement for the purchase of the property, did not reference a prior agreement, and the "Date of Agreement" was "[t]he latest date of execution of the Seller or the Buyer, as indicated on the signature page." (*See e.g.*, **Exhibit** L at 059-003.) The draft agreements included terms that were not included in the November 2, 2016 document, and provide no indication or reference to the alleged November 2, 2016 agreement. (*See id.*) And none of the documents or communications produced by Mr. Geraci ever referenced extortion, which was never raised during the course of discovery.

Mr. Geraci Used the Attorney-Client Privilege as a Shield and a Sword

Mr. Cotton propounded discovery seeking, among other things, documents and communications by and between Mr. Geraci and Ms. Austin. (*See* **Exhibit I** (Discovery Responses) at 13:1-13, 14:8-23.) Mr. Geraci refused to produce any documents or communications based upon attorney-client privilege. (*See id.*) Mr. Geraci waived the attorney-client privilege for the first time and trial, and both he and Ms. Austin testified as to communications regarding the drafting of a purchase agreement and statements Mr. Geraci purportedly made that he was being extorted by Mr. Cotton. (**Exhibit E** at 41:10-26; *see also* **Exhibit A** at 129:22-28 (Mr. Geraci testifying as to the same statements).)[7] The testimony of Mr. Geraci and Ms. Austin was not previously disclosed due to the attorney-client privilege, but and it effectively accused Mr. Cotton of a crime. *See* Pen. Code, § 518 (defining extortion).

[7] "Extortion" is defined as the "…obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right." Cal. Pen. Code § 518. None of the evidence suggests any "wrongful use of force or fear" by Mr. Cotton. Multiple statements equating Mr. Cotton's conduct to extortion were inflammatory and prejudicial.

C. THE ALLEGED NOVEMBER 2, 2016 AGREEMENT WAS ILLEGAL.

The Court has a duty to, *sua sponte*, refuse to entertain an action that seeks to enforce an illegal contract. *May v. Herron*, (1954) 127 Cal.App.2d 707, 710-12 (internal citations and quotations omitted) (voiding contract where plaintiff sought to recover balance due on contract, which recovery would have allowed plaintiff to "benefit from his willful and deliberate flouting of a law designed to promote the general public welfare"). "Whether a contract is illegal … is a question of law to be determined from the circumstances of each particular case." *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal. App. 4th 531, 540; *Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 838. A contract is unlawful and unenforceable if it is contrary to, in pertinent part, (1) an express provision of law; or (2) the policy of express law. Cal. Civ. Code § 1667(1)-(3); *Kashani*, *supra,* at 541 (contract must have a lawful object to be enforceable). For purposes of illegality, the "law" includes statutes, local ordinances, and administrative regulations issues pursuant to the same. *Id.* at 542. "All contracts which have for their object, *directly or indirectly*, to exempt anyone from responsibility for his own … violation of law, whether willful or negligent, are against the policy of the law." Cal. Civ. Code § 1668 (emphasis added). A contract made for the purpose of furthering any matter prohibited by law, or to aid or assist any party in the violation of the law, is void. *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109 (voiding a contract entered into for the purpose of avoiding state and federal income tax regulations). As summarized in *Yoo v. Jho* (2007) 147 Cal.App.4th 1249:

> No principle of law is better suited than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects to be carried out. The courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act.

Id. at 1255 (internal citations and quotations omitted); *see also Kashani*, *supra,* at 179; Cal. Civ. Code §§ 1550, 1608. "The test as to whether a demand connected with an illegal transaction is capable of being enforced is whether the claimant requires the aid of an illegal transaction to establish his case." *Brenner v. Haley* (1960) 185 Cal.App.2d 183, 287.

May is instructive. In *May*, the Newmans and May entered into a contract whereby May agreed to construct a home for the Newmans. *May*, *supra,* at 708. However, May could only perform under the contract by acquiring construction materials through the veteran's priority status under Federal

Priorities Regulation No. 33, which gave preference to veterans in obtaining construction materials. *Id.* The Newmans transferred title to their property to a veteran and May secured construction materials because of his veteran's status. *Id.* at 708-09. The Court of Appeals held that the contract between May and the Newmans, while valid on its face, was illegal because May knew the house was not intended for occupancy by a veteran and May's conduct in performing his obligations under the contract violated the federal regulation.

Mr. Geraci, like May, violated local laws in pursuit of his performance under the alleged November 2, 2016 agreement. On October 31, 2016, Mr. Geraci caused to be filed with the City a CUP application which failed to disclose his ownership interest in the Property, the CUP, or the Geraci Judgments, despite the City's requirement that each of the foregoing be disclosed. (*See* **Exhibit H** at 034-001 (§ 7 requires disclosure of Geraci Judgments), *id.* at 034-004 (requires disclosure of all persons with an interest in the Property and CUP); SDMC § 112.0102(b) (application shall be made on forms provided by city manager and shall be accompanied by all the information required by the same); SDMC § 112.0102(c) (information requested on forms updated "to comply with revisions to local, state, or federal law, regulation, or policy).

The non-disclosure was purposeful. (*See* **Exhibit I** – (Discovery Resp.) at 12:8-16.) Indeed, efforts were undertaken to exclude any reference to Mr. Cotton in the CUP application because of his "legal issues" with the City. There are no disclosure exceptions for Enrolled Agents, and neither the SDMC nor the Geraci Judgments allow Mr. Geraci to comply with some of the CUP requirements. Applying the test of illegal contracts, Mr. Geraci relied upon the General Application and Ownership Disclosure Statement to suggest that he complied with the terms of the alleged November 2, 2016 agreement. As a result, Mr. Geraci asks this Court to assist him in violating local laws, which the Court is prohibited from doing.

The alleged November 2, 2016 agreement also violates the policy of express law in the form of the CUP requirements and AUMA.[8] The policy of the SDMC is disclosure and transparency in

[8] Although AUMA was adopted days after the alleged November 2, 2016 agreement, pursuant to Ordinance No. O-20793, all MMCC applications in the City were replaced with the new retail sales category called an MO. Thus, the CUP application submitted by Ms. Berry on behalf of Mr. Geraci is subject to AUMA. Furthermore, the text of AUMA was circulated in July of 2016 so all of the requirements for potential successful applicants were already known to the public and attorneys specializing in cannabis laws and regulations prior to November 2, 2016.

government. Similarly, the policy of AUMA is to bring marijuana into a regulated and legitimate market to create a transparent and accountable system. Mr. Geraci's efforts, which were undertaken both before and after November 2, 2016, violated both policies. Neither of the policies provides any exceptions for Enrolled Agents, "convenience of administration," or those persons with "legal issues" – all of which Mr. Geraci has used to justify his purposeful non-disclosure.

D. THE JURY APPLIED AN OBJECTIVE STANDARD TO MR. COTTON, AND A SUBJECTIVE STANDARD TO MR. GERACI.

Mutual assent is determined under an objective standard applied to the outward manifestations, the surrounding circumstances, the nature and subject matter of the contract, and subsequent conduct of the parties; assent is not determined by unexpressed intentions or understandings. *Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 141 (disapproved on other grounds in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 524); *People v. Shelton* (2006) 37 Cal.4th 759, 767 (internal citations and quotations omitted). Agreements to agree are unenforceable because there is no intent to be bound and the Court may not speculate upon what the parties will agree. *Bustamante v. Intuit, Inc.* (2009) 141 Cal.App.4th 199, 213-14 (internal citations and quotations omitted).

There was no dispute relating to the parties' objective manifestations. Shortly after receiving a copy of the alleged November 2, 2016 agreement, Mr. Cotton sent an e-mail stating the 10% equity position in the dispensary was not included in the document and requested an acknowledgment that the same would be included in "any final agreement." (*See* **Exhibit K**.) Mr. Geraci responded "no problem at all." (*Id.*) Mr. Geraci then had draft final agreements prepared and circulated. The draft agreements: (i) do not state they were amending a prior agreement; (ii) do not reference a prior agreement; (iii) state that the "Date of Agreement" was "[t]he latest date of execution of the Seller or the Buyer, as indicated on the signature page;" (iv) do not provide any indication that a prior agreement was reached between the parties; and (v) include terms not set forth in the alleged November 2, 2016 agreement. None of the drafts were signed and none of the documents produced by Mr. Geraci ever referenced extortion.

Only two conclusions could have been reached if the appropriate objective standard had been applied to both Mr. Cotton and Mr. Geraci. The first possible conclusion is that the alleged November 2, 2016 agreement included the 10% interest that Mr. Geraci subsequently refused to acknowledge. The

second possible conclusion is that the e-mail exchange subsequent to the alleged November 2, 2016 agreement demonstrated the parties agreed to agree. And, therefore, the alleged November 2, 2016 agreement was not enforceable.

Instead, the jury reached the conclusion that the alleged November 2, 2016 agreement was a contract. In order to do so, the jury must have applied Mr. Geraci's subjective standard. The jury must have believed Mr. Geraci's unexpressed intentions or understandings (*i.e.*, that he was only responding to the first line of Mr. Cotton's e-mail and the statements to his counsel that he was being extorted). According to Mr. Geraci's testimony, he called Cotton the following day to explain. But if the hours that passed between the November 2, 2016 agreement and Mr. Cotton's e-mail was too late for Mr. Cotton, the day that passed before Mr. Geraci's call was also too late to explain his subjective intent as to his response. Therefore, the jury's conclusion that the alleged November 2, 2016 agreement is a contract stands in direct contrast to the objective standard applied to Mr. Cotton's conduct. The jury cannot apply objective standards to Mr. Cotton and subjective standards to Mr. Geraci.

E. MR. GERACI USED THE ATTORNEY-CLIENT PRIVILEGE AS A SHIELD AND A SWORD, THEREBY VIOLATING MR. COTTON'S RIGHT TO A FAIR AND IMPARTIAL TRIAL.

"[A]n overt act of the trial court … or adverse party, violative of the right to a fair and impartial trail, amounting to misconduct, may be regarded as an irregularity." *Gray, supra,* 33 Cal.App.2d at 182; *see also Webber*, *supra,* 33 Cal.2d at 164 (affidavit not required where motion for new trial "relies wholly upon facts appearing upon the face of the record"). Litigation is not a game, and a litigant cannot claim privilege during discovery then testify at trial. *A&M Records, supra,* 75 Cal.App.3d at 566. As the *A&M* Court eloquently put it, "[a] litigant cannot be permitted to blow hot and cold in this manner." *Id.* At the February 8, 2019 hearing on Mr. Cotton's Motion to Compel Further Responses to Discovery to which Mr. Geraci asserted Attorney-Client Privilege, the Court acknowledged as much when it stated: "[T]here is a price to be paid; [Mr. Geraci] can't go back and reopen that area once [he has] narrowed the scope by asserting privilege." (*See* **Exhibit J** February 8, 2019 at 21:1-5. The Court subsequently entered an order prohibiting testimony on matters that Plaintiff asserted attorney-client privilege. Minute Order dated Feb. 8, 2019 (ROA 455) at p. 3 (prohibiting testimony on matters that Plaintiff

asserted privilege in discovery). Mr. Geraci has previously admitted that failure to disclose constitutes "substantial prejudice." *Plaintiff Larry Geraci's Memorandum of Points and Authorities in Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens* dated April 10, 2018 (ROA 179) at 4:7-8. (Mr. Geraci claimed that Cotton's "refusal to participate in discovery has substantially prejudiced Geraci and Berry in preparation of this case.").

Mr. Cotton propounded discovery seeking, among other things, documents and communications by and between Mr. Geraci and Ms. Austin related to the purchase of the Property. (*See* **Exhibit I** (Discovery Responses) at 13:1-13, 14:8-23.) No documents or communications were produced in connection with the request based upon attorney-client privilege. Then, at trial, Mr. Geraci waived privilege and he and Ms. Austin testified as to the very communications Mr. Cotton previously sought.

Mr. Geraci's use of the privilege as a shield and a sword violated Mr. Cotton's right to a fair and impartial trial. One of the central arguments Mr. Cotton presented was that the parties agreed to draft a final agreement. While Mr. Geraci's conduct was consistent with this argument, he and Ms. Austin testified at trial that Mr. Geraci's request for draft agreements was purportedly the result of extortion. The failure to disclose those documents constitutes, as Mr. Geraci previously admitted, substantial prejudicial to Mr. Cotton because it prevented Mr. Cotton from cross-examining Mr. Geraci and Ms. Austin on their inflammatory and prejudicial extortion allegations, as well as proving that the alleged November 2, 2016 agreement was an agreement to agree. Mr. Geraci cannot be permitted to "blow hot and cold."

CONCLUSION

For the reasons set forth herein, Mr. Cotton requests that the Court (i) find that the alleged November 2, 2016 agreement is illegal and void; or (ii) order a new trial and enable Mr. Cotton to conduct discovery related to the communications between Messrs. Geraci and Cotton.

DATED this 13th day of September, 2019.

TIFFANY & BOSCO, P.A.

By_____
EVAN P. SCHUBE
Attorneys for Defendant/Cross-Complainant
Darryl Cotton

Exhibit 22

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

AND RELATED CROSS-ACTION

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

PLAINTIFF/CROSS-DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT/CROSS-COMPLAINANT'S MOTION FOR NEW TRIAL

[IMAGED FILE]

DATE:	**October 25, 2019**
TIME:	**9:00 a.m.**
DEPT:	**C-73**
Filed:	March 21, 2017
Trial Date:	June 28, 2019
Notice of Entry of Judgment:	August 20, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

TABLE OF AUTHORITIES-Continued

///

TABLE OF AUTHORITIES-Continued

STATUTES

OTHER

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff/Cross-Defendants submit this Memorandum of Points and Authorities in Opposition to Defendant/Cross-Complainant's Motion for New Trial.

I. INTRODUCTION/SUMMARY OF ARGUMENT

This case came to jury trial on July 1, 2019 and took place over the ensuing three-week period, consisting of 9 trial days. Mr. Cotton received a fair trial. The jury unanimously found in favor of Mr. Geraci and against Mr. Cotton on his causes of action for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing and awarded damages to Mr. Geraci. (See Special Verdict Form, ROA #635.)[1] Cotton now requests this Court to set aside the verdict.[2]

As a threshold matter, Mr. Cotton's supporting documents were not timely filed and served. CCP § 569(a) provides that "Within 10 days of filing the notice, the moving party ***shall serve upon all other parties*** and file any brief ***and accompanying documents***, including affidavits in support of the motion. ...". Here, Mr. Cotton's Notice of Intent to Move for New Trial was served and filed on September 3, 2019. The ten-day period to file his brief and accompanying documents expired on September 13th. While Mr. Cotton timely filed his ***unsigned*** Memorandum of Points and Authorities just before midnight on September 13th, that filing did not include any accompanying documents. Instead, on Monday, September 16th, (3-days late) Mr. Cotton filed two documents entitled "Errata"

---

[1] The jury also unanimously found in favor of Mr. Geraci and against Mr. Cotton on all of Mr. Cotton's claims set forth in his cross-complaint. (See Special Verdict Form, ROA# 636.) Mr. Cotton does not challenge the jury verdict nor seek a new trial in connection with his cross-claims; his memorandum of points and authorities in support of his new trial motion does not argue any grounds for a new trial on his cross-claims. Even if for the sake of argument Mr. Cotton intended to move for a new trial on those claims, that motion would fail for the same reason as his new trial motion fails as to the verdict against him on Mr. Geraci's claims.

[2] Mr. Cotton's counsel, Jacob Austin, did not raise an objection to the admission of any exhibits or the examination with regard to any exhibits. Attorney Austin only made two objections throughout the trial, neither of which have any impact on the pending motion. "In an appeal ... from a judgment after denial of a motion for new trial, the failure of ... counsel to object or except may be treated as a waiver of the error." (5 Witkin, Cal. Procedure (1983 pocket sup.) Attack on Judgment in Trial Court, § 119, p. 307; *Malkasian v. Irwin* (1964) 61 Cal. 2d at p. 747; see *Horn v. Atchison, T. & S.F.Ry. Co.* (1964) 61 Cal.2d 602, 610, cert. den. Sub nom.Atchison, *Topeka & Santa Fe Railway Co. v. Horn*, 380 U.S. 909 [13 L. Ed. 2d 796, 85 S. Ct. 892] ["'In the absence of a timely objection the offended party is deemed to have waived the claim of error through his participation in the atmosphere which produced the claim of prejudice.'" (*Sabella* v. Sothern Pac. Co. (1969) 70 Cal.2d at p. 319.)

which contained the accompanying documents in support of his motion.[3] Affidavits or declarations filed too late may be disregarded. (See *Morris v. Purity Sausage Co.* (1934) 1 Cal.App.2d 120; *Lewith v. Rehmke* (1935) 10 Cal.App.2d 97, 105; *Peterson v. Peterson* (1953) 121 Cal.App.2d 1, 9.)

As to the merits of his motion for new trial, Mr. Cotton's asserts three grounds:

First Mr. Cotton contends the November 2, 2016 agreement was illegal and void because Mr. Geraci failed to disclose his interest in both the Property and the Conditional Use Permit ("CUP"). Mr. Cotton erroneously contends the agreement violates local law and policies, as well as state law. The statutes upon which Mr. Cotton relies were not even in effect at the time the November 2, 2016 contract was entered.[4] Even if that is disregarded, the contract was otherwise legal as discussed *infra*.

Additionally, Mr. Cotton has waived the "illegality" argument for two reasons: (1) he never raised illegality as an affirmative defense; and (2) with regard to the "illegality" argument, Attorney Austin represented to the Court at the conclusion of evidence and in response to the Court's inquiries if there were any other exhibits Mr. Austin wished to admit into evidence: "I'm willing to not argue the matter if your Honor is inclined not to include it. We can just – forget about it." (Reporter's Transcript herein after referred to as "RT") (Plaintiff/Cross-Defendants Notice of Lodgment in Opposition to Motion for New Trial ("Plaintiff NOL") (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to Plaintiff NOL)

Even assuming the illegality argument has not been waived, the argument that the November 2, 2016 contract is illegal fails. Mr. Geraci's stipulated judgments with the City of San Diego, and the

---

[3] Mr. Cotton's Errata claims that "[d]ue to a clerical error, an incomplete draft of the Memorandum of Points and Authorities in Support of the Motion for New Trial was uploaded for electronic filing and service instead of the true final copy and, as such, the table of Authorities in the draft was incomplete, the document was not executed and the exhibits referenced therein were not attached." The signature page for the Memorandum of Points & Authorities attached to the Errata is dated, ***September 15, 2019***, (2 days after the papers were filed and served) which belies Mr. Cotton's claim that the motion was complete, filed and served in a timely manner and that the failure to transmit the signature page and accompanying documents was a "clerical error. Indeed, it suggests Mr. Cotton's filing was untimely.

[4] In making his illegality argument, Mr. Cotton cites to B&P Code §§ 26000 (Effective June 27, 2017); 26055 (Effective July 2019); and 26057(a) (Effective January 1, 2019). The contract in question was entered November 2, 2016. The general rule that judicial decisions are given retroactive effect is basic in our legal tradition. In *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207, the California Supreme Court observed: "[t]he principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student." (*United States v. Security Industrial Bank* (1982) 459 U.S. 70, 79, 103 S.Ct. 407, 413, 74 L.Ed.2d 235.) The statutes cited by Mr. Cotton in support of his "illegality" argument were not in effect until after, sometimes years after, entering the contract in question.

use of an agent in application process for the CUP, do not render the contract illegal. Indeed, as set forth herein, several witnesses testified that it is common practice for an applicant on a CUP application for a medical marijuana dispensary to utilize an agent in that process.

Second, Mr. Cotton argues the verdict is against law because the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and the "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton and a subjective standard to Mr. Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence which he would like to substitute for the jury's unanimous verdict.

Third, Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during discovery and as a sword during trial, which prohibited Mr. Cotton from receiving a fair and impartial trial.[5] Mr. Cotton has misrepresented the facts, circumstances and the Minute Order issued by the Court in connection with the attorney-client privilege issues during discovery and the waiver of those issues at trial. In spite of asserting the attorney-client privilege with regard to the documents drafted by Gina Austin's office, and contrary to Cotton's arguments herein, those documents were produced to Mr. Cotton during discovery. (Cross-Defendant Rebecca Berry's Responses to Request, For Production of Documents, Set One, Ex. 1 to Plaintiff NOL; and Plaintiff/Cross-Defendant Larry Geraci's Amended Responses to Special Interrogatories, Set Two, Ex. 2 to Plaintiff NOL) The documents were also listed on the Joint TRC Exhibit List and admitted into evidence at trial without objection. (Trial Exhibits 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 3 to NOL; Joint Exhibit List, Ex. 10 to Plaintiff NOL) Mr. Cotton's counsel did not raise any evidentiary objections to the waiver of attorney-client privilege either with regard to the documentary evidence or the testimonial evidence. As such, Mr. Cotton's claim that he was unable to cross-examine either Mr. Geraci or Ms. Austin with the relevant documents (Cotton's P's & A's, p. 5:1-3) is without merit.

---

[5] This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in the Notice of Intent to Move for New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131; *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th 1599, 1601-1605.) (Practice Guide: Civil Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)]

Indeed, armed with those documents during discovery, Mr. Cotton never took the depositions of Mr. Geraci nor Attorney Gina Austin. And he in fact questioned the witnesses about those documents during trial. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

Finally, as a matter of law, a new trial may only be granted when the verdict constitutes a miscarriage of justice. (Calif. Const., Art. VI, §13.) "If it clearly appears that the error could not have affected the result of the trial, the court is bound to deny the motion." [*Bristow v. Ferguson* (1981) 121 Cal.App.3d 823, 826; *Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 866-867, (disapproved on other grounds in *People v. Ault* (2004) 33 Cal.4th 1250, 1272.)] Mr. Cotton has not demonstrated the claimed errors likely affected the result of the trial.

II. STANDARDS FOR NEW TRIAL MOTION BASED ON C.C.P. § 657(6)

A. Cotton's New Trial Motion is Limited to the Statutory Ground that the Verdict was "Against Law" under C.C.P. § 657(6)

In his Notice of Intent to Move for New Trial dated September 13, 2019, Mr. Cotton gave notice that he was bring the motion pursuant to C.C.P. § 657(6) on the ground that "the verdict is against the law." (ROA#656.) Yet in his brief, he asserts that his motion for new trial is made on the grounds of "irregularity of proceedings" under C.C.P. § 657(1) and "against the law" under (C.C.P. § 657(7), *neither of which grounds were set forth in his Notice of Intention to Move for New Trial.* (Cotton P's&A's, p. 5:10-21) A notice of intention to move for a new trial is deemed to be a motion for new trial *on the grounds stated in the notice.* (C.C.P. §659.) It is well-established that a new trial order "can be granted only on a ground specified in the motion." (*Malkasian v. Irwin* (1964) 61 Cal.2d 738, 745; *De Felice v. Tabor* (1957) 149 Cal.App.2d 273, 274.)

Mr. Cotton also asserts that "the Court sits as the 13th juror and is "vested with the plenary power – and burdened with a correlative duty – to independently evaluate the evidence," (incorrectly citing to *Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775, 784, which concerned C.C.P. § 657(5), not § 657(6). Rather, the "against law" ground differs from the "insufficiency of the evidence" ground in that there is no weighing of evidence or determining credibility. The "against law" ground applies only when the evidence is without conflict in any material point and insufficient as a matter of law to support the verdict. (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 229.)

B. The Correct Standard for a New Trial Motion Based on the Statutory Ground that the Verdict is "Against Law"

The statutory ground under C.C.P. §657(6) that the verdict is "against law" is of very limited application. (*Tagney v. Hoy* (1968) 260 Cal.App.2d 372, citing *Kralyevich v.Magrini* (1959) 172 Cal.App.2d 784 ["A decision can be said to be 'against law' only: (1) where there is a failure to find on a material issue; (2) where the findings are irreconcilable; and (3) where the evidence is insufficient in law and without conflict in any material point.[6] C.C.P. § 657(6) is not a ground to have the court reconsider its rulings. The "against law" ground applies only when the evidence is without conflict in any material point and insufficient *as a matter of law* to support the verdict. (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 229; see *Fergus v. Songer* (2007) 150 Cal.App.4th 552, 567-569 [finding verdict was not "against law" because it was supported by substantial evidence]; *Marriage of Beilock* (1978) 81 Cal.App.3d 713, 728.) C.C.P. § 657(6) does not cover errors that fall within the other sections of C.C.P. § 657, such as § 657(7). (*O'Malley v. Carrick* (1922) 60 Cal.App. 48, 51)

III. ARGUMENT

A. MR. COTTON'S ILLEGALITY ARGUMENTS FAIL

1. Mr. Cotton Has Waived and Abandoned the "Illegality" Argument

Mr. Cotton failed to raise "illegality" as an affirmative defense in his Answer to Plaintiff's Complaint (ROA#17). Normally, affirmative defenses not raised in the answer to complaint or cross-complaint are waived. (E.g., *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 813.) As stated above, Mr. Cotton did not plead "illegality" as an affirmative defense; therefore, Mr. Cotton cites *Lewis Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 146-148), for the proposition that illegality can be raised "at any time." That is a correct statement of the law, however, that rule is not unqualified. Two California Supreme Court cases decided after *Lewis & Queen – Fomco, Inc. v. Joe Maggio, Inc.* (1961) 55 Cal.2d 162, and *Apra v. Aureguy* (1961) 55 Cal.2d 827 – both rejected post-

[6] Mr. Cotton did not set forth any failure by the court as to a finding on some material issue. Mr. Cotton also did not establish findings that are irreconcilable. Mr. Cotton further did not establish that the evidence is insufficient in law and without conflict on any material point. Other challenges as to the application of law in this case would be governed by C.C.P. § 657(7) not cited in Mr. Cotton's Notice of Intention to Move for New Trial and, therefore, are not reviewable herein. For these reasons alone, Mr. Cotton's arguments for a new trial should be rejected by this Court.

trial defenses of illegal contract because the illegality defense had not been raised in the trial court. (See *Fomco, supra,* 55 Cal.2d at p. 166; 55 Cal.2d at p. 831.) In fact, language in *Fomco* suggests that the high court actually rejected *Lewis & Queen's* dicta that the issue of illegal contract could be raised for the first time on appeal. (See *Chodosh v. Palm Beach Park Association* 2018 WL 6599824)

At trial the "illegality" issue appears to have first come up in response to questions being posed by Attorney Austin in his examination of witnesses. Attorney Weinstein argued Attorney Austin was asking questions of witnesses which implied it was illegal for Mr. Geraci to operate a legally permitted dispensary. Attorney Weinstein pointed out, and the Court agreed, that the two civil judgments on their face did not bar Mr. Geraci from operating a legally permitted dispensary. (RT, July 9, 2019, p. 120:20-121:24, Ex. 5 to Plaintiff NOL) Attorney Weinstein went on to argue that Business & Professions Code Section 26057 was *permissive* and not mandatory and that it dealt with state licenses, not a City CUP. The Court was troubled by the fact that Attorney Austin had not filed a trial brief addressing this issue, nor had Attorney Austin filed any memorandum of points and authorities on the issue. The Court concluded: "So for the time being, I'm tending to agree with the plaintiff's side without the defense having given me something I can look at and absorb." (RT, July 9, 2019, p. 120:20-123:6, Ex. 5 to Plaintiff NOL)

Later that day, Attorney Austin called Joe Hurtado to the stand. Joe Hurtado had a vested interest in the case as he was financing Mr. Cotton's litigation expenses and attorneys' fees. (RT July 9, 2019, p. 150:13-18, Ex. 5 to Plaintiff NOL) Attorney Austin improperly attempted to elicit expert testimony from Joe Hurtado, that it was his opinion that Mr. Geraci did not qualify for a CUP under the Business & Professions Code. (RT, July 9, 2019, 151:22-28, Ex. 5 to Plaintiff NOL) During Attorney Austin's examination of Mr. Hurtado, the Court initiated a side-bar at which Mr. Hurtado's proposed testimony was discussed. The Court permitted Mr. Hurtado to testify to hearsay conversations with Gina Austin and hearsay conversations with anyone else on Mr. Geraci's team. At the conclusion of Mr. Hurtado's testimony, and after excusing the jury, the Court permitted the parties to make a record of that side bar. (RT, July 9, 2019, p. 155:8-158:18, Ex. 5 to Plaintiff NOL) The Court expressed to Attorney Austin that to the extent Mr. Hurtado wanted to express legal opinions, he was not going to permit such testimony. In response, Attorney Austin admitted that "perhaps Mr.

Hurtado should have been designated as an expert...". (RT, July 9, 2019, p. 157:13-15, Ex. 5 to Plaintiff NOL) Mr. Hurtado was not designated as an expert witness and his opinion testimony was properly excluded.

The "illegality" issue was again raised on July 10, 2019, when Attorney Austin offered Trial Exhibit 281 into evidence, which was a copy of Business & Professions Code § 26051; and requested the Court take judicial notice of the two lawsuits in which Mr. Geraci was a named party. The Court sustained Attorney Weinstein's objections to Business & Professions Code § 26051 being admitted into evidence. As to the request for judicial notice of the two prior cases against Mr. Geraci, Attorney Weinstein raised an Evidence Code § 352 objection.

The Court stated:

> Putting aside whether the probative value is substantially outweighed by undue prejudice or any other of the 352 factors including but not limited to cumulativeness, as I read these judgments, Mr. Geraci is not barred from trying to obtain whatever permission he would need or anybody would need from operating a marijuana dispensary. And I thought that was your theory at one point.
>
> And if that were your theory, I'm not seeing anything, well, inside the four corners of these judgments that prohibit Mr. Geraci from, for example, doing the deal that he had proposed to do with Mr. Cotton.

Attorney Austin replied to the Court: "I think there was a change in the law, which would – would change that. ***But I'm willing to not argue the matter if your Honor is inclined not to include it. We can just – forget about it.***" The Court then sustained the objections and declined to take judicial notice of Mr. Geraci's two prior judgments. (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to Plaintiff NOL) [trial court could properly deny a motion for new trial based on a waiver of the issue during trial. (*Miller v. National American Life Ins. Co.* (1976) 54 Cal.App.3d 331, 346; *Horn v. Atchison, T. & S.F.Ry. Co.*, (1964) 61 Cal.2d 602; *Sepulveda v. Ishimaru*, (1957) 149 Cal.App.2d 543, 547]

It is clear in the instant case, that Attorney Austin abandoned his "illegality" argument; i.e., Mr. Austin's statement to the Court: "I think there was a change in the law, which would – would change that. But I'm willing to not argue the matter if your Honor is inclined not to include it. We can just – forget about it." (RT, July 10, 2019, p. 72:10-13, Ex. 6 to Plaintiff NOL) Having waived this issue during the trial, Mr. Cotton is precluded from urging it as a ground for granting a new trial.

2. The Contract at Issue in This Case is Not Illegal.

Even if the statutes Mr. Cotton relies upon were in effect on November 2, 2016 when the contract was entered (which they were not) and there were no waiver of the "illegality" issue (which there was), the November 2, 2016 agreement remains a legal contract.

The stipulated judgments on their face permit Mr. Geraci to apply for a CUP. In Case Number 37-2014-00020897-CU-MC-CTL, paragraph 8a enjoins Mr. Geraci from "Keeping, maintaining, operating, or allowing the operation of an ***unpermitted marijuana dispensary*** ...". (Italics, Bold Added.) Paragraph 8(b) specifically sates "***Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.***" (Italics, Bold Added.)

In Case Number 37-2015-00004430-CU-MC-CTL, Paragraph 7 prevents Defendant from "Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana dispensary, collective or cooperative organized anywhere in the City of San Diego ***without first obtaining a Conditional Use Permit pursuant to the San Diego Municipal Code.***" (Italics, bold added)

It was this language in the two stipulated judgments that led this Court to state: "I'm not seeing anything, well, inside the four corners of these judgments that prohibit Mr. Geraci from, for example, doing the deal that he had proposed to do with Mr. Cotton." To which, Attorney Austin stated "***We can just – forget about it.***" (RT, July 10, 2019, p. 69:8-15, Ex. 6 to Plaintiff NOL)

3. The B&P Code Does Not Bar Mr. Geraci From Applying for a CUP

Setting aside waiver and the fact that the two stipulated judgments, on their face, permit Mr. Geraci to obtain a CUP, there is no mandatory provision in the Business & Professions Code which would bar Mr. Geraci from lawfully obtaining a CUP.

Section 26057(b)(7) of the California Business & Professions Code provides that "[t]he licensing authority ***may*** deny the application for licensure or renewal of a **state license** if ... [t]he 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 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 licensing authority." (Cal. Bus. & Prof. Code § 26057(b)(7) [*emphasis added*].) Section 26057 is part of a larger division known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act, which has the purpose and intent to "control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale" of commercial medicinal and adult-use cannabis. (Cal. Bus. & Prof. Code § 26000.) Under this division, a "license" refers to a "state license issued under this division, and includes both an A-license and an M-license, as well as a laboratory testing license." (Cal. Bus. & Prof. Code § 26001(y).)

In this case, the CUP is not a state license. Even if this statute were to apply to a CUP, the permissive nature of the authority would not *require* the denial of a CUP license because it is up to the discretion of the licensing authority to make such a decision based on the conditions provided in section 26057(b). (Cal. Bus. & Prof. Code § 26057(b).) In addition, attorney Gina Austin testified at trial the statute would not prevent Mr. Geraci from obtaining a CUP. (RT, July 8, 2019, p. 55:12-57:21, Ex. 4 to Plaintiff NOL)

4. It Is Common Practice For CUP Applicants To Use Agents During The Application Process.

Mr. Cotton argues that Mr. Geraci did not disclose his interest on the Ownership Disclosure Statement and that therefore Mr. Geraci is asking this Court to assist him in violating local laws, which the Court is prohibited from doing. (Cotton P's & A's, p. 12:16-23)

Rebecca Berry, the CUP applicant, signed the CUP forms as Mr. Geraci's agent. This was disclosed to Mr. Cotton from the outset. Prior to Mr. Cotton signing the Ownership Disclosure Statement he knew that Ms. Berry was going to be acting as Mr. Geraci's agent for purposes of the CUP. (RT, July 8, 2019, p. 99:15-19, Ex. 4 to Plaintiff NOL; and Trial Exhibit 30, Ex. 8 to Plaintiff NOL) In fact it was Mr. Cotton's belief that Ms. Berry had to sign the Ownership Disclosure Statement as a Tenant Lessee. (RT, July 8, 2019, pp. 101:26-102:7, Ex. 4 to Plaintiff NOL; and Trial Exhibit 30, Ex. 8 to Plaintiff NOL)

Abhay Schweitzer testified that there is no problem with that (Ms. Berry signing as an agent for Mr. Geraci) because, from the City's perspective, the City is only interested in having someone make the representation that they are the responsible party for paying for the permitting process. (RT,

July 8, 2019, p. 31:22-33:13, Ex. 4 to Plaintiff NOL) And as to the Ownership Disclosure statement, the City's Form is limited, only permitting three choices, none of which fit the circumstances in this case; thus attorney Gina Austin testified that there was no problem from her perspective with Ms. Berry checking tenant/lessee. (RT, July 8, 2019, p. 33:14-35:11, Ex. 4 to Plaintiff NOL) Mr. Schweitzer testified that it is not unusual for an agent to be listed as the owner on the form. (RT, July 9, 2019, p. 60:20-27, Ex. 5 to Plaintiff NOL)

During Mr. Austin's cross-examination of Firouzeh Tirandazi, a City Project Manager III (the highest classification of Project Managers at the City of San Diego), he tried to get her to testify that "anyone with an ownership or financial interest in a marijuana outlet is supposed to be disclosed to the City." Ms. Tirandazi testified that they (the City) are only looking for the property owner and the tenant/lessee. (RT, July 9, 2019, p. 112:23-28; Ex. 5 to Plaintiff NOL) Ms. Tirandazi was unfamiliar with the California Business & Professions Code vis-à-vis the CUP application process. (RT, July 9, 2019, p. 113:1-5, Ex. 5 to Plaintiff NOL)

B. MR. COTTON'S ARGUMENT THAT THE VERDICT IS AGAINST THE LAW BECAUSE THE JURY DISREGARDED THE JURY INSTRUCTIONS FAILS.

Mr. Cotton contends the verdict is contrary to law because, he argues, the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and the "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton and a subjective standard to Mr. Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence which he would like to substitute for the jury's unanimous verdict.

If the jury has been instructed correctly and returns a verdict contrary to those instructions, the verdict is "against law." (See *Manufacturers' Finance Corp. v. Pacific Wholesale Radio* (1933) 130 Cal.App.239, 243.(A new trial motion based on the "against law" ground permits the moving party to raise new legal theories for the first time; i.e., the trial judge gets a second chance to reexamine the judgment for errors of law. (*Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4th 10, 15.)

Mr. Cotton asks this Court to accept *his* interpretation of the evidence; disregard the jury's

evaluation and interpretation of the evidence; and grant him a new trial based upon *his* theory of what the evidence shows. Specifically, Mr. Cotton urges that there was no disputed evidence relating to the parties' objective manifestations regarding the contract formation. (Cotton P's&A's, p. 13:16-17.) This is yet another iteration of Mr. Cotton's mantra in numerous motions throughout the litigation that the "disavowment allegation" was case dispositive.

The unanimous verdict of a sophisticated jury militates strict adherence to the principle that courts "credit jurors with intelligence and common sense and presume they generally understand and follow instructions." (*People v. McKeinnon* (2011) 52 Cal.4th 610, 670 ["defendant manifestly fails to show a reasonable likelihood the jury misinterpreted and misapplied the limiting instruction"].) The Court's instructions to the jury, which, "absent some contrary indications in the record," must be presumed heeded by the jury. (*Cassim v. Allstate Ins. Co.* (2004)33 Cal.4th 780 at 803.)

The Court gave CACI Nos. 302 – Contract Formation Essential Factual Elements; 303 – Breach of Contract – Essential Factual Elements; and a host of other instructions regarding contract formation, interpretation and breach. Those instructions were correct statements of the applicable law. Mr. Cotton's counsel did not object to any of those instructions. Mr. Cotton has not overcome the presumption that the jury heeded the Court's instructions. He fails to show a reasonable likelihood the jury misinterpreted and misapplied the jury instructions related to contract formation.

In support of his argument, Mr. Cotton argues that Mr. Geraci had draft "final" agreements prepared and circulated by Attorney Gina Austin, and therefore, the argument goes, the November 2, 2016 Agreement could not have been the final agreement between the parties. This argument simply ignores the testimony of Larry Geraci that he felt he was being extorted by Mr. Cotton and did not want to lose all of the money he had invested in the project and therefore he instructed his attorney, Gina Austin to draft some agreements, attempting to negotiate some terms that Mr. Cotton might be happy with. Those draft agreements were prepared by Gina Austin's office and forwarded to Mr. Cotton. (Trial Exhibit 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 4 to NOL) Mr. Cotton refused to accept those terms and no new agreement was reached. Mr. Geraci became fed-up and filed the instant lawsuit to protect his investment based on the November 2, 2016 written agreement the parties had entered into.

Mr. Cotton sets forth a number of factors which he claims support his interpretation of the evidence that the November 2, 2016 agreement was not the final agreement of the parties. (Cotton Ps &As, p. 13:16-25.) However, Mr. Cotton fails to acknowledge that each of the alleged factors he claims support his argument, are equally supportive of Mr. Geraci's and Attorney Gina Austin's testimony that Mr. Geraci felt he was being extorted by Mr. Cotton and requested Gina Austin to please draft new contracts so he would not lose his investment. (RT July 8, 2019, p. 41:10-26, Ex. 4 to Plaintiff NOL.) Consistent with their testimony, the November 2, 2016, written agreement was neither amended nor superseded by a new agreement.

C. MR. COTTON'S ARGUMENT THAT HE WAS DENIED A FAIR TRIAL AS THE RESULT OF ERRORS RELATING TO THE USE OF THE ATTORNEY-CLIENT PRIVILEGE DURING DISCOVERY AND AT TRIAL ALSO FAILS.

Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during discovery and as a sword during trial, which prevented Mr. Cotton from receiving a fair and impartial trial. This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in Mr. Cotton's Notice of Intent to Move for New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131; *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th 1599, 1601-1605.) (Practice Guide: Civil Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)]

Preliminarily, under C.C.P. § 657(1), evidentiary rulings by which relevant evidence was erroneously excluded (or conversely, irrelevant evidence erroneously admitted) may be grounds for a new trial if prejudicial to the moving party's right to a fair trial. [Civil Trials and Evidence, Post Trial Motions, The Rutter Group 18:134.1] A motion for new trial on this ground *must* be made on affidavits. Mr. Cotton has failed to file any affidavits in support of his motion for new trial

Alternatively, erroneous evidentiary rulings (admitting or excluding evidence may be challenged under C.C.P. §657(7) as an "Error in law, occurring at the trial and excepted to by the party making the application." Mr. Cotton has *not* moved for a new trial based on either C.C.P. § 657(1) or C.C.P. §657(7). Instead, in his Notice of Intent to Move for New Trial (p. 2:8-11), Mr. Cotton has sought a new trial on the sole ground that the verdict is "against law" pursuant to C.C.P. § 657(6). A notice of intention to move for a new trial is deemed to be a motion for new trial *on the grounds stated*

in the notice. (C.C.P. §659.) Mr. Cotton cannot assert grounds for new trial not stated in the Notice.

As to the merits of the argument, Mr. Cotton has misrepresented the facts, circumstances and the Minute Order issued by the Court in connection with the attorney-client privilege issues during discovery and the waiver of those issues at trial.

Mr. Cotton claims there was a Court order prohibiting testimony on matters that Plaintiff asserted attorney-client privilege. (Mr. Cotton's P's & A's, p. 14:26-28) In support of this contention, Mr. Cotton Cites to the Court's Minute Order dated February 8, 2019 (ROA#455 at p. 3.) This misrepresents what that Court Order states. It actually states:

> Plaintiff's objections on the basis of privilege to REQUEST FOR PRODUCTION NO. 29 are SUSTAINED; however, the scope of the request appears to seek relevant documents. Given Plaintiff's election to assert the privilege and/or doctrine in discovery, the Court will ***HEAR*** on the scope of the testimony Plaintiff will be not be permitted to provide at trial on the subject of the DISAVOWMANET ALLEGATION."

Cleary, the Court said it would hear and determine the scope of the testimony allowed; it did not prohibit testimony as alleged by Mr. Cotton. Thereafter, Mr. Cotton's attorney drafted the Notice of Ruling which only prevents Rebecca Berry from testifying on the matter of the disavowment allegation. It does not bar any other witness from so testifying. (ROA# 455, p. 2.)

In addition, Mr. Cotton asserts that Mr. Geraci used the attorney-client privilege as a shield and a sword, thereby violating Mr. Cotton's right to a fair and impartial trial. This argument fails on many levels, and has otherwise been waived by Mr. Cotton's failure to object to either the documentary evidence or the testimonial evidence.[7] In fact, Mr. Cotton's attorney conducted substantial examination of witnesses on these very topics.

Mr. Cotton has waived this argument for the following reasons:

1. He never took the depositions of Mr. Geraci or Gina Austin for ascertain this information from them;

2. In response to Mr. Cotton's requests for the production of all documents relating to the purchase of the property drafted or revised by Gina Austin [RFPs Nos. 18, 19], Mr. Geraci objected on the grounds of attorney-client privilege; however, in response to RFP 19, he added that ***"Responding***

[7] "Failure to object to the reception of a matter into evidence constitutes an admission that it is competent evidence." (*People v. Close* (1957) 154 Cal.App.2d 545, 552; *People v. Wheeler* (1992) Cal.4th 284, 300.)

Party has produced previously all responsive documents drafted by Ms. Austin or persons employed in her law firm."

3. Indeed, all such responsive documents had been produced and were marked as Trial Exhibits 59 and 62 which were admitted at trial with Mr. Cotton's Attorney's representations that he had no objections to the admission of the documents. (RT July, 3, 2019, pp. 130:18-26; 132:2-7, Ex. 3 to Plaintiff NOL.) Mr. Cotton testified that he received Exhibit 59 on February 27, 2017, and Exhibit 62 on March 2, 2017. (RT July 8, 2019, pp. 137:1-138:6, Ex. 4 to Plaintiff NOL.) In fact Mr. Cotton responded to Mr. Geraci regarding those documents. (RT July 8, 2019, pp. 138:2-141:4, Ex. 4 to Plaintiff NOL; and Trial Exhibits 63 and 70, Ex. 9 to Plaintiff NOL)

4. Larry Geraci testified regarding these exhibits and the surrounding circumstances. Mr. Cotton's attorney noted he had no objection to the admission of those exhibits (RT July 3, 2019, pp. 130:18-26; 132:2-7, Ex. 3 to Plaintiff NOL) and he did not object to the testimony.

5. Attorney Gina Austin testified regarding these exhibits and the surrounding circumstances and Mr. Cotton's attorney made no objections. (RT July 8, 2019, p. 41:10-26, Ex. 4 to Plaintiff NOL)

6. Mr. Cotton's attorney cross-examined Gina Austin regarding the draft agreements drafted by Ms. Austin's office. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

Having failed to make any objections whatsoever to any of the documentary and testimonial evidence of which he now complains, Mr. Cotton has waived any argument that the material should not have been admitted.

Mr. Cotton cites *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 556 for the proposition that a litigant cannot claim privilege during discovery and then testify at trial. The *A&M Records* case is clearly distinguishable from the case at bar. In that case, a defendant accused of distributing pirated records failed to produce at his deposition documents requested by the plaintiff "and also refused to answer any questions of substance on the constitutional ground (5th Amendment) that his answers might tend to incriminate him." (*A&M Records, supra*, 75 Cal.App.3d at p. 654.) The trial court ordered the defendant to turn over the requested documents by a specified date before trial, or the defendant would be barred from introducing them at trial, and the court also precluded the

defendant "from testifying at trial respecting matters [and] questions ... he refused to answer at his deposition[.]" (*Id.* at p. 655.) The order limit[ed] the scope of [the defendant]'s testimony only, and not that of any other witness" at his company. (*Ibid.*)

First and foremost, this case does not involve a situation where a party claims the 5th Amendment privilege against self-incrimination and then waives it at trial, so the *A & M Records* case has no application to the case at bar. The Court held that a litigant cannot assert his constitutional privilege against self-incrimination in discovery and then waive the privilege and testify at trial. (*Ibid.*) By analogy, and without citation, Mr. Cotton seeks to extend this reasoning to the attorney-client privilege being asserted during discovery and then waived at trial. This argument is inapplicable to this case where the attorney-client documents were produced to Mr. Cotton; were responded to by Mr. Cotton; were offered and admitted at trial with no objection by Mr. Cotton; the witnesses (Larry Geraci and Gina Austin) testified without any objection being made; and where Mr. Cotton's own attorney conducted extensive examination of that witness with regard to the relevant communications between Ms. Austin and her client, Mr. Geraci. And Mr. Cotton himself was examined regarding these exhibits.

IV. CONCLUSION

This Court ensured that Mr. Cotton received a fair trial from a fair and impartial jury. The jury paid careful attention, sifted through the evidence, and carefully came to an appropriate verdict. For the above-stated reasons, the Court should deny Mr. Cotton's motion for a new trial. "There must be some point where litigation in the lower courts terminates" because otherwise "the proceedings after judgment would be interminable". (*Coombs v. Hibberd* (1872) 43 Cal. 452, 453.) It is time to end this litigation in the trial court and respect the jury's judgment.

FERRIS & BRITTON
A Professional Corporation

Dated: September 23, 2019

By: 
Michael R. Weinstein
Scott H. Toothacre
Attorney for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

Exhibit 23

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT

DEPARTMENT 73 HONORABLE JOEL R. WOHLFEIL, JUDGE

LARRY GERACI, PLAINTIFF, VS. DARRYL COTTON, DEFENDANT.	CASE NO. 37-2017-00010073-CU-BC-CTL OCTOBER 25, 2019 FRIDAY, 9:00 AM MOTION FOR A NEW TRIAL EX PARTE HEARING

REPORTER'S CERTIFIED TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL R. WEINSTEIN, ESQ.
SCOTT H. TOOTHACRE, ESQ.
FERRIS & BUTTON, APC
501 BROADWAY
SUITE 1450
SAN DIEGO, CA 92101

FOR THE DEFENDANT: EVAN P. SCHUBE, ESQ.
FOR: JACOB AUSTIN, ESQ.
PO BOX 231189
SAN DIEGO, CA 92193

REPORTED BY: ELIZABETH CESENA, CSR 12266
PO BOX 131037, SD, CA 92170
LIZCEZ@GMAIL.COM

SAN DIEGO, CALIFORNIA, OCTOBER 25, 2019, FRIDAY, 9:00 AM

--000--

THE COURT: Item five, Geraci versus Cotton, case number 10073.

MR. WEINSTEIN: Good morning, Your Honor.

Michael Weinstein and Scott Toothacre on behalf of Mr. Geraci and Ms. Berry, who is not a part of this conference.

THE COURT: And Counsel?

MR. SCHUBE: Good morning, Your Honor.

Evan Schube on behalf of Mr. Cotton.

THE COURT: All right. Did I hear you two say that you were submitting?

MR. WEINSTEIN: Yeah. We are submitting, Your Honor, with time to respond.

THE COURT: All right. Counsel?

MR. SCHUBE: Thank you. I'll get to the illegality of the contract issue first. The fact is it cuts to the heart of the motion that we filed and the biggest issue.

A couple of items I wanted to raise with the Court, a couple of factual items I wanted to raise with the Court.

First one, on Exhibit H of our motion, is a leave to file the application to CUP Applications that were filed. In general application, which is Trial Exhibit 4200, it's states that "Notice of violation is required to be disclosed," and skip back to page four of the same Trial Exhibit, the Ownership Disclosure Statement, it also says,

"the name of any person of interest in the property must also be disclosed," and it states to potentially attach pages if needed.

THE COURT: So you are saying the contract is unenforceable?

MR. SCHUBE: Yes.

THE COURT: As a matter of law?

MR. SCHUBE: Yes. CUP was a condition precedent to the contract.

THE COURT: Counsel, up until this point in time, this case was filed in 017. Your side has been screaming at the Court and filed multiple writs asking me to adjudicate the contract as a matter of law in favor of your side.

Now you are asking me in, after an adverse finding, to adjudicate the law for the other side? You are doing a 180. Truly, you are doing a 180.

MR. SCHUBE: I came in on a limited scope. I don't have the background.

THE COURT: I do. They do. They have been sitting --

MR. SCHUBE: But my understanding was there were the motions that were made were based upon my clients understanding of what the agreement is which is not specifically related to the November 2, 2016 agreement that the jury found. Our motion is a bit more limited in that regard. I may be wrong. That's my understanding of the background of the case.

THE COURT: Again, from the Court's perspective as a matter of law up to this point. You have been asking me to adjudicate the contract in your favor. Now you're asking the Court to adjudicate the contract as a matter of law against the other side.

Counsel, shouldn't this have been raised at some earlier point in time?

MR. SCHUBE: Should it have, Your Honor? My personal opinion is that it should have been raised before but it was not and we are where we are and so hence, the reason why we're raising the issue now on a Motion for New Trial.

I think what has been referred to before, the illegality argument has been raised before and raised in the context of reference to State Law and Section 2640 of the California Business and Professions Code. I believe what was not conveyed to the Court was that these requirements for these forms, the specific provisions in the San Diego Municipal Code that require those disclosures and require applicant provide information.

The information was not provided. And --

THE COURT: 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.

MR. SCHUBE: Your Honor, illegality of the contract can be raised any time whether in the beginning or during the case or on appeal.

THE COURT: So it's akin to a jurisdictional

challenge?

MR. SCHUBE: I don't know if it's akin to a jurisdictional challenge, but the issue can be raised.

THE COURT: But at some point, doesn't your side waive the right to assert this argument? At some point?

MR. SCHUBE: I am not suggesting we waived that. The Case Law I saw in the motion cited that there is a duty and the duty continues and so I am not aware if there is anything that suggests that we waived that argument.

THE COURT: Anything else, Counsel?

MR. SCHUBE: The other thing I'd like to point out, Section 11.0401 of San Diego Municipal Code specifically states that "every applicant prior be furnished true and complete information." And that's obviously not what happened here. I think it's undisputed and the reasoning for the failure to disclose, there is no exception to either the San Diego Municipal Code or failure to disclose.

THE COURT: Thank you, very much.

MR. SCHUBE: Thank you, Your Honor.

THE COURT: I am not inclined to change the Court's view. Did either one of you need to be heard?

MR. TOOTHACRE: Just to make a record. One comment with respect to the illegality argument. Obviously, we agree with the comments of the Court but the failure to make these disclosures in the CUP, it doesn't make the contract between Geraci and Cotton unenforceable. It's one thing to say that the contract or the form wasn't

properly filled out, that doesn't make the contract unenforceable. That's all we have for the record.

THE COURT: Counsel, the Court observed this case throughout the entirety, including at trial. Quite frankly, I thought your client did well on the witness stand. Truly.

But the jury categorically rejected your side's claim and I am persuaded everybody got a fair trial here. The Court confirms the tentative ruling as the order of the Court. I will direct Plaintiff's side to serve Notice of the Decision. Thank you very much.

MR. WEINSTEIN: Thank you, Your Honor.

MR. TOOTHACRE: Thank you, Your Honor.

(END OF PROCEEDING AT 9:23 AM)

SAN DIEGO, CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

I, ELIZABETH M. CESENA, CSR 12266, A COURT-APPROVED REPORTER OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, DO HEREBY CERTIFY THAT I REPORTED IN SHORTHAND THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING TRANSCRIPT, NUMBERED FROM PAGES 1 TO 7, IS A FULL, TRUE AND CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON OCTOBER 25, 2019.

SAN DIEGO, CALIFORNIA, DATED THIS 9TH DAY OF JUNE, 2020.

ELIZABETH M. CESENA, CSR 12266
CERTIFIED SHORTHAND REPORTER

Exhibit 24

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 10/25/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Elizabeth Cesena CSR# 12266
BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017
CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

---

EVENT TYPE: Motion Hearing (Civil)
MOVING PARTY: Darryl Cotton
CAUSAL DOCUMENT/DATE FILED: Motion for New Trial, 09/13/2019

APPEARANCES
Michael R Weinstein, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Scott H Toothacre, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Evan Schube, specially appearing for counsel Jacob Austin, present for Defendant,Cross - Complainant,Appellant(s).

The Court hears oral argument and the tentative ruling as follows:
The Motion (ROA # 672) of Defendant / Cross-Complainant DARRYL COTTON ("Cotton") for a new trial or a finding that the alleged November 2, 2016 agreement is illegal and void, is DENIED.

The evidentiary objections (ROA # 679) of Plaintiff / Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY, are OVERRULED.

Plaintiff to give notice of the Court's ruling.

Exhibit 25

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

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

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

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

. . . . .

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

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

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

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

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

7. The legal description of the PROPERTY is:

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

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

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

INJUNCTION

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

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

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

COMPLIANCE MEASURES

DEFENDANTS agree to do the following:

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

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

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

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

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

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

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

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

MONETARY RELIEF

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

. . . . .

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

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

ENFORCEMENT OF JUDGMENT

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

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

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

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

RETENTION OF JURISDICTION

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

KNOWLEDGE AND ENTRY OF JUDGMENT

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

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

RECORDATION OF JUDGMENT

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

IT IS SO STIPULATED.

Dated: 12/29/, 2014

JAN I. GOLDSMITH, City Attorney

By [signature]
Gabriela Brannan
Deputy City Attorney
Attorneys for Plaintiff

Dated: 12/23/, 2014

[signature]
SALAM RAZUKI, an individual

Dated: 12/23/, 2014

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

Dated: 12/23, 2014

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

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

Dated: JAN - 6 2015

JUDGE OF THE SUPERIOR COURT
RONALD S. PRAGER

City of San Diego v. Stonecrest Plaza, LLC, et al., Case No. 37-2014-00009604 -CU-MC-CTL

Exhibit 26

Steven A. Elia (State Bar No. 217200)
Maura Griffin (State Bar No. 264461)
James Joseph (State Bar No. 309883)
LAW OFFICES OF STEVEN A. ELIA, APC
2221 Camino Del Rio South, Suite 207
San Diego, California 92108
Telephone: (619) 444-2244
Facsimile: (619) 440-2233
Email: steve@elialaw.com
maura@elialaw.com
james@elialaw.com

Attorneys for Plaintiff
SALAM RAZUKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

v.

NINUS MALAN, an individual; CHRIS HAKIM, an individual; MONARCH MANAGEMENT CONSULTING, INC. a California corporation; SAN DIEGO UNITED HOLDING GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; MIRA ESTE PROPERTIES, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC., a California nonprofit mutual benefit corporation; and DOES 1-100, inclusive,

Defendants.

CASE NO. 37-2018-00034229-CU-BC-CTL

DECLARATION OF SALAM RAZUKI IN SUPPORT OF EX PARTE APPLICATION FOR APPOINTMENT OF RECEIVER AND PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, A TEMPORARY RESTRAINING ORDER AND AN OSC RE APPOINTMENT OF RECEIVER AND PRELIMINARY INJUNCTION

Date: July 17, 2018
Time: 8:30 a.m.
Dept: C-66
Judge: Hon. Kenneth J. Medel

I, Salam Razuki, declare as follows:

1. I am the Plaintiff in the above-entitled action. I am over the age of eighteen and otherwise competent to make the statements contained herein based on personal knowledge or information and belief as noted.

2. This declaration is provided to the Court in support of my *Ex Parte* Application for a Temporary Restraining Order and Appointment of a Receiver.

The Partnership Assets

3. For years, I have engaged in multiple business dealings with Malan including, but not limited to, the ownership of real properties in order to operate legal marijuana businesses. Concerning the business dealings that are the subject of the instant action, and despite how title to the particular asset was vested, Malan and I acquired certain real property and other assets for the operation of a i) marijuana retail store, and, ii) a marijuana manufacturing and cultivation business (collectively, the "Partnership Assets"):

4. The arrangement for the Partnership Assets Malan and I had was that: (a) I would provide the initial investment capital; (b) Malan would manage the investment property or business; and, (c) after I recuperated my initial investment, I was entitled to 75% of the profits and Malan was entitled to 25% of the profits. I have invested **millions of dollars** of my own money and time into the Partnership Assets while Malan invested only his time and virtually **no money**. Malan and Hakim are attempting to steal millions of dollars from me.

5. A summary of the Partnership Assets is as follows:

(a) Malan owns (in his name only):

(i) A 100% membership interest in SD United Property Holdings, LLC ("SD United"). SD United owns title to certain real properties located at 8859 Balboa Avenue, Suites A-E, 8861 Balboa Avenue, Suite B, and 8863 Balboa Avenue, Suite E. Malan and I own, directly or indirectly, a marijuana retail business located at 8861 Balboa Avenue and 8863 Balboa Avenue.

(ii) A 100% membership interest in Flip Management, LLC ("Flip"). Flip

was supposed to serve as the operator for all marijuana operations before Malan and Hakim entered into a Management Services and Option Agreement with SoCal Building Ventures, LLC ("SoCal Building").

(iii) A 50% interest in Mira Este Properties, LLC ("Mira Este"). Mira Este owns title to certain real property located at 9212 Mira Este Court, San Diego, CA 92126. Malan and I own, directly or indirectly, a marijuana manufacturing and cultivation business located at 9219 Mira Este Court.

(iv) A 50% interest in Roselle Properties, LLC ("Roselle"). Roselle owns title to real property located at 10685 Roselle Street, San Diego, CA 92121. This location has or will have a cultivation license, but no marijuana operations are currently underway.

(b) Meanwhile, I own (i) a 20% membership interest in Sunrise Properties, LLC ("Sunrise"); and, (ii) a 27% membership interest in Super Consulting, LLC ("Super 5").

6. For all the Partnership Assets, I provided almost all the initial monetary investment. I have not calculated the exact amount of money I have invested at this time, but I estimate I have invested close to five or six million dollars including taking out millions of dollars in loans for the respective businesses and/or properties which I have personally guaranteed. Since Malan has possession of the financial records for most of the Partnership Assets, I am not able to properly trace the exact amount at this time and I am currently in the process of obtaining all documents that will evidence my monetary investment in the Partnership Assets. Regardless of any paperwork, Malan and I maintained an oral agreement to split the profits for all Partnership Assets 25%/75%, respectfully.

7. For Mira Este and Roselle, Defendant Chris Hakim ("Hakim") provided fifty percent (50%) of the initial investment and owns a fifty percent (50%) ownership in Mira Este and Roselle. I am informed and believe Hakim invested a total of $410,000.00, yet he has taken out well over a million dollars without giving me one red cent.

8. SD United, Flip, Mira Este, and Roselle are all entities involved in our "Marijuana

Operations." The Marijuana Operations were structured as such:

(a) Balboa Ave Cooperative ("Balboa), California Cannabis Group ("CCG"), and Devilish Delights, Inc. ("Devilish") hold the California State Licenses for the marijuana businesses located at the properties owned by SD United, Mira Este and Roselle, respectively. Malan is the CEO for Balboa, CCG, and Devilish. A true and correct copy of the most recent California Secretary of State Statement of Information for each of Balboa, CCG, and Devilish are attached hereto as **Exhibit A**, **Exhibit B** and **Exhibit C**, respectively.

(c) Flip was originally intended and supposed to serve as the day-to-day operator for all Marijuana Operations pursuant to my agreement with Malan.

(d) SD United (as to 8861 Balboa Avenue, Suite B and 8863 Balboa Avenue, Suite E), Mira Este (as to 9212 Mira Este Court, San Diego, CA 92126), and Roselle (as to 10685 Roselle Street, San Diego, CA 92121) are the property owners for the physical location of the businesses and hold the Conditional Use Permits ("CUPs"), which are obtained from the City of San Diego, for the Marijuana Operations.

9. All of these entities must coordinate and work together in order to run the Marijuana Operations because the businesses/properties need all of the appropriate licenses in order to legally manufacture, cultivate, distribute, and sell marijuana.

10. Under this structure, I believed all revenue and profits from the Marijuana Operations would be deposited into accounts owned by either SD United, Mira Este, or Roselle, as owners of the properties, or to an account owned by Flip who was intended to day-to-day operator of the Marijuana Operations.

The Settlement Agreement & RM Holdings

11. On or about November 9, 2017, Malan and I memorialized our oral agreement regarding the Partnership Assets in an Agreement entitled *Agreement of Compromise, Settlement and Mutual General Release* (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit D**. Pursuant to the terms of the Settlement Agreement, we agreed as follows:

(a) Malan and I would each transfer all Partnership Assets into a newly formed entity called RM Property Holdings, LLC ("RM Holdings");

(b) Malan would provide an accounting of all the initial capital investments I made in relation to the Partnership Assets; and,

(c) After recuperating my initial capital investment, I would be entitled to 75% of all profits of RM Holdings and Malan would be entitled to the remaining 25%.

Dealings with SoCal Building Ventures, LLC

12. Malan and I originally agreed that Flip would manage the day-to-day business of the Marijuana Operations. However, on or around October of 2017, Malan and Hakim unilaterally contracted with SoCal Building, a third-party operator, to manage the day-to-day business of the Marijuana Operations thereby replacing Flip. This arrangement was eventually memorialized in three separate agreements dated January 2, 2018 for each of the properties owned by SD United, Mira Este and Roselle, known as the Management Agreements, as follows:

(a) The "SD United Management Agreement" was between SoCal Building on one hand and Balboa, SD United, Monarch Management Consulting, Inc. ("Monarch"), Hakim and Malan on the other. I am informed and believe that Hakim and Malan are each 50% shareholders in and to Monarch. A true and correct copy of the SD United Management Agreement is attached hereto as **Exhibit E**.

(b) The "Mira Este Management Agreement" was between SoCal Building on one hand and CCG, Devilish, Mira Este, Hakim and Malan on the other. A true and correct copy of the Mira Este Management Agreement is attached hereto as **Exhibit F**.

(c) The "Roselle Management Agreement" was between SoCal Building on one hand and Roselle, Hakim, and Malan on the other. A true and correct copy of the Roselle Management Agreement is attached hereto as **Exhibit G**.

Collectively, these three agreements will be referred to as the "Management Agreements."

13. Under the terms of the Management Agreements, SoCal Building would retain all revenue from the marijuana business. SoCal Building would then pay a monthly guaranteed payment

for the opportunity to manage and profit from the marijuana business. Per the terms of the Management Agreements, SoCal Building would pay approximately $50,000 a month for operating the retail locations at the Balboa location (which is owned by SD United) and an additional $50,000 a month for the manufacturing and cultivating at the Mira Este Location (which is owned by Mira Este) (referred to herein collectively as the "Management Fees"). The Roselle location is in the process of operating a cultivation business, but operations have yet to begin. SoCal Building informed me that it has spent approximately $2,600,000 in tenant improvements, machinery, Management Fees and other monies it paid to Malan and Hakim. The Management Agreements also state SoCal paid Malan and Hakim nearly $1,000,000 in loans, for the sale of furniture fixtures and equipment (FF&E's) and for the grants of certain options under said agreements. Malan and Hakim never told me they received this money from SoCal building and did not give me my share of the funds.

14. I was somewhat informed of the negotiations with SoCal Building through Malan and Hakim but I believe Malan and Hakim intentionally kept me vaguely informed and prevented me from reviewing the agreements so that they can divert the money to themselves. Before the Management Agreements were finalized and pursuant to the terms of the Settlement Agreement, I pressed Malan to transfer his interest in the Partnership Assets to RM Holdings. Malan, through his counsel, intentionally delayed the transfer, claiming that effectuating the transfer would "complicate" the Management Agreements. Based on Malan and his attorney's representations, I then orally agreed to extend the time in which to transfer the Partnership Assets to RM Holdings. Malan never provided copies of the Management Agreements to me. I eventually obtained copies of the executed Management Agreements in July 2018 from SoCal Building. Because of our business relationship, I trusted Malan to make a fair deal and protect the Partnership Assets. Malan told me that SoCal Building would remit the Management Fees to either SD United, Flip, Mira Este, or Roselle. Instead, I later found out that Malan and Hakim funneled hundreds of thousands of dollars or more through Monarch, the corporation of which Malan and Hakim were each 50% shareholders in and to.

15. Upon my inquiry as to the Management Fees that SoCal Building was supposed to be paying to either SD United, Flip, Mira Este or Roselle, Malan claimed that the Marijuana Operations and/or SoCal Building were suffering financial hardship and SoCal Building was simply not paying the required Management Fees.

16. Although Hakim never owned any interest in the Balboa retail operations, I am informed and believe from representatives of SoCal Building that he represented himself to SoCal Building to be an owner and former operator of the Balboa retail locations. He and Malan conspired to divert and steal hundreds of thousands of dollars paid by SoCal Building for the Balboa retail locations.

17. According to counsel for SoCal Building, the Management Agreements were actually signed between February and March of 2018 although they were dated January 2, 2018.

18. After signing the Settlement Agreement, I contacted Malan, through counsel, to complete the transfer of the Partnership Assets. Around January 2018, Malan and his counsel, David Jarvis, represented that Malan was currently negotiating the Management Agreements with SoCal Building. Malan and his counsel told my attorney that transferring SD United, Mira Este, and Roselle to RM Holdings prior to the signing of the Management Agreements would "complicate" the deal and recommended holding off on the transfer.

19. Based on these representations, I trusted Malan and agreed to extend the time to transfer all Partnership Assets to RM Holdings. Between January 2018 to May 2018, Malan assured me on a number of occasions that he would honor our 75/25 profit split.

20. Between January 2018 to May 2018, Malan informed me that SD United, Flip, Mira Este, and Roselle were not producing any profits and were just breaking even. Malan told me that SoCal Building was not paying the Management Fees pursuant to the Management Agreements.

Discovery of Malan and Hakim's Fraudulent Scheme

21. On or about the second week of May 2018, I met with Dean Bornstein who is the owner of SoCal Building. During this meeting, we both learned many troubling facts concerning Malan and Hakim's business dealings.

22. Mr. Bornstein informed me that SoCal Building remitted the Management Fees due under the terms of the Management Agreements to an entity named Monarch which I, at the time, had never heard of before. I had no knowledge of Monarch's existence or which entities were receiving the Management Fees before May 2018. This money should have been deposited into Flip (or, alternatively, the respective owner of the properties) to ensure that I would receive my share of the profits.

23. According to Monarch's Statement of Information filed with the California Secretary of

State, Hakim is the President, Secretary and CFO and Hakim and Malan are the only two board members. A true and correct copy of the California Secretary of State's Statement of Information is attached hereto as **Exhibit H**.

24. Malan never informed me of the existence of Monarch. Rather, Malan told me that the Management Fees would be deposited to either SD United, Flip, Mira Este, or Roselle's accounts. Furthermore, because Malan said that SoCal Building was not paying the monthly Management Fees, I did not ask to review the accounts for SD United, Flip, Mira Este, or Roselle because I did not believe it to be necessary.

25. Mr. Bornstein also confirmed that the Marijuana Operations were thriving and producing a significant profit. I informed him that I had a substantial ownership interest in each of SD United, Mira Estae and Roselle. Mr. Bornstein stated that he did not know I had any interest in SD United, Flip, Mira Este, and Roselle or that I funded millions of dollars in relation to the Partnership Assets.

26. On June 22, 2018, SoCal Building sent a letter to Malan and Hakim demanding documents demonstrating their ownership interest in SD United, Mira Este, and Roselle. I was provided a copy of this letter by SoCal Building. In this letter, SoCal Building stated that it had learned of my actual interest in SD United, Mira Este, and Roselle. SoCal Building said it would withhold further payments owed under the Management Agreements until Malan and Hakim's ownership interests were proven. A true and correct copy of SoCal Building's June 22, letter is attached hereto as **Exhibit I**.

Malan and Hakim's Lock Out of SoCal Building

27. Because SoCal Building stopped paying Monarch because of the aforementioned issues, I am informed that less than a week ago Malan and Hakim took the extraordinary measure to lock SoCal Building out of both the Balboa retail location and the Mira Este cultivation operations. I am informed and believe that the Marijuana Operations were closed.

28. Since July 9, 2018, I have been in contact with SoCal Building and its employees. This week, employees and executives from SoCal Building informed me of the following:

(a) On the evening of July 9, 2018, Malan went to the retail dispensary located at 8863 Balboa Ave. The business is named "Tree House Balboa." Malan took the key from the employee who was locking up. The next day, Malan changed the locks, changed the password for the camera system, and blocked access to the

Point of Sale system at Tree House Balboa.

(b) On July 10, 2018, a letter was sent to SoCal Building informing it that the Management Agreements were immediately terminated for non-performance.

(c) On July 10, 2018, an employee of SoCal Building that worked at Tree House Balboa went to the retail location and found Malan in the store. Malan would not explain what he was doing there. Malan also used another employee's credentials to access backend data reports regarding the business. Malan also informed two other employees, Alexandra Clarke and Maria Ortega, to come to the Tree House Balboa on July 10, 2018 to take inventory and meet the "new management."

(d) On this same day, SoCal Building learned that Malan had changed the locks and denied entry to SoCal Building employees to the Mira Este and Roselle properties as well.

(e) On July 11, 2018, Malan began redesigning the interior of Tree House Balboa and changed the front sign of the store to read "Golden State Balboa." It is my belief that Malan and Hakim replaced SoCal Building as the management company with another operator who will pay them monthly payments.

(f) Although Malan has locked out SoCal Building from the properties, Malan has not returned any equipment, inventory, security systems, or cash that belong to SoCal Building. **SoCal Building believes it has over a million dollars' worth of equipment, inventory, security systems, and cash at the properties.**

(g) On July 13, 2018, Malan and Hakim entered Mira Este in order to take possession of SoCal Building's equipment.

(h) San Diego Police Officers were called to the scene. However, Malan and Hakim claimed that they owned the property and the police elected to treat it as a civil matter and did not want to get involved.

(i) I've learned that Malan and Hakim have secured a new operator at the Balboa retail location. I am informed and believe Malan and Hakim are attempting to secure a new operator for the Mira Este location as well.

Malan's Recent $24,000 Theft

29. I previously deposited $24,000 into RM Holdings to cover a loan obligation for RM Holdings. On July 10, 2018 (*i.e.* one week ago), Malan withdrew this money from RM Holdings and closed RM Holdings' bank account without my knowledge or consent.

30. To date, I have not seen any information regarding the accounting and financials for Monarch, SD United, Flip, Mira Este, and/or Roselle.

31. According to SoCal Building, SoCal Building has expended approximately $2,600,000 under or in relation to the Management Agreements. Neither Malan nor Hakim have ever provided me with any records of these payments. Some of the funds paid by SoCal to Monarch, Malan and/or Hakim were for options to purchase the real property which I have an ownership interest in.

32. According to SoCal Building, they are still willing to serve as the operator for the Marijuana Operations.

33. Unless a receiver is appointed so that internal controls are implemented and the Marijuana Operation's assets are protected, Malan and Hakim will continue to steal from me. Additionally, Malan and Hakim will likely continue to enter the properties and convert any remaining assets, inventory, equipment or cash on the premises. This will ultimately lead to further litigation with SoCal Building and will expose me to liability in relation thereto.

34. Currently, Malan and Hakim are in actual possession of the subject real property and in control of the Marijuana Operations.

35. Contact information for Malan is as follows: 5065 LOGAN AVE, SAN DIEGO CA 92113-3099; (619) 750-2024.

36. Contact information for Hakim is as follows: 9763 ALTO DR, LA MESA, CA 91941-4447; (619) 368-5343.

37. If a Receiver is appointed, it will not interfere with the business of the Marijuana Operations, but actually preserve the status quo by allowing SoCal Building to continue operating and paying Management Fees pursuant to the Management Agreements that should be interpled with the court instead of being converted to Malan and Hakim's use and for their sole personal benefit.

38. The Marijuana Operations already have an operator (SoCal Building) that has experience in running a profitable business with experienced employees and management and both my interest and

theirs should and would be protected by the Court's appointment of a receiver over the subject entities, properties and the Marijuana Operations.

39. I have not personally reviewed the financials for the Marijuana Operations because Malan has not given me access to those documents. However, I am informed that the business is quite profitable and can support the cost of the receiver if appointed. In fact, prior to the lockout of SoCal Building, the Marijuana Operations were generating approximately $100,000 a month in income which was paid to Monarch and other entities before SoCal Building and I discovered their fraud and started asking questions. I am confident that the Marijuana Operations will be able to cover the expenses associated with a receiver. Furthermore, I respectfully request that the Court reserve the right to reallocate the costs of the receivership to Monarch, Malan and/or Hakim in the interests of justice based on their wrongdoing.

40. A true and correct copy of Michael Essary's CV and Rate Sheet are attached hereto collectively as **Exhibit J**. I have been advised by my counsel that Mr. Essary is a competent receiver and well-equipped to handle this receivership if the Court grants my application.

41. I am furthermore informed by my counsel that I will be required to obtain a bond to secure any potential claim by Defendants, which I am prepared to do in the event the Court grants this application. I respectfully request that the Court order me to obtain a bond of $10,000, which I believe to be fair and reasonable given the grievous and fraudulent acts of Malan and Hakim, both individually and through their entity Monarch. I will acquire said bond immediately upon the Court's granting of this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This Declaration was executed on July 16, 2018, at San Diego, California.

Salam Razuki

Exhibit 27

Razuki v. Malan

Decided Feb 24, 2021

D075028

02-24-2021

SALAM RAZUKI, Plaintiff and Respondent, v. NINUS MALAN et al., Defendants and Appellants.

G10 Galuppo Law, Daniel T. Watts and Louis A. Galuppo; Noonan Lance Boyer & Banach, James R. Lance and Genevieve M. Ruch for Defendants and Appellants Ninus Malan, San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, California Cannabis Group, and Devilish Delights, Inc. Goria, Weber & Jarvis and Charles F. Goria for Defendants and Appellants Chris Hakim, Mira Este Properties, LLC, and Roselle Properties, LLC. Law Offices of Steven A. Elia, Steven A. Elia, Maura Griffin and James Joseph; Williams Iagmin and Jon R. Williams for Plaintiff and Respondent.

HALLER, J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. (Super. Ct. No. 37-2018-000034229-CU-BC-CTL) APPEAL from an order of the Superior Court of San Diego County, Eddie C. Sturgeon, Judge. Affirmed. G10 Galuppo Law, Daniel T. Watts and Louis A. Galuppo; Noonan Lance Boyer & Banach, James R. Lance and Genevieve M. Ruch for Defendants and Appellants Ninus Malan, San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, California Cannabis Group, and Devilish Delights, Inc. Goria, Weber & Jarvis and Charles F. Goria for Defendants and Appellants Chris Hakim, Mira Este Properties, LLC, and Roselle Properties,
2 LLC. *2 Law Offices of Steven A. Elia, Steven A. Elia, Maura Griffin and James Joseph; Williams Iagmin and Jon R. Williams for Plaintiff and Respondent.

Defendants Ninus Malan and Chris Hakim (and related entities) appeal from an order imposing a receivership over two cannabis businesses: a retail dispensary and a production facility. The trial court imposed the receivership after Salam Razuki sued the defendants, alleging he had interests in the businesses and defendants were diverting money owed to him. The manager of the cannabis businesses, SoCal Building Ventures, LLC (SoCal), intervened in the lawsuit and also requested the receivership. The court imposed the receivership pending the resolution of the many disputes among the parties in the litigation.

Defendants assert numerous challenges to the court's receivership order. We determine the court acted within its broad discretion and its legal rulings were supported by applicable law. We thus affirm.

OVERVIEW

The proceedings leading to the receivership followed a chaotic and procedurally confusing path before three different trial court judges, and involved thousands of pages of conflicting

documentation about the parties' activities and their investments in the real property where these all-cash businesses operated. The allegations included accusations that money and equipment had been stolen from the businesses and claims that Malan's counsel and the receiver had committed malfeasance.

Razuki and Malan's business relationship began with commercial real estate investments in 2009, and eventually expanded into several cannabis businesses. By 2017, however, the relationship was strained, and they entered into a settlement agreement to clarify their ownership of and rights to the expected profits from three cannabis
3 businesses: (1) A retail *3 dispensary located on Balboa Avenue (Dispensary); (2) a production facility located on Mira Este Court (Production Facility); and (3) a planned cannabis cultivation facility to be located on Roselle Street (Planned Facility). Malan owned the entity that held title to the Dispensary property, and Malan and Hakim both owned shares in the entities that held title to the Production and Planned Facilities properties. Razuki claimed interests in these businesses through his relationship with Malan.

After the settlement agreement, Malan and Hakim contracted with SoCal to manage the Dispensary and the Production Facility. This contract provided SoCal with options to purchase interests in the businesses. In May 2018, Razuki learned from SoCal that Malan had allegedly failed to disclose profits to him, and SoCal learned that Razuki claimed an interest in the Dispensary and Production Facility properties and/or businesses. After SoCal questioned Malan and Hakim's rights to option the properties, they unilaterally terminated SoCal's management agreements and locked SoCal out of both facilities.

Two months later, Razuki filed the complaint against Malan, Hakim, and numerous entities formed to operate the three cannabis businesses (detailed below). Within days, Razuki brought an ex parte application requesting the appointment of a receiver over the three businesses and SoCal filed an ex parte request to file a complaint in intervention against the same defendants. SoCal also joined Razuki's request for a receiver. These filings opened two months of intense litigation concerning the appointment of a receiver, generated thousands of pages of briefing, declarations, and exhibits, and resulted in five hearings before three different judges: Judge Kenneth Medel (who initially appointed the receiver and was peremptorily challenged); Judge Richard Strauss (who vacated the receiver and was
4 *4 peremptorily challenged); and Judge Eddie Sturgeon (who appointed the receiver in the challenged order).

After the matter was assigned to Judge Sturgeon, the parties filed voluminous documentation describing wildly different versions of events and competing theories of ownership of the businesses. Judge Sturgeon reinstated the receiver temporarily over the Dispensary and Production Facility, but not the Planned Facility, and set another hearing to confirm the appointment. By the time of that hearing, the court had before it evidence showing Razuki's significant investment into the businesses at issue; multiple competing claims on the ownership of the assets; at least one separate pending lawsuit to quiet title over the Dispensary; and allegations that Malan and his counsel had directed Dispensary employees to abscond with thousands of dollars in cash after Judge Medel's initial order appointing the receiver. After an extensive hearing, on September 26, 2018, Judge Sturgeon ordered the receiver to remain in place for an additional 60 days. Malan and Hakim (and related entities) now appeal from this order.[1]

[1] On November 16, 2018, after the notices of appeal were filed and before any briefing, federal officers arrested Razuki for plotting to hire a hitman to kidnap and murder Malan in Mexico to put an end to this litigation. At the time of the briefing, Razuki awaited trial on federal charges of

conspiracy to murder and kidnap Malan. As explained below, these facts occurred after the challenged September 26 receivership order and thus are not before us in deciding the propriety of this order. But these facts would be relevant to any further court orders in this case.

Malan contends (1) technical errors in the procedure for the appointment of the receiver require reversal; and (2) his 2017 settlement agreement with Razuki is unenforceable as against public policy because its subject matter, the sale of cannabis, was unlawful when the agreement was
5 *5 made. Malan and Hakim both assert (1) the unclean hands doctrine precludes the equitable receivership remedy; (2) Razuki lacked standing under the receivership statute to pursue his claims; and (3) appointment of the receiver must be reversed because Razuki failed to show a probable right of possession of the assets, that the balance of harms supported the appointment of a receiver, or that a less drastic remedy was not available. Hakim's arguments concern only the appointment of the receiver over the Production Facility because he claims no ownership interest in the Dispensary.

As we shall explain, the trial court's discretion to appoint a receiver at this preliminary stage of litigation is broad, and to "justify our interference, it must clearly appear that the appointment was an arbitrary exercise of power." (*Maggiora v. Palo Alto Inn, Inc.* (1967) 249 Cal.App.2d 706, 711 (*Maggiora*).) Applying this standard, we reject appellants' arguments that the trial court abused its discretion. We also determine appellants' other contentions lack merit and affirm the receiver appointment.

FACTUAL AND PROCEDURAL BACKGROUND

The contours of the relationship between Malan and Razuki are not clearly spelled out in the record before this court. Their declarations show the business relationship began around 2009 and that Razuki initially hired Malan to manage his struggling Chula Vista commercial shopping center, followed shortly after by another commercial property. Malan excelled in this role, and Razuki brought him into his real estate investment business, partnering with Malan on the purchase, sale, and rental of commercial properties.

Eventually, the two became partners in the cannabis businesses which ultimately led to this litigation among Razuki, Malan, Hakim, and the
6 *6 various entities. The proceedings leading to the receiver appointment were lengthy and factually disputed. To properly evaluate the appellate contentions, we describe in some detail the facts and procedure leading to the appointment.

A. Allegations in Razuki's First Amended Complaint

On July 13, 2018, three days after filing his initial complaint, Razuki filed an amended complaint against Malan and Hakim and the various entities owned or controlled by them. These entities fall into three categories: (1) the entities holding title to the property where each of the three marijuana businesses was located[2]; (2) entities created to hold title to the required state licenses for each business[3]; and (3) the entities created to serve as the operating entity for all the cannabis operations (Flip Management, LLC (Flip) and Monarch Management Consulting (Monarch). These three category of entities will be collectively referred to as the Related Entities. The first category entities
7 will be referred as the Property Owner entities. *7

2 These entities are (1) San Diego United Holding Group, LLC (SD United), property owner of the Dispensary location; (2) Mira Este Properties, LLC (Mira Este), property owner of the Production Facility location; and (3) Roselle Property, property owner of the Planned Facility location. Malan was the sole owner of SD United, and Malan and Hakim held equal interests in the other two property-owning entities.

3 These entities are Balboa Ave Cooperative (Balboa Co-Op) for the Dispensary; California Cannabis Group (CCG) for the Production Facility; and Devilish Delights, Inc. (Devilish) for the Planned Facility. The licenses were required under state laws that closely regulate cannabis businesses. (See Bus. & Prof. Code, § 26000 et seq.) Cities and counties also regulate these businesses through their land use and police powers, including through conditional use permits (CUP). (See *id*., § 26200, subd. (a)(1).)

In the amended complaint, Razuki alleged that when he and Malan decided to enter the cannabis industry as partners, they had an oral agreement that "Razuki would provide the initial cash investment to purchase a certain asset while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, he would be entitled to seventy-five percent (75%) of the profits & losses of that particular asset and Malan would be entitled to twenty-five percent (25%) of said profits & losses."

According to the complaint, the oral agreement between Razuki and Malan faltered in early 2017, when the entity that held property ownership of the Production Facility (Mira Este) required additional capital for renovations. Malan was able to secure a $1.08 million loan based in part on Razuki's personal guarantee and real property collateral. According to Razuki, however, the proceeds of the loan were not used on improvements to this property, but were instead taken by Malan and Hakim for their personal use.

On November 9, 2017, Razuki and Malan entered into a written agreement to settle their interests titled "Agreement of Compromise, Settlement, and Mutual Release" (Settlement Agreement). The Settlement Agreement required the transfer of the partnership assets to a new entity, RM Property Holdings, LLC (RM Property). The agreement describes the partnership assets as consisting of various portions of the three Property Owner entities and Flip, and Razuki's minority interests in two additional assets (Sunrise Property Investments, LLC (Sunrise) and Super 5 Consulting Group, LLC (Super 5)). The Agreement states Razuki and Malan "hereby reaffirm and acknowledge the terms of the Operating Agreement [for RM Property] provide for the repayment of the Partner's Cash Investment
8 *8 prior to any distribution of profits and losses. The Parties further reaffirm that once the partner's cash contribution has been repaid by the Company, then Razuki shall receive [75%] of the profits and losses of the Company and Malan shall receive [25%], all as set forth under the terms of the Operating Agreement."

Under the Settlement Agreement, Razuki and Malan had 30 days to make their best efforts to transfer these assets to RM Property and to perform an accounting of their cash investments in those assets. Razuki alleges that Malan asked for additional time to perform the accounting and also contracted with SoCal to serve as the operator for the cannabis operations at the Dispensary, the Production Facility, and the Planned Facility.

The SoCal management agreements gave SoCal the right to retain all revenue from the businesses in exchange for a guaranteed monthly payment to Monarch (formed to serve as an operating entity for all cannabis operations). Razuki alleged that although the agreements required payment to Monarch, Malan did not disclose the existence of Monarch to Razuki. Instead Malan told Razuki that SoCal's monthly payments would be deposited into accounts of Flip (the other operating entity) or the Property Owner entities. Also allegedly unknown to Razuki, the management agreements gave SoCal an option to purchase a 50 percent interest in each of the Property Owner entities.

In January 2018, Malan notified Razuki that he was close to completing the sale of the three Property Owner entities to SoCal and that transferring the assets to RM Property, as required by the Settlement Agreement, would unnecessarily

complicate the sale. From January to May 2018, Malan represented he was continuing to negotiate the sale of the [9] Property Owner entities to SoCal and that Razuki would receive 75 percent of Malan's share of the sale proceeds. During this time, Razuki asked for an accounting of the businesses and Malan told him none of the operations were profitable.

Then, in the second week of May 2018, Razuki met with SoCal's principal, Dean Bornstein. Bornstein told Razuki that SoCal had been making monthly payments to Monarch and that the Dispensary and the Production Facility were both profitable. As a result of this conversation, Razuki believed Malan was hiding profits and trying to eliminate Razuki from the businesses. After the meeting, SoCal also became suspicious of Malan and Hakim because SoCal was previously unaware of Razuki's claimed interest in the properties. As a result, SoCal sent a letter to Malan requesting confirmation of his ownership of the three Property Owner entities, and also indicating that SoCal wished to exercise its purchase options.

On July 9, Malan allegedly withdrew $24,028.93 from RM Property's bank account that had been deposited by Razuki, changed the locks at the Dispensary, and changed passwords for the Dispensary's security systems. During the next two days, Malan and Hakim terminated SoCal's management agreements, renamed the Dispensary, and told employees there was new management.

Based on these factual allegations, Razuki asserted numerous causes of action against Malan, Hakim and the Related Entities. These claims included: breach of the Settlement Agreement, the oral agreement, and the good faith implied covenant against Malan; breach of fiduciary duty against Malan, Hakim, and Monarch; fraud against Malan; money had and received against Flip and the Property Owner entities; conversion against Malan, [10] Hakim, and Monarch; an accounting claim against Malan and Hakim; appointment of a receiver against all defendants; injunctive relief to prevent all defendants from selling, transferring, or conveying any asset or property; declaratory relief against Malan; constructive trust against Malan and Monarch; dissolution of RM Property; intentional interference with prospective economic advantage against Malan, Hakim, and the entities holding licenses; and intentional interference with a contractual relationship against Hakim and Monarch.

B. Razuki's Application for Receiver Appointment and SoCal's Application to File Complaint In Intervention

Three days after the amended complaint was filed, on July 16, Razuki filed his ex parte application for the appointment of receiver and preliminary injunction. The application sought the appointment of Michael Essary as receiver to take possession of the assets of RM Property, and each of the Related Entities.

The same day, SoCal filed an ex parte application to file a complaint in intervention. The proposed complaint named the same defendants, repeated many of the same allegations, and also sought the appointment of a receiver over the Related Entities. SoCal alleged defendants had concealed the existence of Razuki's ownership interest in the three facilities, and defendants had violated the management agreements.

According to SoCal's complaint, after SoCal learned of Razuki's interest and questioned Malan and Hakim, Malan informed SoCal that defendants' ownership of the Dispensary was also disputed in a separate pending case in San Diego Superior Court. SoCal responded with a request that defendants sign a tolling agreement to suspend the option deadlines, but also expressed hope the relationship could be salvaged. [11]

On July 10 (the day Razuki filed his initial complaint), defendants' counsel sent a letter to SoCal terminating the three management agreements, and asserting SoCal was in breach of

the agreements for failing to make contractually required payments and failing to appropriately manage the facilities. By the next day, Malan and Hakim had locked SoCal out of both the Dispensary and the Production Facility, and had repainted the dispensary and changed its name and signage. SoCal's complaint alleged that defendants "destroyed the facilities' financial records, receipts, printers, barcode scanners, and point of sale tracking information . . . ."

C. Hearing on Receiver Appointment and Intervention Complaint

The hearing on Razuki's ex parte application for receivership and on SoCal's ex parte application to file its intervention complaint occurred on July 17. During the brief hearing, Razuki's counsel outlined the basis for the requested relief, explaining that Razuki believed Malan and Hakim had hidden over $1 million in management fees received from SoCal. He also argued a receivership was needed because defendants had violated their management agreements with SoCal, locking SoCal out of both the dispensary and production facility and preventing SoCal from accessing its valuable manufacturing equipment. SoCal also joined in the application for a receiver.

Gina Austin specially appeared on behalf of all of the defendants and said she had not yet been retained in the matter, and that none of the defendants had yet been served with the application for receiver or the complaint in intervention. Austin indicated she had briefly reviewed the receiver application before the hearing, and argued there was no urgency identified that required immediate relief. *12

12

The court granted SoCal's application to intervene and then without explanation stated it was "going to grant the relief requested. The injunction is granted. Receivership is appointed." The same day, the court issued a minute order confirming its rulings and signed a proposed order submitted by Razuki, which appointed a receiver over RM Property and the Related Entities (encompassing all three businesses). The orders directed both Razuki and the receiver to post a $10,000 bond within five days. The orders also set an August 10 order to show cause (OSC) to confirm the receiver appointment. Razuki and the receiver, Essary, submitted proof of the requisite undertakings to the court that day.

D. Malan's Peremptory Challenge and Motion to Vacate Receivership; Razuki's Ex Parte Application to Reset OSC Hearing

The day of the hearing, Malan filed a peremptory challenge. The OSC hearing was then vacated and, on July 25 the case was reassigned to Judge Strauss. Three days later, on July 28, Razuki filed an ex parte application for an order to reset the OSC hearing. Before the court took action on this application, Malan filed a competing ex parte application to vacate the receivership order. The application also sought a temporary restraining order (TRO) to prevent Razuki from "transferring money or disposing of property obtained from one of the Defendants since the receivership order was issued" or from entering any real property controlled by defendants.

Malan's moving papers presented a version of events completely at odds with those presented by Razuki and SoCal. Malan asserted that Razuki had no ownership interest in the businesses, pointing to grant deeds transferring the Dispensary and Planned Facility properties to the two Property Owner entities (SD United and Roselle). Malan's declaration stated that he and Razuki mutually agreed to rescind the Settlement Agreement in *13 March 2018 after Razuki was unable to transfer his interests in Sunrise and Super 5 to RM Property. Malan alleged that Razuki filed the lawsuit because "of a large judgment a litigant obtained against him in another lawsuit, which is causing Razuki some cash flow problems."[4]

13

[4] Malan also said the homeowners association rules governing the Dispensary property prohibit marijuana operations; the

association had sued on this issue; and that the lawsuit had resulted in a February 2018 settlement granting a variance to the Property Owner entity (SD United) to operate the Dispensary if certain conditions were met.

With respect to SoCal, Malan asserted that in January 2018, the three entities holding the medical marijuana licenses (Balboa Co-op, CCG, and Devilish) hired SoCal to operate the three properties, but SoCal had mismanaged the properties. Malan claimed SoCal had poorly controlled inventory, failed to have sufficient security present and hired a security guard not authorized to carry a firearm, failed "to pay employees correctly," and failed to pay required insurance. Malan also asserted SoCal gave confidential information to Razuki and withheld payments related to the Production Facility property, causing the owner (Mira Este) to default on a loan. Malan said SoCal was conspiring with Razuki "to hijack the three businesses" by filing this lawsuit.[5]

5 Malan also noted the entity holding title to the Dispensary property (SD United) had filed a cross-complaint to quiet title to this property in a separate pending case against Razuki.

Finally, Malan's declaration detailed dramatic events that unfolded on July 17, the day Essary was appointed. Malan stated that after the hearing, several SoCal employees, including one carrying a visible gun, accompanied Essary to the Dispensary parking lot. Malan said he called the police when he saw the "gunman" and when the police arrived at the premises, Essary *14 and the SoCal employees "fled." According to Malan, the employees and Essary returned later in the day, "broke down the door and invaded the building," and stole computers and other equipment. Malan stated that Essary's decision to rehire SoCal after his appointment was evidence of negligence and Essary's inability to manage the businesses.

14

A supporting declaration from Malan's counsel (Austin) corroborated Malan's statements about the receiver's takeover of the Dispensary. Austin also claimed Essary could not lawfully run the businesses because Essary was not properly licensed. Austin also said the Dispensary was under audit by the City of San Diego and both the Dispensary and Production Facility had upcoming hearings related to their conditional use permits that would be jeopardized by Essary's involvement.

SoCal filed an opposition, refuting Malan's allegations and asserting Malan had made material misrepresentations to the court. SoCal stated Malan falsely claimed Essary had threatened Dispensary employees, when in fact those employees had barricaded themselves into the store "so they could steal the dispensary's money in violation of the [receivership] order, and flee with bags of 'loot' into their attorney's 'getaway car.' " In support, SoCal submitted Essary's declaration stating that after the July 17 hearing, Austin told him she was advising her clients not to follow the court's order and to resist any attempt by Essary to take control of the assets. Essary also described the scene when he went to the Dispensary, explaining the employees locked themselves in a backroom with the safe and security cameras, loaded bags with money, and fled out the back door into Austin's waiting car.

15 *15

E. July 31, 2018 Hearing Before Judge Strauss

On July 31, Judge Strauss heard Razuki's ex parte application to re-set the OSC to confirm the appointment of the receiver and Malan's ex parte application to vacate the receivership. Counsel for Malan and the entities argued the receivership order was void because Razuki had failed to provide proper notice, the receiver had a prior relationship with Razuki and SoCal that disqualified him, Razuki had failed to show a

sufficient ownership interest in the entities, and there was no urgency that supported the drastic remedy of a receiver.

Razuki's counsel responded that Razuki's submitted evidence showed that Malan was attempting to steal assets from Razuki and SoCal, which had invested $2.6 million in equipment and other improvements to the properties. SoCal's counsel asserted there was urgency because Malan had begun to sell SoCal's equipment, and Malan and Hakim had diverted millions of dollars to Monarch that was owed to Razuki. SoCal also asserted a receiver was necessary because the operators hired by the defendants after SoCal's termination threatened the viability of the businesses and the value of its purchase options.

Near the conclusion of the contentious hearing, Hakim's counsel proposed a compromise, suggesting the court issue an injunction returning the parties to the status quo that existed before the receivership order, and that prevented any transfer of funds outside the ordinary course of business. Counsel suggested Razuki could then bring his request for a receiver again, on a noticed motion on shortened time with full briefing and the opportunity to submit evidence. The court adopted the proposal and directed Hakim's counsel to prepare a final order. The court declined to set a date to hear a new motion, instead instructing the
16 parties "when you're ready to file *16 whatever it is you're going to file, we'll see what kind of date we can give you. And we'll make it as soon as possible, but I don't know what that is exactly."

The court issued a minute order on July 31 stating the request to vacate the receivership was granted and directing "counsel to prepare a proposed order for the [c]ourt's review and approval." The order also granted Essary's request to employ counsel and "as to all other matters; the [c]ourt instructs counsel to proceed via noticed motion for remedies being sought."

F. Peremptory Challenge and Case Reassignment to Judge Sturgeon

After the July 31 hearing, SoCal filed its peremptory challenge to Judge Strauss and the case was again reassigned, this time to Judge Sturgeon. On his own motion, Judge Sturgeon scheduled an August 14 hearing to revisit the appointment of the receiver.[6]

> 6 The status of Judge Strauss's order vacating the receivership was left in limbo. On August 7, 2018, Hakim's counsel submitted a proposed order to the court, as directed by Judge Strauss, with a letter to Judge Sturgeon explaining the circumstances. Razuki's counsel represented in a declaration filed on August 10, 2018, that Judge Sturgeon's clerk contacted her on August 8, 2018, by telephone and stated that because Judge Strauss had directed counsel to prepare an order after the hearing, and no order was ever signed, the July 31, 2018 minute order vacating the receivership "did not constitute a valid and final order and the receivership was never vacated." Essary submitted a report to the court on August 10, 2018, which stated it was his understanding that the order vacating his appointment was never made final, and that Judge Sturgeon had scheduled an ex parte hearing on August 14, 2018, "to 're-hear' Defendants' ex parte application to vacate the receivership."

On August 10, Razuki filed a "supplemental memorandum of points and authorities in support of appointment of receiver and opposition to [Malan's] ex parte application to vacate receivership order." Razuki argued Judge Strauss's minute order was ineffectual because the court had
17 not *17 signed any final order after the hearing, and he again argued the merits of appointing the receiver. Razuki's counsel outlined in more detail the payments made by SoCal to Monarch that he asserted were misappropriated by Malan and Hakim, and described the potential profitability of the businesses.

In support of his supplemental brief, Razuki filed voluminous records attached to his and other declarations, showing his specific investments into the Dispensary, Production Facility, and Planned Facility properties. For instance, Razuki attached evidence that he invested $254,780 for the down payment for the Production Facility property and paid $200,000 for the operation's business tax certificate, while Hakim invested $420,000 toward the down payment. Razuki also explained that he transferred the Dispensary property from Razuki Investments, LLC, his wholly owned entity, to the Property Owner entity (SD United) because he did not want to violate a settlement agreement he had previously reached with the City after another property he owned was charged with operating a dispensary unlawfully. That other settlement prohibited Razuki from owning a nonpermitted cannabis facility and Razuki feared the Dispensary's violation of the homeowners association rules precluding marijuana operations might constitute a violation.

Malan also filed supplemental briefing, a supporting declaration, and his counsel's declaration. Malan argued the Settlement Agreement was unenforceable because it was in violation of public policy and Razuki had not shown the medical marijuana businesses covered by the agreement were conducted in conformance with the law. Malan also argued that Essary had acted illegally by reinstating SoCal as the operations manager and failing to *18 secure appropriate approval from the state licensing authorities before assuming the receivership.

In his declaration, Malan said that on July 31 (the date of the prior order), he witnessed SoCal employees use a moving truck at the Production Facility to attempt to steal equipment and an office computer. Malan also claimed Essary had stolen $80,000 from the Dispensary. Hakim's declaration stated he paid more than one-half the down payment for the Production Facility property and that Razuki "was insistent on not wanting to appear of record on title in connection with [this] acquisition. . . ."

Neither Malan's nor Hakim's declarations disputed Razuki's assertions concerning his specific ownership interests in the various properties, including that he was the source of a large portion of the down payment for the Production Facility property and had paid for the $200,000 business tax certificate.

G. August 14, 2018 Hearing

On August 14, the parties appeared before Judge Sturgeon for the first time. At the start of the hearing the court rejected the idea that it was conducting a rehearing of the prior orders and stated it would hear the matter anew on August 20. The parties' counsel then disputed whether the receivership had been vacated at the July 31 hearing because no final order had been signed.

After asking questions about the parties' documentation, the court stated it was not reinstating the receiver, and instead would institute a new, temporary order. This order froze all related bank accounts until the next hearing (although it allowed certain product purchases) and enjoined the sale of the three properties at issue. *19

H. Briefing for August 20, 2018 Hearing

On August 17, 2018, the parties filed additional briefs and voluminous documentation in support of their positions.

Malan filed a supplemental brief and a 20-page supplemental declaration describing additional facts about his relationship with Razuki and the financing and prior ownership of the properties owned by SD United (the Dispensary property owner). Malan also again alleged malfeasance by Essary, asserting payments of over $100,000 to "SoCal insiders" and thousands of dollars to himself while in control of the businesses' bank accounts.

Malan continued to refute Razuki's ownership claims, asserting for the first time that SD United purchased the Dispensary property from Razuki in March 2017, subject to a $475,000 loan held by Razuki that Malan paid off three months later. Malan stated that Razuki abandoned his interest in the Dispensary property because his ownership in another dispensary (Sunrise) was far more lucrative. Malan stated that SD United purchased five other units adjacent to the Dispensary for $1.6 million with financing that did not involve Razuki. Malan repeated his prior allegations that he was coerced into signing the Settlement Agreement, and that he and Razuki mutually agreed to cancel it around January or February 2018.

Hakim's supplemental papers pertained mainly to its claims about SoCal's alleged mismanagement and sought to rebut SoCal's assertions it had option rights and rights to its equipment at the facilities. Hakim also noted that the Planned Facility was currently occupied by a tenant whose rent payments could easily be accounted for.

Razuki also submitted a supplemental brief in which he claimed Malan had immediately violated the court's order by contacting the bank for one of
20 *20 the entities, and another declaration with additional documentation showing his involvement in the financing of the three properties.

SoCal filed additional declarations in support of its position that a receiver was needed and that Essary was qualified to serve as the receiver.

I. August 20, 2018 Hearing

At the August 20 hearing, the court stated it would not address whether the July 31 order vacating the receiver was valid, rather the court was "starting fresh." Razuki's counsel then outlined Razuki's interest in the three businesses, expressing concern that Malan intended to immediately sell the real properties, and asserting Razuki had no confidence a truthful accounting could be done, particularly since the businesses were operated almost entirely in cash.[7] SoCal's counsel argued a damage award would be insufficient to remedy the breaches of its options for the real properties.

[7] Razuki's counsel also asserted there was some indication that Malan and Hakim had given purchase options to Far West Operating, LLC (Far West) (which was the operator hired after Malan terminated SoCal in early July and was reinstated as the operator after July 31, 2018) and Synergy Management Partners, LLC (Synergy) (the company hired after July 31, 2018 to run the Mira Este production facility) that overlapped with SoCal's options, creating the risk of further litigation and additional need for the receiver.

Malan's counsel repeated his argument that the Settlement Agreement was unenforceable as against public policy and also noted RM Property was never capitalized. He continued to assert there was no urgency requiring a receiver because all the asserted damages could be determined by an accounting. He also said that SoCal's poor management of the Dispensary had resulted in a default by the entity Property Owner (SD United) under the homeowners association settlement,
21 irreparably harming the business. *21 Hakim's counsel refuted the validity of SoCal's options and confirmed the Planned Facility was not currently a marijuana operation.

Essary's counsel explained Essary's activity during his appointment from July 17 to July 31, and refuted defendants' assertions that Essary had not satisfied the regulatory requirements to manage the Dispensary and Production Facility operations.

After the conclusion of arguments, the court imposed a temporary receivership and set a further hearing for Friday, September 7 to consider the continued need for the receiver. The court stated Razuki had shown a likelihood of prevailing on the merits and that there was a risk of irreparable harm "based on the amount of money that allegedly ha[d] been put into this case." The court

again appointed Essary as the receiver and directed him to keep the two existing managers (Synergy and Far West) in place as managers of the Production Facility and the Dispensary, respectively.

The court also entered orders specifying who Essary should hire as the accountant for the entities in the receivership. The court ordered Essary to file a report on September 5 and ordered the parties to file any additional supplemental briefing three days before the hearing. The court excluded the Planned Facility from the receivership, but imposed a TRO preventing the sale of this property.

On August 28, the court entered the order appointing Essary as the receiver over the Dispensary and Production Facilities, the entity owners of these properties, and their license holders.

J. Briefing for September 7, 2018 Hearing

One week later, Hakim filed another supplemental brief, arguing the receivership had already caused irreparable harm to the Production Facility because producers and manufacturers were unwilling to work with the *22 business while it was under the control of the receiver. Hakim also asserted the new manager (Synergy) could soundly manage the facility and keep meticulous records for any required accounting, preventing any harm to Razuki. Finally, Hakim argued a $10 million dollar bond was appropriate.

In his supplemental brief, Malan continued to refute Razuki's interest in the three businesses.[8] Malan asserted the receivership was detrimental to the businesses and that the receiver had already proven too expensive. Malan also continued to allege malfeasance by Essary.

[8] Malan lodged close to 100 exhibits consisting primarily of documents he asserted showed his control of the three businesses and related properties, e.g., cancelled checks, wire transfer receipts, and receipts for various business expenses, as well as documents from other lawsuits that allegedly showed Razuki's manipulation of the justice system to gain an advantage in real estate dealings.

Malan's declaration outlined additional details about his relationship with Razuki, explaining that in 2014 he and Razuki began investing in properties together with a 75/25 split in Razuki's favor, and that they purchased 50 properties including a gas station and two marijuana dispensaries. Malan stated Razuki then refused to honor their arrangement and did not share rent proceeds as they agreed, resulting in the 2017 Settlement Agreement. Malan repeated his assertion he was tricked into signing that agreement and that he and Razuki agreed to rescind it in February 2018. Malan also stated for the first time that he and Razuki had then agreed to keep the properties they controlled, with Malan taking ownership of all of the assets under the control of the receiver.

Malan's attorney (Austin) submitted a declaration expressing concern over Essary's decision to hire a partner in the law firm representing SoCal, as the receiver's cannabis expert, rather than her recommended independent *23 expert. Austin also said the City's consultant who conducted an audit of the Dispensary had recently discovered an approximate $100,000 discrepancy while SoCal was the operator.

On September 5, Essary submitted his first receiver's report outlining his activity related to the Dispensary and the Production Facility.

K. September 7 Order Confirming Receiver Appointment for 60 Days

At the September 7 hearing, the parties' counsel reiterated their positions at length.

Razuki's counsel emphasized the entirely cash nature of the businesses, noting the cash could be easily hidden. Malan's counsel countered that

discovery was the proper mechanism for Razuki to obtain financial information about the businesses, and that most of the relevant information was in SoCal's possession. Malan's counsel continued to challenge Razuki's assertion he had invested millions into the businesses, and argued a remedy less drastic than a receiver would be more appropriate, such as requiring a forensic accountant to assess all of the business accounts and operations.

Hakim's counsel focused on the harm resulting if the receiver remained in place, emphasizing the inability to attract any producers, and citing the uncertainty the property could be sold and the risk that trade secrets would be disclosed. Hakim's counsel also suggested that Razuki's interest in the Production Facility property could be protected by requiring his portion of profits to be deposited into a separate account that the other parties could not access.

In response to the court's inquiry, Essary's attorney stated he did not think the receivership would prevent new producers from contracting at the Production Facility and any concern about the disclosure of trade secrets could be rectified with a
24 nondisclosure agreement. *24

After considering the voluminous written record and the parties' oral arguments at the several hearings, the court confirmed its receivership decision. The court concluded Razuki had shown a sufficient probability of prevailing on his claims, and that based on the documentation submitted to the court there was a risk of irreparable harm requiring protection. The court appointed Essary as the receiver for an additional 60 days, after which it would reconsider the appointment, and ordered Essary to hire an outside accountancy firm to conduct a forensic accounting of the Production Facility, the Dispensary, and all of the interested parties' contributions to those businesses. The court ordered the receivership to remain over the same entities and ordered Razuki to post a bond of $350,000 within two weeks, with the existing order remaining in place until the bond was posted, and ordered that if the bond was not posted the receivership would be dissolved. The court directed the receiver's counsel to submit a final proposed order.

On September 13, the receiver's attorney submitted a proposed order. Seven days later, on September 20, Razuki filed notice he had posted the receivership bond of $350,000 on September 18.

On September 26, 2018, the court entered the order challenged in this appeal, entitled "Order Confirming Receiver and Granting Preliminary Injunction" (the September 26 order). The order confirmed Essary's appointment as receiver over two of the Property Owner entities (SD United and Mira Este); three license holder entities (Balboa Co-op, CCG, Devilish), and the business manager entity (Flip). The order required Essary to retain an independent accountant to conduct "a comprehensive forensic audit of the Marijuana Operations, as well as of all named parties in this matter as it relates to financial transactions
25 between and among such parties related to *25 the issues in dispute." The order excluded the Planned Facility, lifting the prior restraining order preventing its sale.

L. Notices of Appeal From the September 26 Order

Malan, SD United, Flip, and the three license holders (Balboa Co-op, CCG, and Devilish) filed their joint notice of appeal from the September 26 order on October 30, 2018. Hakim and the entities related to the Production Facility (Roselle and Mira Este) filed their joint notice of appeal from the order on November 2, 2018.[9]

[9] Our references to appellate arguments made by Malan and/or Hakim includes the entities related to each of these parties in their notices of appeal.

DISCUSSION

Malan and Hakim challenge the court's imposition of the receiver over the Dispensary and Production Facility related entities (SD United, Mira Este, Balboa Co-op, CCG, Devilish, and Flip).[10] Malan raises several errors in the process used to appoint the receiver and asserts that Essary is biased against him. Both appellants argue the court abused its discretion by appointing Essary, contending that Razuki did not show a sufficient probable interest in the assets placed under receivership and that the balance of harms did not favor him. Finally, Malan and Hakim assert the doctrine of unclean hands prevents the
26 appointment of a receiver in this case. *26

[10] Although the court's order appointing Essary is styled "Order Confirming Receiver and Granting Preliminary Injunction," neither Malan's nor Hakim's briefing challenges a preliminary injunction. Rather, appellants briefing exclusively seeks reversal of the trial court's order appointing the receiver and return to them of the properties, assets, and companies placed under the receiver's control in accordance with that order.

I. Legal and Procedural Standards

A. Receivership Standards and Procedure

The appointment of a receiver is a provisional equitable remedy. The receiver's role is to preserve the status quo between the parties while litigation is pending. (*Southern California Sunbelt Developers, Inc. v. Banyan Limited Partnership* (2017) 8 Cal.App.5th 910, 925.) Further, it is " 'an ancillary remedy which does not affect the ultimate outcome of the action.' " (*Ibid.*)

The court's role in supervising a receiver cannot be overstated. " 'The receiver is but the hand of the court, to aid it in preserving and managing the property involved in the suit for the benefit of those to whom it may ultimately be determined to belong.' [Citations.]" (*Marsch v. Williams* (1994) 23 Cal.App.4th 238, 248 (*Marsch*).) The receiver is the agent of the court and not of any party and, as such, is neutral, acts for the benefit of all who may have an interest in receivership property, and holds assets for the court rather than the parties. (*O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1092 (*O'Flaherty*); see *People v. Stark* (2005) 131 Cal.App.4th 184, 204; Cal. Rules of Court, rule 3.1179(a).)[11] Put another way, appointment of a receiver is a tool for the court to gain control over a chaotic ownership dispute like the turbulent situation Judge Sturgeon found when he was assigned to this case.

[11] All rule references are to the California Rules of Court.

" 'In California, a receiver may not be appointed except in the classes of cases expressly set forth in the statutes or as authorized under established usage of the court's equitable powers.' [Citations.]" (*O'Flaherty*, *supra*, 115 Cal.App.4th at p. 1092.) Code of Civil Procedure section 564 generally sets
27 *27 forth the statutory circumstances under which a receiver can be appointed.[12] (*Marsch*, *supra*, 23 Cal.App.4th at p. 248.) Section 564, subdivision (b) states: "A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge of that court, in the following cases," and then lists 12 particular circumstances that can support the appointment of a receiver.

[12] Subsequent undesignated statutory references are to the Code of Civil Procedure.

Two of these circumstances are relevant here. First, section 564, subdivision (b)(1) states: "(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, *or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds of the property or fund, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially*

injured." (Italics added.) Second, section 564, subdivision (b)(9) is a catchall, providing for the appointment of a receiver "[i]n all other cases where necessary to preserve the property or rights of any party."

"The requirements of [section 564] are jurisdictional, and without a showing bringing the receiver within one of the subdivisions of that section the court's order appointing a receiver is void." (*Turner v. Superior Court* (1977) 72 Cal.App.3d 804, 811.) To invoke the authority of the court to appoint a receiver under section 564, subdivision (b)(1), the plaintiff must establish by a preponderance of the evidence a "joint interest with [the] defendant in the property; that the same was in danger of being lost, removed or materially injured, and that plaintiff's right to possession was probable." (*Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1953) 116 *28 Cal.App.2d 869, 873 (*Alhambra*).) Lack of standing (here alleged to be lack of probable possession of the property) to seek a receivership is a jurisdictional defect that subjects the action to dismissal. (*O'Flaherty*, *supra*, 115 Cal.App.4th at p. 1095.)

Importantly, "[t]he trial court on the motion for receivership is not required to determine the ultimate issues involving the precise relationship of the parties. At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown." (*Maggiora*, *supra*, 249 Cal.App.2d at p. 711.) " 'Evidence to justify the appointment of a receiver may be presented "in the form of allegations in a complaint or other pleading, by affidavit or by testimony." ' " (*Republic of China v. Chang* (1955) 134 Cal.App.2d 124, 132, italics removed.)

Procedurally, the Code of Civil Procedure and the Rules of Court set two paths for obtaining a receiver. A party seeking the appointment of a receiver can do so either on an ex parte basis, or by noticed motion. Under either path, the substantive requirements for appointment of the receiver under section 564 are the same. Additional procedural protections, however, are required under the Rules of Court when an applicant proceeds on an ex parte basis.

Under rule 3.1175(a)(1), a plaintiff seeking a receiver on an ex parte basis, must show by declaration "[t]he nature of the emergency and the reasons irreparable injury would be suffered by the applicant during the time necessary for a hearing on notice." In addition, the applicant must show, by declarations or a verified pleading, (1) the names and contact information for "the persons in actual possession of the property"; (2) " [t]he use being made of the property by the persons in possession"; and (3) "[i]f the property is a part of the plant, equipment, or stock in trade of 29 any business, the nature and *29 approximate size or extent of the business and facts sufficient to show whether the taking of the property by a receiver would stop or seriously interfere with the operation of the business." (Rule 3.1175(a)(2)-(4).) If any of this information is "unknown to the applicant and cannot be ascertained by the exercise of due diligence, the applicant's declaration or verified complaint must fully state the matters unknown and the efforts made to acquire the information." (*Ibid.*)

In addition to the requirements of rule 3.1175, when an applicant proceeds on an ex parte basis, section 566, subdivision (b) requires an undertaking in an amount fixed by the court before imposing the receivership order. At the ex parte hearing, the applicant must propose specific amounts, and the reasons for the amounts proposed, of the undertakings required from the applicant by section 566, subdivision (b) and from the receiver by section 567, subdivision (b). (Rule 3.1178.)

If a receiver is appointed on an ex parte basis, the matter "must be made returnable upon an order to show cause why appointment should not be confirmed." (Rule 3.1176, subd. (a).) The OSC must be set within 15 days, "or if good cause

appears to the court," within 22 days of appointment of the receiver. (*Ibid*.) On an OSC, or a noticed motion, the applicant's moving papers must allege sufficient facts establishing one of the statutory grounds for the appointment, as well as irreparable injury and the inadequacy of other remedies. (*Alhambra*, *supra*, 116 Cal.App.2d at p. 873.) The court has discretion to require the applicant to post a bond if the receivership is confirmed, but unlike at the ex parte stage, the bond is not statutorily required. Under section 567, subdivision (b) the receiver must maintain a
30 bond under either procedure. *30

B. Standard of Review

"Where there is evidence that the plaintiff has at least a probable right or interest in the property sought to be placed in receivership and that the property is in danger of destruction, removal or misappropriation, the appointment of a receiver will not be disturbed on appeal." (*Sachs v. Killeen* (1958) 165 Cal.App.2d 205, 213 (*Sachs*).) "The discretion of the trial court is so broad that an order based upon facts concerning which reasonable minds might differ with respect to the necessity for the receiver will not be reversed. [Citation.] To justify our interference, it must clearly appear that the appointment was an arbitrary exercise of power [citation]." (*Maggiora*, *supra*, 249 Cal.App.2d at pp. 710-711; see also *Breedlove v. J.W. & E.M. Breedlove Excavating Co*. (1942) 56 Cal.App.2d 141, 143 ["[W]here a finding, based upon conflicting evidence, is to the effect that danger is threatened to property or funds, and the appointment of a receiver is made, it is seldom that the reviewing court will hold that the lower tribunal has been guilty of an abuse of the discretion confided to it."].)

II. Procedural Challenges to the Order Appointing Essary

Because of the peremptory challenges and their attendant judicial reassignments, the procedure followed in this case did not precisely align with the conventional paths laid out by the rules. After Razuki obtained the initial appointment of the receiver on July 17 on an ex parte basis, the confirmation process required by rule 3.1176, subdivision (a) was short-circuited. Before the receivership could be confirmed through the issuance of an OSC, the receivership was vacated by Judge Strauss on July 31. That order was then interrupted by SoCal's peremptory challenge and Judge Sturgeon began the ex parte proceedings
31 anew. *31

Although no order clarified whether the parties were to proceed by way of noticed motion or on an ex parte basis, the timeline of events generally followed the ex parte and confirmation by OSC procedure set forth in rules 3.1175 and 3.1176. Of note, at the August 20 hearing, the court stated that the next hearing should occur "within 15 to 20 days" and set the hearing for September 7 to consider the continuation of the receivership and the bond amount that should be required from Razuki. Further, no party filed a noticed motion with respect to the appointment of (or request to vacate) the receiver.

A. Failure to Require Undertaking

Malan first asserts that the initial order imposing the receiver issued by Judge Medel on July 17 was void because it "did not require an undertaking from the applicant *before* the order would take effect," and that every order thereafter was void as a result. (Italics added.) Malan also argues that Razuki failed to post a bond before Judge Sturgeon imposed the receivership a second time on August 20, again violating section 566 and voiding the September 26 order confirming the receivership at issue in this appeal.

Malan's arguments are not well taken. Section 566, subdivision (b) states, "if a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant may sustain by reason of the appointment of the

receiver and the entry by the receiver upon the duties, in case the applicant shall have procured the appointment wrongfully, maliciously, or without sufficient cause." As has been described, Razuki proceeded by ex parte application. The
32 initial order issued by Judge Medel *32 provided Razuki a five-day grace period. Razuki, however, posted the bond *the day the order was issued*, satisfying the statute's requirement.

Even if we were to conclude the initial receivership was invalid because it gave Razuki five days to post an undertaking, we do not agree with Malan's contention that the September 26 order is therefore void.

To advance this argument, Malan relies on *Bibby v. Dieter* (1910) 15 Cal.App. 45, which held an order appointing a receiver upon an ex parte application without the required undertaking is void *and all subsequent orders arising from that appointment order are void*. This case is not governed by this rule because the challenged receivership order did not arise from the initial appointment order claimed to be void. Instead, after the two successful peremptory challenges, Judge Sturgeon made clear he was considering the receivership petition anew. The court had the full authority to vacate the earlier orders and rule on the petition as a matter of first impression. (See, e.g., *Wiencke v. Bibby* (1910) 15 Cal.App. 50, 53 [" 'The power of a court to vacate a judgment or order void upon its face is not extinguished by lapse of time, but may be exercised whenever the matter is brought to the attention of the court. . . . The court has full power to vacate such action on its own motion and without application on the part of anyone.' "]; *State of California v. Superior Court (Flynn)* (2016) 4 Cal.App.5th 94, 100 ["Even without a change of law, a trial court has the inherent power to reconsider its prior rulings on its own motion at any time before entry of judgment."].)

Malan alternatively asserts that Judge Sturgeon's August 20 order appointing Essary for the second time was void because it did not require another undertaking by Razuki before it took effect. However, Malan does not explain why the initial $10,000 bond filed by Razuki was insufficient to
33 *33 satisfy section 566. While a dispute existed when the case was reassigned to Judge Sturgeon about whether that receivership was vacated by Judge Strauss on July 31 because no final order was signed, the record shows that Razuki's undertaking remained in place through September 19, 2018, when Razuki filed notice he had posted the $350,000 undertaking.[13] We presume the court was aware of the bond, which satisfied section 566. (See *Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443 [" 'We uphold judgments if they are correct for any reason, "regardless of the correctness of the grounds upon which the court reached its conclusion." ' "]; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133, ["A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness."])[14]

13 Despite the lack of a final order after the July 31 hearing, the record also shows Essary and the defendants treated the receivership as being vacated that day. For example, the Dispensary and Production Facility resumed operations that day without any oversight by Essary. On appeal, no party suggests the July 31 order was not effective because it was not final.

14 Malan also argues the September 26 order violated section 566 because it gave Razuki 14 days to post the $350,000 bond ordered on September 7, 2018. However, there is no bond requirement on the applicant for an order confirming the receivership. (§ 566, subd. (b); see § 41:7. Undertakings, bonds, receiver's oath, and related claims, 12 Cal. Real Est. § 41:7 (4th ed.) [No similar statutory requirement to file an undertaking where the application

for appointment of receiver is made on a noticed motion or for the confirmation of an order appointing a receiver on an ex parte basis.].) Rather a bond may be imposed at the court's discretion.

B. Failure to Timely Serve First Amended Complaint

In a similar vein, Malan argues that Razuki's failure to serve defendants with the first amended complaint within five days of the July 17 *34 order, as required by rule 3.1176(b)-(c), requires reversal of the September 26, 2018 order.

Rule 3.1176(b) states that when a receiver is appointed on an ex parte basis, service of the complaint, notice of the OSC, and any supporting memorandum and declarations "must be made as soon as reasonably practical, but no later than 5 days after the date on which the order to show cause is issued, unless the court orders another time for service." Under rule 3.1176(c), if the applicant fails to "exercise diligence to effect service upon the adverse parties as provided in (b), the court may discharge the receiver."

Razuki provided the trial court with a reasonable explanation for the delay in serving the first amended complaint. He explained he was unable to obtain a conformed copy from the court's business office because of its backlog and that after the case was reassigned to Judge Strauss, his ex parte hearing to obtain an order from the court to require the court's business office to expedite return of the conformed pleading was taken off calendar. Razuki explained to the trial court that after the case was reassigned, he obtained a new ex parte hearing before Judge Strauss to expedite processing of the complaint. This evidence established Razuki's diligence in attempting to serve defendants. Further, any error was mooted by Judge Strauss's July 31 order vacating the receiver and Judge Sturgeon's August 14, 2018 order declining to reinstate Essary. Malan's argument does not support reversal of the September 26 order.

C. Failure to Schedule OSC Hearing Within 22 Days of July 17 Order

Malan also argues the court's failure to make the OSC returnable within 15 days of the July 17 order appointing Essary, as required by rule 3.1176, voids the receivership. This argument lacks merit. *35

Rule 3.1176(a) requires the OSC to "be made returnable on the earliest date that the business of the court will admit, but not later than 15 days or, if good cause appears to the court, 22 days from the date the order is issued." (Rule 3.1176 (a).) At the time it instituted the first receivership on July 17, the court did set the hearing on the OSC outside the rule time. The OSC, however, was vacated after Malan filed his peremptory challenge to Judge Medel, mooting the purported violation of rule 3.1176(a). Further, Malan has provided no legal authority or argument to support his assertion that this technical error requires reversal of the later receivership order that is before this court on appeal.[15] (See *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546 (*Mansell*) [appellate court need not furnish argument or search the record to ascertain whether there is support for appellant's contentions].)

[15] Malan's assertion that the court violated rule 3.1176(a) at the August 20 hearing by setting the next hearing to confirm its appointment of Essary 18 days later is also without merit. The hearing was within the rule limit of 22 days and Malan does not challenge the existence of good cause to set the hearing beyond 15 days.

III. Receiver's Alleged Bias and Rule 3.1179(b)

Malan next contends that Essary was improperly biased against him and that Razuki and Essary violated rule 3.1179(b), which prohibits a receiver from making an agreement with the party seeking the receiver to hire particular service providers.

Razuki responds that the trial court considered these allegations, and properly rejected them in view of all of the evidence.

Rule 3.1179(b) states: "The party seeking the appointment of the receiver may not, directly or
36 indirectly, require any contract, agreement, *36 arrangement, or understanding with any receiver whom it intends to nominate or recommend to the court, and the receiver may not enter into any such contract, arrangement, agreement, or understanding concerning: [¶] (1) The role of the receiver with respect to the property following a trustee's sale or termination of a receivership, without specific court permission; [¶] (2) How the receiver will administer the receivership or how much the receiver will charge for services or pay for services to appropriate or approved third parties hired to provide services; [¶] (3) *Who the receiver will hire, or seek approval to hire, to perform necessary services*; or [¶] (4) What capital expenditures will be made on the property." (Italics added.) The rule contains no remedy for a violation, and does not require the court to void the receivership if it is violated.

The record shows the order issued by the court ensured the receiver was exercising independent authority in determining who to hire and how to manage the assets. Further, Malan points to no evidence of the existence of any agreement or understanding between Razuki and Essary concerning who Essary would hire if appointed. The court's rejection of Malan's argument that there was an agreement between Razuki and Essary that violated rule 3.1179(b)(3) was not an abuse of discretion.

With respect to Malan's assertion that Essary was biased against him, Malan points out that the initial July 17 order signed by Judge Medel authorized the receiver "to bind the Marijuana Operations to the terms of the Management Agreement . . . with SoCal . . . ." This order, however, was replaced and is not before this court on appeal.

The record shows that Judge Sturgeon was careful with respect to SoCal's continued role in the businesses. At the August 20 hearing, and as reflected in the court's written orders, Judge
37 Sturgeon specifically prohibited *37 Essary from hiring SoCal, instead directing the receiver to keep the new managers (Far West and Synergy), who were favored by Malan and Hakim, in place as the operators of the Dispensary and the Production Facility. As the court directed, Essary maintained those entities in place after his August 20 appointment. There is no support in the record for Malan's position that the court abused its discretion by appointing Essary, that Essary's actions showed bias in favor of Razuki, or that Essary violated rule 3.1179(b) after his August 20 appointment.[16]

16 The record does show the cannabis industry in San Diego is relatively small and many of the players in this litigation had existing relationships. For example, as SoCal argued below, Austin introduced Malan and Hakim to her client Jerry Baca, who formed Synergy in late August 2018 with Austin's counsel for the purpose of managing the Production Facility.

IV. No Abuse of Discretion on Section 564 , subdivision (b)(1) Issues

Malan and Hakim both argue in different ways that the court was required to determine whether Razuki showed a probability of success on the merits of his claims. Hakim asserts that "the trial court abused its discretion in appointing a receiver because the probability of success at trial between Razuki on the one hand and [the Production Facility entities (Mira Este and CCG)] on the other hand indisputably favors" these entities. Malan argues the Settlement Agreement "is void for violating public policy at the time it was created, so [Razuki] has not shown the requisite likelihood of success on the merits."

To appoint a receiver, however, the trial court was not required to determine the probability of success on any particular claim. Rather, as set forth above, to invoke the court's authority to appoint a receiver under section 564, subdivision (b)(1), a plaintiff seeking a receiver must establish
38 by a *38 preponderance of the evidence a "joint interest with [the] defendant in the property; that the same was in danger of being lost, removed or materially injured, and that plaintiff's right to possession was probable."[17] (*Alhambra*, *supra*, 116 Cal.App.2d at p. 873; see *Maggiora*, *supra*, 249 Cal.App.2d at p. 711.)

[17] Hakim cites one case addressed to the probability of prevailing, *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493 (*Teachers*). *Teachers*, however, was an appeal of a preliminary injunction requiring the defendant to remove a fence in a shared easement. (*Id.* at pp. 1490-1492.)

Contrary to appellants' arguments, the trial court was "not required to determine the ultimate issues involving the precise relationship of the parties. At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown [citations]." (*Maggiora*, *supra*, 249 Cal.App.2d at p. 711.) Notably, an interest in the profits of a concern is "a significant factor in determining the necessity of a receiver [citation]. . . ." (*Id.* at p. 711, fn. 3.)

A. Razuki's Interest in Dispensary and Production Facility Entities

Malan and Hakim argue the receivership order must be vacated because Razuki failed to show a sufficient interest in the entities over which the receiver was appointed to satisfy section 564, subdivision (b)(1). Further, they contend that the catchall provision of section 564, subdivision (b)(9) is unavailable because Razuki chose to proceed under subdivision (b)(1).

Razuki responds that the Settlement Agreement, enforceable or not, is evidence of an oral partnership agreement with Hakim and his significant interest in the Dispensary and the Production Facility. Further, his declarations and the attached documentation showed his significant
39 financial *39 contributions to these businesses. We agree with Razuki that these facts supported the trial court's determination that he had standing to pursue a receiver under section 564, subdivision (b)(1) over the Dispensary and Production Facility, and the various entities that served the two businesses.[18]

[18] Malan makes passing reference in his brief to the inclusion of Devilish in the receivership as improper because the title owner (Roselle) was excluded and Devilish was formed to hold Roselle's licenses. However, despite the exclusion of Roselle, Devilish was explicitly named as a party to the management agreement with SoCal for the Production Facility, bringing Devilish within the purview of the receivership.

The evidence presented to the trial court satisfied the requirement that Razuki show a probable interest in the assets. Razuki's declaration attached the executed Settlement Agreement memorializing his interest in the operations of both the Dispensary and the Production Facility, specifically his right to receive profits from those entities through the mechanism of RM Property. In addition, Razuki's declaration outlined the background of the Settlement Agreement and the underlying partnership with Malan, which showed their agreement to share the profits from their joint ventures. Indeed, Malan's own declaration recounted his longstanding arrangement with Razuki whereby profits in their real estate investments were split 75/25 in favor of Razuki.

Razuki also submitted documentation showing the collateral he pledged to secure the purchase and refinancing of the Production Facility property; his cash investments of over $450,000 in this property and the facility's licensure; and

documentation showing the transfer of the Dispensary property from an entity wholly owned by him to SD United. Although Malan and Hakim
40 submitted documentation showing their own *40 investments in the properties and businesses, the documents did not refute Razuki's evidence of his own interest.

These facts distinguish the case from *Rondos v. Superior Court of Solano County* (1957) 151 Cal.App.2d 190, relied upon by appellants. In *Rondos*, one of two owners of a business licensed by the Department of Alcoholic Beverage Control (ABC), Marvin Caesar, contracted to sell his stake to Edward Essy with the consent of the other owner, George Rondos. When the required application to transfer the business was not approved by ABC within a year, Rondos served Essy with notice of rescission of the contract for sale and notified ABC that he was withdrawing the application for transfer. Essy brought suit and obtained the appointment of a receiver over the business. (*Id.* at p. 193.) The Court of Appeal reversed the receivership order, holding that Essy had failed to establish a probable interest under section 564, subdivision (1) (the identical predecessor to (b)(1)). (*Rondos*, at pp. 194-195.) Critically, the parties' contract explicitly stated the transfer of Caesar's interest to Essy would not occur until ABC approved the transfer. (*Id.* at p. 194.) No similar uncontroverted evidence exists in this case that would have precluded the trial court's finding that Razuki had shown a probable interest in the assets at issue.

Malan and Hakim point to no evidence showing Razuki's contributions to the businesses did not occur, or that Razuki made them without expectation of sharing in the profits. The trial court was tasked with making a preliminary determination as to whether Razuki was a partner or investor in these assets with a *probable* interest in them. There was sufficient evidence before the court supporting its determination that Razuki had satisfied this standard. (See *Maggiora*, *supra*, 249 Cal.App.2d at p. 711 ["At this stage of the proceedings, nothing more than a probable joint or
41 common *41 interest in the property concerned need be shown . . . ."]; see also *Eng v. Brown* (2018) 21 Cal.App.5th 675, 694 ["In general, 'the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.' (Corp. Code, § 16202, subd. (a).) With certain exceptions, '[a] person who receives a share of the profits of a business is presumed to be a partner in the business . . . .' . . . "].) It is not this court's role to second guess that determination.

Appellants' claim that Razuki lacks a sufficient interest to obtain a receiver bears a resemblance to the issue decided in *Sachs*, an appeal from the confirmation of a receiver after an ex parte appointment. (*Sachs*, *supra*, 165 Cal.App.2d at p. 207.) There, the defendants "urge[d] that the written agreement" giving plaintiff, the inventor of a device "to regulate the speed of electric motors," a percentage of net profits in the manufacturing and sale of the device "created neither a partnership nor a joint venture." (*Id.* at p. 213.) The defendants asserted that the plaintiff was "in the position of an unsecured creditor suing at law to recover a debt." (*Ibid.*) The trial court rejected this argument, concluding even if it was an accurate analogy, it did not preclude the receivership because "[t]he action is not one of law, but is essentially an equitable action to obtain an accounting and establish a constructive trust." (*Ibid.*)

In affirming, the *Sachs* court recognized the defendants had submitted conflicting evidence, denying that the plaintiff invented the device and contending he stole it from his employer, and asserting the profit sharing agreement was unenforceable because the plaintiff had failed to uphold his obligation to do certain "experimental and design work." (*Sachs*, *supra*, 165 Cal.App.2d at p. 210.) However, the court concluded the
42 plaintiff's assertion *42 that he entered into the agreement with the defendants was sufficient

under the receivership statute to support the trial court's finding that the plaintiff had shown a probable interest in the business. (*Id*. at p. 213.)

As in *Sachs*, defendants here submitted evidence contradicting Razuki's claim to the property and profits of the Dispensary and Production Facility. This conflicting evidence, however, does not establish the court abused its discretion by crediting Razuki over defendants and finding Razuki had shown a probable right to possession at this stage of the litigation.

For these same reasons, we reject Malan's assertion that Razuki's failure to transfer his pledged interests in Super 5 and Sunrise to RM Property, as contemplated by the Settlement Agreement, precludes appointment of the receiver.[19] This fact does not conclusively establish that Razuki lacked a probable interest in the assets placed in receivership. Rather, it was one fact among many conflicting facts about Razuki's ownership.[20]

[19] We also reject Malan's contention that Razuki's failure to join Super 5 and Sunrise as indispensable parties precludes his claims. Malan fails to provide any legal argument in support of this position. (*Mansell*, *supra*, 30 Cal.App.4th at pp. 545-546.)

[20] We do agree with Hakim and Malan that proceeding under one of the more specific provisions of section 564 precludes reliance on the catchall provision of subdivision (b)(9). (See *Marsch*, *supra*, 23 Cal.App.4th at p. 246, fn. 8.) However, because we affirm the trial court's finding under subdivision (b)(1), we need not address the issue.

B. Enforceability of Settlement Agreement As Against Public Policy

Malan argues the Settlement Agreement is void because it was against public policy when it was entered and therefore Razuki "has not shown the requisite likelihood of success on the merits."
43 Malan also argues the explicit *43 protection for contracts involving cannabis businesses afforded by Civil Code section 1550.5 are not applicable because the law became effective after the Settlement Agreement was executed.

As discussed, the law applicable to the appointment of a receiver does not require the plaintiff to show a likelihood of prevailing on the merits of his claims. Rather, Razuki was required to show a probable right to the assets placed in receivership and that "the same was in danger of being lost, removed or materially injured . . . ." (*Alhambra*, *supra*, 116 Cal.App.2d at p. 873.) Further, the trial court "is not required to determine the ultimate issues involving the precise relationship of the parties." (*Maggiora*, *supra*, 249 Cal.App.2d at p. 711.)

Malan's assertion that the Settlement Agreement is unenforceable because it was against the public policy of this state at the time it was entered, does not convince us the trial court abused its discretion by appointing the receiver. "Anything that has a tendency to injure the public welfare is, in principle, against public policy. But to determine what contracts fall into this vague class is exceedingly difficult. It has been frequently observed that the question is primarily for the Legislature, and that, in the absence of a legislative declaration, a court will be very reluctant to hold the contract void." ([§ 453] General Principle., 1 Witkin, Summary 11th Contracts § 453 (2020); see also *Moran v. Harris* (1982) 131 Cal.App.3d 913, 919-920, quoting *Stephens v. Southern Pacific Co*. (1895) 109 Cal. 86, 89-90 [" ' "The power of the courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt." [Citation.] . . . "No court ought to refuse its aid to enforce a contract on doubtful
44 and uncertain grounds. The burden is on *44 the defendant to show that its enforcement would be

in violation of the settled public policy of this state, or injurious to the morals of its people." [Citation.]' "].)

As an initial matter, Razuki's claims are not entirely reliant on the enforceability of the Settlement Agreement. Razuki sought the receiver appointment to protect his rights to the real properties and to the past and potential profits derived from the Dispensary and the Production Facility. He seeks to enforce those rights not only by way of the Settlement Agreement, but also by enforcement of his oral partnership agreement with Malan.

Additionally, the Settlement Agreement on its face does not concern the operations of a recreational marijuana business, which could arguably have been classified as illegal at the time the agreement was executed. The agreement's first recital states: "RAZUKI and MALAN have engaged in several business transactions, dealings, agreements (oral and written), promises, loans, payments, related to the acquisition of real property and interests in various *medical marijuana* businesses. Specifically, RAZUKI and MALAN have each invested certain sums of capital for the acquisition of the following assets . . . ." (Italics added.) At the time the contract was entered, business related to the provision of *medical marijuana* was lawful and not against this state's public policy.

In addition, the fact that marijuana use remains a violation of federal law does not necessarily establish the contract is unenforceable. Even if a dispute involves an "illegal contract" it can "be enforced in order to 'avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff.' " (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 292.) " ' "[T]he extent of enforceability and the kind of remedy granted
45 depend upon a *45 variety of factors, including the policy of the transgressed law, the kind of illegality and the particular facts." ' " (*Ibid.*)

The trial court was tasked with making an early determination concerning the necessity of a receiver to protect the real property and other assets at issue. The court was not charged with determining the ultimate issue of enforceability of the Settlement Agreement and its failure to reach this issue to preclude Razuki's claims at this stage was not an abuse of discretion.[21]

21 Malan also relies on Civil Code section 1550.5 (recognizing the lawfulness of certain medicinal and/or adult-use cannabis commercial activity) and the fact that the law did not take effect until January 1, 2018, almost two months after the Settlement Agreement was executed. Although the statute's existence may be a factor in determining the enforceability of the Settlement Agreement and/or the alleged oral agreement, it did not preclude the receiver appointment at this early stage of the litigation.

C. Necessity of Derivative Action

Malan also argues that Razuki lacks standing to enforce the Settlement Agreement and that his claims should have been brought as a derivative action on behalf of RM Property. This argument misconstrues the claims asserted by Razuki. Razuki seeks to enforce the Settlement Agreement and his oral partnership agreement. Razuki's claims are not that Malan and Hakim defrauded RM Property. Rather he alleges that Malan breached the Settlement Agreement and that Malan and Hakim otherwise engaged in illegal and fraudulent conduct to prevent Razuki from obtaining the benefits of his partnership with Malan. Contrary to Malan's assertion, these claims are not necessarily derivative and were properly brought by Razuki on his own behalf. (See *Schuster v. Gardner* (2005) 127 Cal.App.4th 305,
46 312 *46 [A " '*derivative* action [is] filed on *behalf of the corporation* for injury to the corporation for which it has failed or refused to sue.' "].)

V. Imminent Injury and Availability of Less Dramatic Relief

Malan and Hakim contend the court erred by determining the balance of harms favored Razuki and SoCal's request for a receiver. They primarily argue that events occurring after the appointment —the Production Facility's failure to obtain new clients—demonstrate why the trial court was incorrect in finding there was a risk to Razuki's interest during the pendency of this litigation. Malan also asserts there was no evidence of any risk of destruction to the businesses' operations or the property. Further, Malan and Hakim both contend that lesser remedies were available to protect Razuki's interests.

Razuki responds that the risk of harm to his interest was significant because ownership of the cannabis operations, in particular the property that was permitted for such operations, "is a unique asset that cannot easily be replicated or otherwise replaced with money damages. Specifically, an ownership or equitable interest in those businesses and related facilities also grants an interest in the licenses and [CUPs] which allow those marijuana businesses to operate legally in San Diego. As the number of such licenses is rigorously restricted, the ownership of those business is a unique and irreplaceable asset." Further, Razuki points to the cash nature of the businesses, which makes accounting for and after-the-fact tracing of profits particularly difficult. Because of these facts, Razuki contends the trial court did not abuse its discretion by finding that a receivership was necessary to protect his stake in the enterprise while his claims proceed through the court. We
47 agree. *47

To appoint a receiver under section 564, subdivision (b)(1), the trial court must determine whether the "property or fund is in danger of being lost, removed, or materially injured." "[T]he availability of other remedies does not, in and of itself, preclude the use of a receivership. (*Sibert v. Shaver* [(1952)] 113 Cal.App.2d 19, 21.) Rather, a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." (*City and County of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.)

Contrary to Malan and Hakim's assertions on appeal, at the time the trial court confirmed the receivership, there was substantial evidence presented by Razuki suggesting that his investment in the dispensary and production facility was in jeopardy as a result of defendants' actions. The court had before it competing claims of ownership by Razuki and SoCal, and at least one separate pending lawsuit to quiet title over the Dispensary property. In addition, the initial receiver appointment in July had resulted in allegations that Malan and his counsel had directed Dispensary employees to take significant amounts of cash from the businesses.

Other facts before the court also suggested the property itself was in jeopardy of destruction. For instance, SoCal submitted the affidavit of a witness who saw the illegal transportation of cannabis products to the Production Facility, potentially jeopardizing the facility's permit. Malan and Hakim argued that SoCal's employees were also jeopardizing the viability of the dispensary through their mismanagement. There were also competing claims on the valuable equipment in the production facility, and threats it would be sold or destroyed.

When the unique character of this real property is considered in conjunction with the erratic behavior
48 of the various parties leading to the *48 September 7 hearing, the trial court's determination that there was a significant risk of irreparable harm to these assets requiring a neutral third party to step in was not an abuse of its wide discretion. In addition, the all-cash nature of the Dispensary and Production Facility, combined with a specific claim that cash had already been misappropriated from the Dispensary without proper accounting, supported the trial court's conclusion there was a risk of irreparable harm to the assets during this litigation. (See *Moore v. Oberg* (1943) 61 Cal.App.2d 216,

221-222 (*Moore*) ["So broad is the discretion of the trial judge that his order based upon facts concerning which reasonable minds might differ with respect to the necessity for the receivership will not be reversed. We cannot substitute our conclusion for that of the trial court made upon sufficient evidence even if we should be of the opinion that there was no danger of the loss or removal of, or other irreparable injury to, the assets of the joint venture. To justify our interference with the order confirming the appointment herein, it must be made clearly to appear that the order was an arbitrary exercise of power."].)

With respect to Malan and Hakim's argument that the receivership has harmed the assets since September 26, 2018, it is not this court's role to review the activity that took place after the appealed order. (*Bach v. County of Butte* (1989) 215 Cal.App.3d 294, 306 (*Bach*).) This information was not before the trial court when it confirmed Essary's appointment and thus is not
49 *49 a proper basis for reversal of the order.[22] Hakim also argues that the appointment was unnecessary because after July 10, the Production Facility had generated no profits, and thus there was nothing for the receiver to manage. This argument does not assist Hakim. Rather it highlights the contradictions that were facing the trial court, including Hakim's and Malan's assertions that Synergy had secured profitable contracts before Essary's appointment. The argument also casts doubt on appellants' assertions that the receiver is the reason for the facility's lack of profit.

[22] For the same reason, Hakim's motion to augment the record to include subsequent reports of the receiver and related documentation is denied. (See *In re Marriage of Folb* (1975) 53 Cal.App.3d 862, 877, disapproved on other grounds by *In re Marriage of Fonstein* (1976) 17 Cal.3d 738, ["But we must reiterate that matters occurring after judgment are generally not reviewable on appeal . . . . The trial court remains the more appropriate forum in which to litigate these subsequent developments."].)

In sum, the receivership was an appropriate remedy for the court to track the cash the parties stated was flowing, and that had flowed, through the two operations; control the parties' chaotic ownership disputes; and protect the real property jeopardized by the parties' conduct. While the other remedies appellants suggest might also have protected Razuki's interest, Malan and Hakim have not shown the court's decision to confirm the receiver was "an arbitrary exercise of power." (*Moore*, *supra*, 61 Cal.App.2d at p. 222.)

VI. Unclean Hands

A. Background

Finally, Malan and Hakim ask this court to overturn the September 26 order based on the federal criminal charges that Razuki now faces. In support of their argument, Malan and Hakim included in the Appellants' Appendix briefing and declarations for Hakim's May 8, 2019 "Ex Parte
50 *50 Application to Remove Receiver from [Production] Facility . . . ." These documents include Malan's declaration attaching the criminal complaint filed against Razuki in the Southern District of California, *United States of America v. Razuki*, case No. 3:18-mj-05915-MDD (S.D.Cal. 2018) and the related grand jury indictment. The probable cause statement accompanying the complaint describes an FBI sting operation in which two women who Malan describes as Razuki's employees, hired the FBI's confidential informant to kidnap and murder Malan.

The statement explains that one of the women, Sylvia Gonzalez, first met with the FBI informant on October 17, 2018, and at a subsequent meeting on November 5, 2018, told the informant that she wanted to get rid of Malan because it looked like "they [we]re going to appeal" and Razuki "has a lot of money tied up right now, and he's paying attorney fees." The statement describes several additional meetings between the women and the

informant where they discussed a plan to kidnap Malan and take him to Mexico where they would murder him. Razuki was alleged to be present at one meeting, but not directly involved in conversations concerning the murder plot.

According to the statement, Gonzalez contacted the informant on November 13, 2018, to tell him that Malan would be at the San Diego Superior Court that day and on November 15, 2018, the informant met with Razuki and told him that he "took care of it." During the November 15, 2018 meeting, the informant requested payment from Razuki, who told the informant to ask Gonzalez. Gonzalez, the other woman, and Razuki were all arrested over the course of the next day. The criminal complaint contains two charges against Razuki, conspiracy to kidnap and conspiracy to murder in a jurisdiction outside the United States.
51 *51

Hakim also asserts that in June 2017 Razuki threatened "to burn down the Mira Este facility," when Hakim refused to lend Razuki the $518,000 in proceeds Hakim received from the cash-out refinance on that property.

B. Analysis

"The defense of unclean hands arises from the maxim, ' " 'He who comes into Equity must come with clean hands.' " ' [Citation.] The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. [Citations.] The defense is available in legal as well as equitable actions. [Citations.] Whether the doctrine of unclean hands applies is a question of fact." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 (*Kendall-Jackson*).)

"Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine. [Citations.] [¶] The misconduct that brings the unclean hands doctrine into play must relate directly to the cause at issue. Past improper conduct or prior misconduct that only indirectly affects the problem before the court does not suffice. . . . The misconduct 'must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants.' " (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 979.)

Without any question, the conduct alleged in the federal complaint as well as the allegation that Razuki threatened to burn down the Mira Este facility is powerful evidence that could form the basis for the unclean hands doctrine defense. Critically, however, none of this information was before the trial court at the time it entered the
52 receivership order challenged in this *52 appeal. Malan and Hakim do not dispute that the kidnap and murder conspiracy allegations first came to light in November 2018, almost two months after the issuance of the appealed order. Additionally, Hakim's only citation in the record to the threat he alleges Razuki made in 2017 to burn down the Production Facility is contained in his declaration in support of his May 8, 2019 ex parte application to remove the receiver, more than six months after the issuance of the appealed order.

This court's role is to evaluate the ruling that was appealed by Malan and Hakim, not events that came later and that were not considered by the trial court. Malan and Hakim present no basis for this court to consider this new information.[23] (See *Bach*, *supra*, 215 Cal.App.3d at p. 306 ["It is elementary that an appellate court is confined in its review to the proceedings which took place in the trial court. [Citation.] Accordingly, when a matter was not tendered in the trial court, 'It is improper to set [it] forth in briefs or oral argument, and [it] is outside the scope of review.' "].) While the alleged criminal conduct is concerning, to say the least, it is not a proper basis for reversal by this court of the challenged
53 receivership order. *53

23 In his reply brief, Malan argues the timing of the conduct does not matter and quotes *Kendall-Jackson*, which states the general maxim that a plaintiff in equity "must come into court with clean hands, *and keep them clean*, or he will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 978, italics added.) *Kendall-Jackson*, however, does not address the situation here, where conduct that was not before the trial court is used as the basis for a request that this court reverse the trial court's order.

DISPOSITION

The order is affirmed. Appellants to bear respondent's costs on appeal.

HALLER, J. WE CONCUR: HUFFMAN, Acting P. J. GUERRERO, J.

Exhibit 28

San Diego County
SHERIFF'S DEPARTMENT

LICENSE & REGISTRATION DIVISION -9621 Ridgehaven Ct., P.O. Box 939062
San Diego, Ca 92193-9062

MMJ	$11017.00
LIVESCAN	$49.00
LIVESCAN	$49.00
TOTAL	$11115.00
CHECK	$11115.00
Y S	01/16/2015 10:18
01	45408

MEDICAL MARIJUANA COLLECTIVE OPERATIONS CERTIFICATE

ANNUAL FEE: $11,017.00

FILE # MMJ004

NOTE: APPLICANTS MUST OBTAIN ZONING APPROVAL BEFORE SUBMITTING APPLICATION TO SHERIFF. IF TENTATIVE IMPROVEMENTS TO BUILDING ARE REQUIRED TO ACCOMMODATE THE CULTIVATION AND/OR DISTRIBUTION OF MARIJUANA, YOU MUST ALSO SHOW PROOF THAT A BUILDING PERMIT HAS BEEN APPLIED FOR.

(Print Legibly or Type only)

PART I

Collective Facility Name: Olive Tree Patients Asso. **Property Parcel Number** 281-121-12-00

☐ Sole Proprietor ☐ Partnership ☑ Corporation/Corp ID# 13857 (all participants must be members)

Operating Address: 1210 (Number) Olive St (Street) Ramona (City) CA (State) 92065 (Zip)

Mailing Address: 5666 (Number) La Jolla Blvd #15 (Street) La Jolla (City) CA (State) 92065 (Zip)

Phone # 619 851 5403 **Email:** BIKERSHERLOCK@HOTMAIL.COM

Current number of qualified patients: 0 **Current number of caregivers** 0

Days & hours of operation: Sun 8am-8pm; Mon 8am-8pm; Tue 8am-8pm; Wed 8am-8pm; Thur 8am-8pm; Fri 8am-8pm; Sat 8am-8pm

Owner of the premises [redacted] Stephen Layle **Phone #** (858) 518-1279
(Must have written consent from property owner or proof of ownership of property)

Number of responsible person(s) managing daily operations of collective facility; 2
(A miscellaneous information background sheet must be completed for each responsible person, partner and corporate officer on form approved by the Sheriff – ULP 21.107)

PART II – PERMISSIBLE CULTIVATION:

With consideration for the risks posed by cultivation of a valuable crop with public health implications, please provide a detailed crop security plan providing adequate security to reasonably protect against unauthorized access to marijuana crop @ all stages of cultivation, harvesting, drying, processing, packaging and delivery.

Include an inspection and tracking system by Collective to reasonably ensure that all marijuana produced by collective is assessed, weighed, identified, priced and packaged. Marijuana ready for dispensing shall be kept behind a counter area not directly accessible to any member, between dispensing.

Will all cultivation of marijuana take place at the collective facility applying for operations certificate?
[X] Yes [ ] No (If no provide additional information regarding member sources cultivating marijuana)

Total number of off-site marijuana member sources who will cultivate marijuana for the collective 5-20

For other locations managed by collective members that will be utilized for cultivation, harvesting & packaging/labeling, please provide:

Name & Address for each member source: (Must have written consent from property owner or proof of ownership of property)

(For each member source, please provide signed Medical Marijuana Member Source agreement license form MM-2 as prescribed in §21.2505 (c)(8))

Marijuana packaging & labeling will require scale certification from Dept of Agriculture, Weights & Measures

PART III - SECURITY

Per§21.2504 (a) Complete Security Alarm Application (attached)

ASP # _____ **(Security alarm permit number issued by the Sheriff - §36.5030(c))**

Security Company contracted by Collective Facility (§21.505(k)) (BSIS Regulations for PPO License)

Security Company Name: Alpha Special Servia, Inc.
Address: 2260 Rutherford Rd, Ste 111 Carlsbad. **PPO#** 16907
Phone Number: 760 929-0812 CA 92008

APPLICANT ACKNOWLEDGEMENT:

I declare under penalty of perjury, that this application, including accompanying documents, is true, complete and correct to the best of my knowledge and belief. I understand that any false statements are grounds for denial of this application or loss of certification and that I may be subject to prosecution. I agree to have all required notices, unless otherwise specified, sent by U.S. mail to the address given on the application. I am aware that the application fee is non-refundable.

The right of reasonable inspection shall be a condition for issuance of a Medical Marijuana Collective Operations Certificate. If a certificate is issued, representatives of the Sheriff's Department shall have access to the business premises, during normal business hours, which may include entry into the non-public portion of the business. I am aware that the granting of a medical marijuana operations certificate does not relieve me from building, zoning, fire and other public safety regulations.

I understand as part of the application for a Medical Marijuana Collective Facility Certificate, myself and the owner of the real property listed agree to investigate, defend, indemnify and hold harmless the County, its deputies, employees and agents from any damage, liability, claims, demands, detriments, costs, charges and expense (including reasonable attorney's fees), and causes of action which the County may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of

persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with this application for a Medical Marijuana Collective Facility Certificate and arising from the negligent act or omission of applicant or owner, or their officers and employees.

I further agree to abide by and conform to all the conditions of the Medical Marijuana Collective Facility Certificate and all provisions of the San Diego County Code (SDCC) pertaining to the use, establishment and operation of a Medical Marijuana Collective Facility Certificate.

I also acknowledge the following: That no activities prohibited by State law will occur on or at the Collective Facility with the knowledge of the Responsible Person(s). The Collective Facility, the Collective and its members will comply with all provisions of this Chapter and State law pertaining to medical marijuana.

Applicant Signature: _____ **Date:** 01 - 13 - 15

Application accepted by: _____ **Date:** 01/13/15

Exhibit 29

PLANNING COMMISSION OF THE CITY OF SAN DIEGO
MINUTES OF REGULAR SCHEDULED MEETING OF
JULY 9, 2015
IN COUNCIL CHAMBERS – 12TH FLOOR
CITY ADMINISTRATION BUILDING

CHRONOLOGY OF THE MEETING:
Chairperson Golba called the meeting to order at 9: 05 a.m. Chairperson Golba adjourned the meeting at 11:25 a.m.

ATTENDANCE DURING THE MEETING:

Chairperson Tim Golba – present
Vice-Chairperson Stephen Haase – present
Commissioner James Whalen – in at 9:13 a.m.
Commissioner Anthony Wagner – present
Commissioner Sue Peerson – present
Commissioner Theresa Quiroz – present
Commissioner Douglas Austin – present

Staff
Shannon Thomas, City Attorney – present
Tait Galloway, Planning Department. - present
Mike Westlake, Development Services Department – present
Louis Schultz, Development Services Department - present
Carmina Trajano, Recorder – present

COMMISSION ACTION:
THIS ITEM WAS WITHDRAWN.

ITEM – 8: ***Continued from June 25, 2015; Appeal of Hearing Officer's decision on April 22, 2015***

8863 BALBOA STE E MMCC – PROJECT NO. 368347
City Council District: 6 Plan Area: Kearny Mesa

Staff: Edith Gutierrez

Speaker slips in favor of the project, opposed to appeal submitted by Jim Bartell, Abhay Schweitzer, Kristine Byers, Stephanie Hess, Bradford Harcourt, Michael Sherlock, Damielli Teza, Javier Santana, Alexander Garza, Nicholas Enciso, Christine Bordenave and Gia-rose Strada.

Speaker slips in opposition to the project, in favor of appeal submitted by Daniel Burakowski, Ed Quinn, Greg Izor, Connie Chambers, Judi Strang, Glenn Strand, Brian Kean, Tana Duong, Rod Chambers, P. Michelet, John Murray, William Budd, Scott Chipman, Spencer Harris, Edward Scudder, Kathy Lippitt, Cree Scudder, Peggy Walker, John Peek, Tom Brady, Hilary Brady, Luiza Savchuk, Candace Wo, Cory Berlin, Nathalie Matthews, Tuesday Nunes, Patrice Johnson, Kacie Miller, Michelle Johnson, David S. Demian, Tom Hanley, Heidi Runge, Rick Engebretsen, Steven Hwang and Jim O'Sullivan (not present).

COMMISSION ACTION:
COMMISSIONER WAGNER MADE THE MOTION TO DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1296130 WITH CONDITIONS. Commissioner Quiroz seconded the motion. The motion passed by a vote of 5-1-1 with Commissioners Golba, Haase, Austin, Quiroz and Wagner voting yea and with Commissioner Peerson voting nay and with Commissioner Whalen abstaining due to Comic-Con traffic.

ITEM –9: ***Continued from June 25, 2015; Appeal of Hearing Officer's decision on April 22, 2015***

7625 CARROLL ROAD MMCC – PROJECT NO. 370687
City Council District: 6 Plan Area: Mira Mesa

Staff: Edith Gutierrez

Exhibit 30

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/19/2022 TIME: 09:00:00 AM DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione
CLERK: Richard Day
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: Adrian Cervantes

CASE NO: **37-2021-00050889-CU-AT-CTL** CASE INIT.DATE: 12/03/2021
CASE TITLE: **Sherlock vs Austin [EFILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

---

EVENT TYPE: Demurrer / Motion to Strike

APPEARANCES
Andrew Flores, counsel, present for Plaintiff(s).
Amy Sherlock, Plaintiff is present.
Andrew Hall, counsel, present for Defendant(s) via remote audio conference.

The Court hears oral argument and MODIFIES the tentative ruling as follows:
Defendant Steven Lake's Demurrer to Plaintiffs' First Amended Complaint is overruled in part and sustained leave to amend in part.

Cartwright Act (First Cause of Action)
The Cartwright Act prohibits combinations in restraint of trade. (Bus. & Prof. Code, § 16720.) Under the act, "[a]ny person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor . . . ." (Bus. & Prof. Code, § 16750, subd. (a).) Antitrust standing is required under the Cartwright Act. (*See Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723.) To establish such standing, a plaintiff must show: (1) the existence of an antitrust violation with resulting harm to the plaintiff; (2) an injury of a type which the antitrust laws were designed to redress; (3) a direct causal connection between the asserted injury and the alleged restraint of trade; (4) the absence of more direct victims so that the denial of standing would leave a significant antitrust violation unremedied; and (5) the lack of a potential for double recovery." (*Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1814 (footnotes removed).)

Here, Plaintiffs have not shown that the injuries caused by Defendant-the alleged theft of Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs ("the Sherlock Property")-constitute the type of antitrust injury required to establish standing. Furthermore, to the extent Plaintiffs are relying on the alleged "Proxy Practice" to establish the Cartwright Act violations, they have failed to demonstrate any connection between their injuries and the Proxy Practice, as the FAC alleges that Mr. Sherlock obtained the Ramona and Balboa CUPs legally, outside of any such practice. Finally, Plaintiffs have not alleged sufficient facts to establish Defendant's participation in the Proxy Practice.

Therefore, the demurrer on this cause of action is sustained with leave to amend.

Conversion (Second Cause of Action)
"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240 (alterations and quotation marks omitted).) Plaintiffs allege that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property, which Plaintiffs were entitled to under probate law after Mr. Sherlock's death. Specifically, Plaintiffs allege that Defendant and Harcourt falsified documents dissolving LERE and transferring Mr. Sherlock's interest in the CUPs. These are personal property rights, subject to a claim of conversion. (*See Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367–368 ("A CUP creates a property right which may not be revoked without constitutional rights of due process."); *Holistic Supplements, L.L.C. v. Stark* (2021) 61 Cal.App.5th 530, 542 ("Kersey's membership interest in the LLC was personal property belonging to her as an individual.") (citing Corp. Code, § 17701.02(r)).) Plaintiffs have sufficiently pled that Defendant wrongfully dispossessed them of their personal property rights. Therefore, the demurrer on this cause of action is overruled.

Civil Conspiracy (Third and Seventh Causes of Action)
"The elements of an action for civil conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff from an act or acts done in furtherance of the common design." (*Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 574 (quotation marks omitted).) "There is *no separate tort* of civil conspiracy, and there is *no civil action* for conspiracy to commit a recognized tort unless the *wrongful act* itself is committed and damage results therefrom." (*Id.* (quotation marks and alterations omitted).)

Here, the third cause of action appears to allege a civil conspiracy between Defendant and Harcourt to steal the Sherlock Property. As discussed above, the FAC alleges that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property through, among other things, submitting falsified documents. This is sufficient to allege a civil conspiracy claim between Defendant and Harcourt. Therefore, the demurrer to this cause of action is overruled.

However, the seventh cause of action appears to be either duplicative of the third cause of action or allege Defendant was a member of the conspiracy engaged in the "Proxy Practice." As discussed above, Plaintiffs' allegations fail to tie Defendant to the alleged Proxy Practice. Therefore, the seventh cause of action is either duplicative or fails to state a claim upon which relief can be granted. Regardless, the demurrer to this cause of action is sustained without leave to amend.

Declaratory Relief (Fourth Cause of Action)
Defendant demurs to this cause of action based on the claim that Mr. Sherlock "did not have an interest in the Balboa CUP" and that Defendant did not have "an interest in LERE" or participate in its dissolution. However, this argument is directly contradicted by facts pled in the FAC, which the Court must accept as true when ruling on a demurrer. Therefore, the demurrer to this cause of action is overruled.

Unfair Competition (5th Cause of Action)
"California's unfair competition law permits civil recovery for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. Cal. Bus. & Prof. Code § 17200. A private person may assert a UCL claim only if she (1) has suffered injury in fact and (2) has lost money

or property as a result of the unfair competition." (*Golden State Seafood, Inc. v. Schloss* (2020) 53 Cal.App.5th 21, 39, *reh'g denied (Aug. 6, 2020), review denied (Oct. 28, 2020)* (citations and quotation marks omitted).) Here, Plaintiffs allege that "[t]he filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115." (FAC ¶ 313.) This is sufficient to state a claim under Business and Professions Code section 17200. Therefore, the demurrer to this cause of action is overruled.

The minute order is the order of the Court.

Plaintiffs are directed to serve notice on all parties within five (5) court days.

James A. Mangione

Judge James A Mangione

Exhibit 31

MESSNER REEVES LLP
Nima Darouian, CA Bar No. 271367
11620 Wilshire Blvd., Suite 500
Los Angeles, CA 90025
Telephone: (310) 909-7440
Facsimile: (310) 889-0896
E-mail: ndarouian@messner.com

Attorneys for Plaintiffs
SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC., and
BRADFORD HARCOURT

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC., a California cooperative corporation, and BRADFORD HARCOURT, an individual, Plaintiffs, v. RAZUKI INVESTMENTS, L.L.C., a California limited liability company; BALBOA AVE COOPERATIVE, a California cooperative corporation; AMERICAN LENDING AND HOLDINGS, LLC, a California limited liability company; SAN DIEGO UNITED HOLDINGS GROUP, LLC, a California limited liability company; CALIFORNIA CANNABIS GROUP, a nonprofit mutual benefit corporation; SALAM RAZUKI, an individual; NINUS MALAN, an individual, KEITH HENDERSON, an individual, AND DOES 1-20, INCLUSIVE, Defendants.	Case No. 37-2017-00020661-CU-CO-CTL [Unlimited Jurisdiction] **COMPLAINT FOR DAMAGES FOR:** **1. BREACH OF JOINT VENTURE AGREEMENT;** **2. BREACH OF LEASE AGREEMENT;** **3. ANTICIPATORY BREACH OF ORAL CONTRACT;** **4. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;** **5. BREACH OF CONTRACT WITH RESPECT TO A THIRD PARTY BENEFICIARY;** **6. PROMISORRY ESTOPPEL;** **7. FALSE PROMISE;** **8. FRAUD;** **9. INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;** **10. INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES;** **11. BREACH OF FIDUCIARY DUTY;** **12. CIVIL CONSPIRACY;** **13. DECLARATORY RELIEF; AND** **14. INJUNCTIVE RELIEF** **DEMAND FOR JURY TRIAL**

Plaintiffs SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC. and BRADFORD HARCOURT ("Plaintiffs") allege as follows:

THE PARTIES

1. Plaintiff SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC. ("SDPCC") is, and at all times relevant to this action was, a California cooperative corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

2. Plaintiff BRADFORD HARCOURT ("HARCOURT"), an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

3. Defendant RAZUKI INVESTMENTS, L.L.C., ("RAZUKI INVESTMENTS") is, and at all times relevant to this action was, a California limited liability company organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

4. Defendant BALBOA AVE COOPERATIVE, INC. ("BALBOA AVE") is, and at all times relevant to this action was, a California cooperative corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

5. Defendant AMERICAN LENDING AND HOLDINGS, LLC ("AMERICAN LENDING") is, and at all times relevant to this action was, a California limited liability company organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

6. Defendant SAN DIEGO UNITED HOLDINGS GROUP, LLC ("SAN DIEGO UNITED") is, and at all times relevant to this action was, a California limited liability company organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

7. Defendant CALIFORNIA CANNABIS GROUP ("CALIFORNIA CANNABIS GROUP") is, and at all times relevant to this action was, a California nonprofit mutual benefit

corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

8. Defendant SALAM RAZUKI ("RAZUKI"), an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

9. Defendant NINUS MALAN ("MALAN"), an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

10. Defendant KEITH HENDERSON ("HENDERSON"), an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

11. Plaintiffs are informed and believe and based thereon allege that the fictitiously-named Defendants sued herein as Does 1 through 20, and each of them, are in some manner responsible or legally liable for the actions, events, transactions and circumstances alleged herein. The true names and capacities of such fictitiously-named Defendants, whether individual, corporate, associate or otherwise, are presently unknown to Plaintiffs, and Plaintiffs will seek leave of Court to amend this Complaint to assert the true names and capacities of such fictitiously-named Defendants when the same have been ascertained. For convenience, each reference to a named Defendant herein shall also refer to Does 1 through 20. All Defendants, including both the named Defendant and those referred to herein as Does 1 through 20, are sometimes collectively referred to herein as "Defendants."

12. Plaintiffs are informed and believe and based thereon allege that Defendants, and each of them, were and are the agents, employees, partners, joint-venturers, co-conspirators, owners, principals, and employers of the remaining Defendants, and each of them are, and at all times herein mentioned were, acting within the course and scope of that agency, partnership, employment, conspiracy, ownership or joint venture. Plaintiffs are further informed and believe and based thereon allege that the acts and conduct herein alleged of each such Defendant were known to, aided and abetted, authorized by and/or ratified by the other Defendants, and each of them.

13. There exists, and at all times herein alleged, there existed, a unity of interest in

ownership between certain Defendants and other certain Defendants such that any individuality and separateness between the certain Defendants has ceased and these Defendants are the alter-ego of the other certain Defendants and exerted control over those Defendants. Adherence to the fiction of the separate existence of these certain Defendants as an entity distinct from other certain Defendants will permit an abuse of the corporate privilege and would sanction fraud and promote injustice.

PERSONAL JURISDICTION AND VENUE

14. Defendants, and each of them, are subject to the jurisdiction of the Courts of the State of California by virtue of their business dealings and transactions in California.

15. Venue is proper in this action pursuant to California *Code of Civil Procedure* Section 395.5 because San Diego County, California is the principal place of business of Defendants and they regularly carry on and engage in business in San Diego County. Moreover, the contracts at issue were negotiated and entered in San Diego County.

ALTER EGO ALLEGATIONS

16. Plaintiffs are informed and believe and thereon allege that Defendants RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5, and each of them, were at all relevant times the alter egos of individual defendants RAZUKI, MALAN, and DOES 6 through 10 by reason of the following:

a. Plaintiffs are informed and believe and thereon allege that said individual Defendants, at all times herein mentioned, dominated, influenced and controlled Defendants RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 and the officers thereof as well as the business, property, and affairs of each said corporate entity.

b. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, there existed and now exists a unity of interest and ownership between individual defendants RAZUKI, MALAN, and DOES 6 through 10 and Defendants RAZUKI

INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5, such that the individuality and separateness of said individual Defendants and each of the alter egos have ceased.

c. Plaintiffs are informed and believe and thereon allege that, at all times since the incorporation of each, RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 has been and now is a mere shell and naked framework which said individual Defendants used as a conduit for the conduct of their personal business, property and affairs.

d. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned, each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 were created and continued pursuant to a fraudulent plan, scheme and device conceived and operated by said individual Defendants, whereby the income, revenue and profits of each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 were diverted by said individual Defendants to themselves.

e. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned, each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 were organized by said individual Defendants as a device to avoid individual liability and for the purpose of substituting financially irresponsible corporate entities in the place and instead of said individual Defendants and, accordingly, each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 were formed with capitalization totally inadequate for the business in which said corporate entity was engaged.

f. Plaintiffs are informed and believe and thereon allege that each RAZUKI

INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 are insolvent.

g. By virtue of the foregoing, adherence to the fiction of the separate corporate existence of each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 would, under the circumstances, sanction a fraud and promote injustice in that Plaintiff would be unable to recover upon any judgment in their favor.

h. Plaintiffs are informed and believe and thereon allege that, at all times relevant hereto, the individual Defendants and RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 acted for each other in connection with the conduct hereinafter alleged and that each of them performed the acts complained of herein or breached the duties herein complained of as agents of each other and each is therefore fully liable for the acts of the other.

BACKGROUND AND GENERAL ALLEGATIONS

17. In or around April 2013, HARCOURT and his former business partner, Michael Sherlock ("Sherlock"), initiated the process of obtaining a Conditional Use Permit ("CUP") with the City of San Diego to operate a Medical Marijuana Consumer Cooperative ("MMCC") located at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the "Property").

18. In or around July 2015, the City of San Diego approved and granted CUP No. 1296130 in connection with the Property.

19. After Sherlock passed away in or around December 2015, HARCOURT submitted documentation to the City of San Diego in order to remove Sherlock as the MMCC's responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego under SDPCC. Moreover, HARCOURT identified himself as the MMCC's responsible person.

20. In or around March 2016, CUP No. 1296130 was recorded with the City of San Diego.

21. As a result of the nearly three (3) year process to obtain, secure, and record CUP No. 1296130 with the City of San Diego, Plaintiffs incurred costs and expenses in the amount of approximately $575,000.00.

22. In or around March 2016, the real estate owner of the Property was High Sierra Equity, LLC ("High Sierra"). In addition, a property located at 8861 Balboa Avenue, Unit B, San Diego, California 92123 ("8861 Balboa") provided the requisite parking for the Property, and was owned by the Melograno Trust ("Melograno"). At all relevant times, High Sierra and Melograno were in a business relationship with Plaintiff HARCOURT.

23. In or around summer 2016, High Sierra and Melograno sought out potential buyers for the Property. Plaintiffs were included in, and directly involved with, the negotiations concerning the sale of the Property because: (i) the City of San Diego issued Plaintiff SDPCC a Medical Marijuana Consumer Cooperative Permit, HARCOURT was approved as the Responsible Managing Officer/Responsible Person for SDPCC, and Plaintiffs were therefore permitted by the City of San Diego to operate an MMCC on the Property; (ii) Plaintiffs' CUP No. 1296130, which runs with the land, substantially increased the value of the Property, and (iii) the ongoing business relationship between High Sierra/Melograno and Plaintiff HARCOURT.

24. In or around July 2016, real estate broker HENDERSON, brought an all cash offer of $1.8 million in connection with the purchase of the Property, 8861 Balboa, and SDPCC on behalf of CALIFORNIA CANNABIS GROUP. On information and belief, Defendant MALAN is a director of CALIFORNIA CANNABIS GROUP.

25. Pursuant to the initial terms of CALIFORNIA CANNABIS GROUP's offer, approximately $750,000 of the $1.8 million amount would be apportioned for the real estate, and approximately $1,050,000.00 of the $1.8 million amount would be apportioned for SDPCC. CALIFORNIA CANNABIS GROUP provided a proof of funds, as well as corporate documents, to demonstrate that they could support this offer.

26. However, on information and belief, CALIFORNIA CANNABIS GROUP was unable to perform and the proof of funds that was provided was not legitimate. Thus, in or

around August 2016, HENDERSON, who at all relevant times, was acting on behalf of RAZUKI and RAZUKI INVESTMENTS and served as an agent on behalf of his principals RAZUKI and RAZUKI INVESTMENTS, made another offer to Plaintiffs in connection with the Property and SDPCC on behalf of RAZUKI and RAZUKI INVESTMENTS. On information and belief, Defendant MALAN is closely associated with RAZUKI and RAZUKI INVESTMENTS.

27. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON proposed that: (1) RAZUKI and RAZUKI INVESTMENTS would purchase both the Property and 8861 Balboa for $375,000.000 each or a total of $750,000.00; (2) in lieu of purchasing SDPCC for $1,050,000.00, RAZUKI and RAZUKI INVESTMENTS would permit SDPCC to continue to operate an MMCC on the Property as a tenant upon RAZUKI and RAZUKI INVESTMENTS' purchase of the Property; and (3) RAZUKI and HARCOURT would form a joint venture and/or partnership, under which they would have a joint interest in a common business undertaking, an understanding as to the sharing of profits and losses, and a right of joint control, in connection with SDPCC, and that RAZUKI would pay $50,000.00 as a show of good faith in moving forward with the joint venture and/or partnership.

28. In connection with the joint venture and/or partnership, Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON specifically proposed that HARCOURT and RAZUKI would form a joint venture that would provide business services to SDPCC; HARCOURT and RAZUKI would split equity 50/50 in the joint venture; RAZUKI's contribution would be based upon his capitalization of the company, while HARCOURT's contribution would be based upon services rendered; and that RAZUKI would bear the sole financial responsibility for the plans, permits, tenant improvements, general contractor, and all legal expenses, inventory, operating expenses, reserves, fees, and all other costs associated with the operation and management of the MMCC located at the Property. The name for this company was later tentatively called "San Diego Business Services Group, LLC."

29. In or around August 2016, Plaintiffs accepted the offer made by Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON, and various documents and drafts

were prepared reflecting the parties' agreement. Furthermore, High Sierra/Melograno also accepted Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSONS' offer in connection with the Property and 8861 Balboa.

30. On or around August 18, 2016, Defendant RAZUKI INVESTMENTS executed a commercial lease agreement (the "Lease") with Plaintiff SDPCC in connection with the Property. Pursuant to the terms of the Lease: (i) RAZUKI INVESTMENTS served as the landlord, while SDPCC served as the tenant; (ii) the Commencement Date was October 1, 2016, and the expiration date of the Lease was October 1, 2020; and (iii) upon the expiration of the Lease; SDPCC had the right to exercise a five (5) year option to extend.

31. On or around August 22, 2016, Defendant RAZUKI INVESTMENTS and High Sierra entered into a Commercial Property Purchase Agreement in connection with the Property, in which RAZUKI INVESTMENTS agreed to purchase the Property for an all cash offer of $375,000. In addition, the contracting parties to the Commercial Property Purchase Agreement intended to confer a benefit to SDPCC. Specifically, as stated in Paragraph 6 of the agreement under the "Other Terms" section: "This transaction is to close concurrently with both 8861 Balboa Ave Unit B, and San Diego Patients Consumer Cooperative MMC."

32. On or around August 24, 2016, an Escrow Agreement was entered into between Defendant RAZUKI INVESTMENTS and High Sierra in connection with the Property. Moreover, the contracting parties to the Escrow Agreement intended to confer a benefit to SDPCC. Specifically, as stated in the "Instructions" section of the agreement, "escrow is contingent upon the execution by both parties of the operating agreement and the promissory note for and between San Diego Business Services Group, LLC and San Diego Patients Cooperative Corporation, as set out in section 6 of the 'Agreement.'"

33. On or around August 31, 2016, Defendants RAZUKI and RAZUKI INVESTMENTS, through their agent HENDERSON, prepared a written draft joint venture agreement outlining the basic terms of the joint venture and/or partnership, and provided it to HARCOURT.

34. In or around September 30, 2016, Defendants RAZUKI and RAZUKI INVESTMENTS made a payment of $50,000.00 to HARCOURT as a show of good faith in moving forward with the joint venture and/or partnership.

35. In or around late September 2016/early October 2016, Plaintiffs were concerned regarding a potential looming dispute with the Homeowners Association ("HOA") for the Property. Plaintiffs were concerned that a dispute with the HOA could require Plaintiffs to surrender the CUP or otherwise restrict Plaintiffs from operating an MMCC at the Property. Furthering this concern was that the Property was located in a city district where only up to four properties within the district may be used to operate an MMCC, and that, on information and belief, RAZUKI and RAZUKI INVESTMENTS were associated with a separate property and/or were in a position to profit from a separate property that was near the top of the "waiting list" in case one of these four spots opened up. On information and belief, this separate property is currently being occupied by CALIFORNIA CANNABIS GROUP.

36. Because it would independently benefit RAZUKI and RAZUKI INVESTMENTS if Plaintiffs surrendered their CUP, RAZUKI and RAZUKI INVESTMENTS agreed to pay HARCOURT in the amount of $1,500,000.00 if Plaintiffs surrendered their CUP or otherwise gave up one of the four spots within the district that may be used to operate an MMCC.

37. On or around October 13, 2016, a revised Memorandum of Understanding was prepared that reflected the parties' agreement that RAZUKI and RAZUKI INVESTMENTS would compensate HARCOURT the sum of $1,500,000.00 if the CUP were required to be surrendered.

38. On or around October 17, 2016, escrow on the Property closed, and the deal between RAKUZI INVESTMENTS and High Sierra was finalized. However, on information and belief, Defendants HENDERSON, RAZUKI, and RAZUKI INVESTMENTS conspired together to cause the release of the contingencies in the Commercial Property Purchase Agreement and Escrow Agreement that conferred benefits to SDPCC, including but not limited to the agreement that escrow was contingent upon the execution of the operating agreement and promissory note

with SDPCC, without the approval of Plaintiffs.

39. On or around October 17, 2016, following the close of the aforementioned deal, HENDERSON sent an email to Plaintiffs, which acknowledged that he knew there was "some concern about the operating agreements not being executed." However, HENDERSON further represented that he had spoken with RAZUKI, and that RAZUKI was "excited about moving forward as a team," and that RAZUKI was available on October 18, 2016 "to sign the operating agreements and align ourselves."

40. Just minutes after HENDERSON sent his email on October 17, 2016, RAZUKI replied all to HENDERSON's email, and RAZUKI thanked everyone "for all the work that everyone put to close this deal[.]" RAZUKI further stated that he was "very excited about what happened today," but also apologized for having a "very busy day." RAZUKI concluded his email by stating that he would be "available around 2 p.m." the following day.

41. On or around October 18, 2016, the grant deed reflecting the transfer of the Property to Defendant RAZUKI INVESTMENTS LLC was recorded with the San Diego County Recorder. On information and belief, the Property has since been transferred to AMERICAN LENDING and/or SAN DIEGO UNITED.

42. On information and belief, following the transfer of the Property, Defendants RAZUKI and RAZUKI INVESTMENTS directed, authorized and/or ratified a representative and/or agent to take the following actions without the knowledge or consent of Plaintiffs: (i) contact the San Diego Development Services Department; (ii) falsely claim that the representative and/or agent represented Defendants RAZUKI and RAZUKI INVESTMENTS and Plaintiff SDPCC; and (iii) request that the cooperative identified on the city permit be changed to BALBOA AVE and that the responsible person name be changed to NINUS MALAN. On information and belief, the city permit was then modified to indicate that BALBOA AVE was affiliated with the MMCC at the Property.

43. Moreover, despite the parties' agreements, as well as the various representations made by Defendants RAZUKI and RAZUKI INVESTMENTS, RAZUKI and RAZUKI

INVESTMENTS: (i) failed to comply with the terms of the Lease; (ii) failed to execute a joint venture and/or partnership agreement, operating agreement, and/or promissory note concerning the MMCC; (iii) falsely misrepresented to third parties that their $800,000.00 purchase of the Property included the rights to operate an MMCC on the Property; and (iv) interfered with Plaintiff SDPCC's rights concerning the Property and CUP.

44. On information and belief, in or around April 2017, Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED opened a medical marijuana dispensary at the Property, pursuant to the rights granted by CUP No. 1296130, under the name BALBOA AVE. Furthermore, on information and belief, in or around May 2017, a legal dispute arose between Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED on the one hand, and the HOA on the other hand, concerning the Property, and this dispute may result in the surrender of the CUP.

FIRST CAUSE OF ACTION

BREACH OF JOINT VENTURE AGREEMENT

(Plaintiff HARCOURT Against Defendant RAZUKI)

45. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. Plaintiff HARCOURT and Defendant RAZUKI entered into an oral joint venture agreement in or around August 2016, in which Defendant RAZUKI agreed to form a joint venture and/or partnership with HARCOURT. The parties further agreed that a be-formed-company would provide business services to SDPCC, that RAZUKI's contribution would be based upon his capitalization of the company, and that RAZUKI would bear the sole financial responsibility for the plans, permits, tenant improvements, general contractor, and all legal expenses, inventory, operating expenses, reserves, fees, and all other costs associated with the operation and management of the MMCC located at the Property.

47. At all relevant times, Plaintiff HARCOURT either had performed or was ready,

willing and able to perform all conditions, covenants and promises required of him in accordance with the terms of the joint venture agreement.

48. Defendant RAZUKI breached the joint venture agreement.

49. As a direct and proximate result of the material breaches of the terms of the joint venture agreement by RAZUKI, Plaintiff HARCOURT has suffered, and continue to suffer, substantial monetary damages in an amount according to proof at time of trial.

SECOND CAUSE OF ACTION

BREACH OF LEASE AGREEMENT

(Plaintiff SDPCC Against Defendant RAZUKI INVESTMENTS)

50. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

51. Plaintiff SDPCC and Defendant RAZUKI INVESTMENTS entered into a written Lease in or around August 18, 2016. Pursuant to the terms of the Lease, tenant SDPCC is entitled to the exclusive and undisturbed enjoyment of the Property from October 1, 2016 to October 1, 2020, and SDPCC also has the option to extend the terms of the lease by five (5) years.

52. At all relevant times, Plaintiff SDPCC either had performed or was ready, willing and able to perform all conditions, covenants and promises required of it in accordance with the terms of the written lease agreement.

53. RAZUKI INVESTMENTS breached the Lease by denying Plaintiff SDPCC entry to the Property and interfering with Plaintiff SDPCC's right to occupy the Property as a tenant.

54. As a direct and proximate result of the material breaches of the terms of the written lease agreement by RAZUKI INVESTMENTS, Plaintiff SDPCC has suffered, and continues to suffer, substantial monetary damages in an amount according to proof at time of trial.

///

///

///

///

THIRD CAUSE OF ACTION

ANTICIPATORY BREACH OF ORAL AGREEMENT

(Plaintiff HARCOURT Against Defendants RAZUKI and RAZUKI INVESTMENTS)

55. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

56. Plaintiff HARCOURT and Defendant RAZUKI entered into an oral agreement in or around September 2016. Pursuant to this agreement, RAZUKI and RAZUKI INVESTMENTS agreed that in exchange for Plaintiffs having to give up one of the four spots within the district that may be used to operate an MMCC, RAZUKI and RAZUKI INVESTMENTS would pay HARCOURT in the amount of $1,500,000.00.

57. At all relevant times, Plaintiffs either had performed or were ready, willing and able to perform all conditions, covenants and promises required of him in accordance with the terms of the oral agreement.

58. RAZUKI anticipatorily repudiated the oral agreement before performance was required by clearly and positively indicating, by words and/or conduct, that RAZUKI would not pay HARCOURT $1,500,000.00 should CUP No. 1296130 be surrendered or Plaintiffs were otherwise required to give up one of the four spots within the district that may be used to operate an MMCC due to a dispute with the HOA.

59. As a direct and proximate result of the anticipatory breach of the terms of the oral agreement by RAZUKI, Plaintiff HARCOURT has suffered, and continue to suffer, substantial monetary damages in an amount according to proof at time of trial.

FOURTH CAUSE OF ACTION

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)

60. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

61. Under California law, there is implied in every contract a covenant by each party

not to do anything that will deprive the other parties thereto of the benefits of the contract. This covenant not only imposes upon each contracting party the duty to refrain from doing anything which would render performance of the contract impossible by any act of his own, but also the duty to do everything that the contract presupposes that he will do to accomplish its purpose.

62. Defendants RAZUKI and RAZUKI INVESTMENTS were at all times bound by such implied covenants of good faith and fair dealing.

63. Defendants RAZUKI and RAZUKI INVESTMENTS' conduct as alleged herein has unfairly interfered with the rights of Plaintiffs to receive the benefits of the joint venture agreement, the lease agreement, and the September 2016 oral agreement, and constitute a breach of the implied covenant of Good Faith and Fair Dealing.

64. Moreover, Defendants RAZUKI and RAZUKI INVESTMENTS' conduct as alleged herein, which injured Plaintiffs' right to receive the benefits of the agreements, was in bad faith due to Defendants RAZUKI and RAZUKI INVESTMENS' willful interference with and failure to cooperate with Plaintiffs in the performance of the contracts.

65. As a direct and proximate result of Defendants RAZUKI and RAZUKI INVESTMENTS' material breaches of the implied covenant of good faith and fair dealing inherent in the joint venture agreement, the lease agreement, and the September 2016 oral agreement, as alleged herein, Plaintiffs have suffered, and continue to suffer, substantial monetary damages in an amount to be proven at time of trial.

FIFTH CAUSE OF ACTION

BREACH OF CONTRACT WITH RESPECT TO A THIRD PARTY BENEFICIARY

(Plaintiff SDPCC Against Defendants RAZUKI and RAZUKI INVESTMENTS)

66. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

67. Defendant RAZUKI INVESTMENTS on the one hand, and High Sierra on the other hand, entered into a written Commercial Property Purchase Agreement on or around August 22, 2016, and also entered into a written Escrow Agreement on or August 24, 2016.

68. Although Plaintiff SDPCC was not a party to either the August 22, 2016 Commercial Property Purchase Agreement or the August 24, 2016 Escrow Agreement, Plaintiff SDPCC was an intended beneficiary of both agreements, in that the agreements provided for, among other things, the execution of an operating agreement and promissory note between SDPCC and San Diego Business Services Group, LLC, in which San Diego Business Services Group LLC would provide business services to SDPCC.

69. Defendant RAZUKI INVESTMENTS breached these aforementioned agreements, and RAZUKI INVESTMENTS' breaches deprived SDPCC from receiving the benefit of entering into a contractual and business relationship with San Diego Business Services Group, LLC.

70. As a direct and proximate result of the material breaches of the terms of aforementioned agreements by RAZUKI INVESTMENTS, Plaintiff SDPCC has suffered, and continues to suffer, substantial monetary damages in an amount according to proof at time of trial.

SIXTH CAUSE OF ACTION

PROMISSORY ESTOPPEL

(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)

71. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

72. Defendants RAZUKI and RAZUKI INVESTMENTS made a promise, which was clear and unambiguous in its terms.

73. Plaintiffs relied upon the promise made by Defendants RAZUKI and RAZUKI INVESTMENTS, and Plaintiffs' reliance was reasonable and foreseeable.

74. Plaintiffs were injured because of their reliance upon the promise made by Defendants RAZUKI and RAZUKI INVESTMENTS in an amount to be determined according to proof at Trial.

///

///

///

SEVENTH CAUSE OF ACTION

FALSE PROMISE

(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)

75. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

76. Defendants RAZUKI and RAZUKI INVESTMENTS made a promise to Plaintiffs, and this promise was important to the transaction.

77. Defendants RAZUKI and RAZUKI INVESTMENTS did not intend to perform this promise when they made it.

78. Defendants RAZUKI and RAZUKI INVESTMENTS intended that Plaintiffs rely on this promise, and Plaintiffs reasonably relied on Defendants RAZUKI and RAZUKI INVESTMENTS' promise.

79. Defendants RAZUKI and RAZUKI INVESTMENTS did not perform the promised act.

80. Plaintiffs were harmed, and Plaintiffs' reliance on Defendants RAZUKI and RAZUKI INVESTMENTS' promise was a substantial factor in causing Plaintiffs' harm.

81. Plaintiffs have been damaged in amount to be determined according to proof at Trial.

EIGHTH CAUSE OF ACTION

FRAUD

(Plaintiffs Against Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON)

82. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

83. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON represented to Plaintiffs that certain important facts were true – namely, that RAZUKI and RAZUKI INVESTMENTS would "move together as a team" with Plaintiffs, and that RAZUKI would sign the operating agreement between San Diego Business Services Group, LLC and SDPCC.

84. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON, and each of them, knew that these representations were false when they made them and/or made these representations recklessly and without regard for the truth.

85. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON intended that Plaintiff rely upon these representations, and Plaintiffs reasonably relied on these representations.

86. Plaintiffs were harmed, and Plaintiffs' reliance on Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON's representations were a substantial factor in causing them harm.

NINTH CAUSE OF ACTION

INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

(Plaintiffs Against Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED)

87. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

88. There were oral agreements between Plaintiff HARCOURT and Defendant RAZUKI, as well as a written Lease between Plaintiff SDPCC and Defendant RAZUKI INVESTMENTS.

89. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED knew of these agreements.

90. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED intended to disrupt the performance of these contracts.

91. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED's conduct prevented performance, or made performance more expensive or difficult.

92. Plaintiffs were harmed, and Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED's conduct was a substantial factor in

causing Plaintiffs' harm.

TENTH CAUSE OF ACTION

INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES

(Plaintiff SDPCC Against Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, HENDERSON, SAN DIEGO UNITED and AMERICAN LENDING)

93. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

94. Plaintiff SDPCC and various medical marijuana patients, distributors, cultivators, and/or manufacturers were in economic relationships that probably would have resulted in an economic benefit to SDPCC.

95. Defendants, and each of them, knew of these relationships.

96. Defendants intended to disrupt these relationships, or in the alternative, knew or should have known that these relationships would have been disrupted if they failed to act with reasonable care.

97. Defendants, and each of them, engaged in wrongful conduct through, among other things, fraud and interference with contractual relations.

98. Plaintiff SDPCC's relationships were disrupted.

99. Plaintiff SDPCC was harmed, and Defendants' wrongful conduct was a substantial factor in causing Plaintiff SDPCC's harm.

ELEVENTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(Plaintiff HARCOURT Against Defendant RAZUKI)

100. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

101. Plaintiff HARCOURT is informed and believes and based thereon alleges that, at all times material hereto, HARCOURT and RAZUKI were in a joint venture with each other, as

there was an undertaking by HARCOURT and RAZUKI to carry out a single business enterprise jointly for profit.

102. Plaintiff HARCOURT is informed and believes and based thereon alleges that, at all times material hereto, a fiduciary relationship existed between HARCOURT and RAZUKI pursuant to which RAZUKI owed HARCOURT a fiduciary duty to act at all times honestly, loyally, with the utmost good faith and in HARCOURT's best interests in that HARCOURT and RAZUKI's relationship was founded on trust and confidence, and HARCOURT knowingly undertook to act on behalf of and for the benefit of the joint venture between HARCOURT and RAZUKI.

103. Plaintiff HARCOURT is informed and believes and based thereon alleges that RAZUKI breached his fiduciary duty owed to HARCOURT.

104. As a direct and proximate result of these breaches, Plaintiff HARCOURT has been damaged in amount to be determined according to proof at Trial.

105. RAZUKI acted with malice and with a conscious disregard for Plaintiff HARCOURT's rights and interests in connection with the acts described herein. Plaintiff HARCOURT is therefore entitled to an award of punitive damages to punish Defendant RAZUKI's wrongful conduct and deter future conduct.

TWELFTH CAUSE OF ACTION

CIVIL CONSPIRACY

(Plaintiffs Against All Defendants)

106. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

107. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, and CALIFORNIA CANNABIS GROUP were aware that RAZUKI and RAZUKI INVESTMENTS planned to engage in wrongful acts directed towards Plaintiff, including (i) causing Plaintiffs to rely upon various misrepresentations and false promises and (ii) breaching the oral and written agreements entered into with Plaintiffs, such that an MMCC would

operate at the Property without Plaintiffs' involvement.

108. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, and CALIFORNIA CANNABIS GROUP agreed with RAZUKI and RAZUKI INVESTMENTS, and intended that these aforementioned wrongful acts be committed.

THIRTEENTH CAUSE OF ACTION

DECLARATORY RELIEF

(Plaintiff SDPCC Against Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING)

109. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

110. An actual dispute and controversy has arisen between Plaintiff SDPCC, on the one hand, and Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING, on the other, concerning their rights and duties with respect to the Lease. Plaintiff SDPCC contends that it has the exclusive right to occupy and enjoy the Property and operate an MMCC on the Property. Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING claim that they have the right to enter and permanently occupy the Property for their own benefit, and/or evict or otherwise restrict Plaintiff SDPCC from entering the Property and operating an MMCC on the Property.

111. Plaintiffs seeks a declaration of its rights and duties and Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING's rights and duties and specifically seeks a declaration that, Plaintiff SDPCC is entitled to the exclusive use and benefit of the Property during the terms of the Lease.

112. A judicial declaration is necessary and appropriate at this time, and under the circumstances, because if Plaintiffs are correct, Plaintiffs are entitled to all benefits and rights arising out of the Lease. For these reasons, it is appropriate for this Court to declare the rights and obligations of the parties with respect to the issues described above.

FOURTEENTH CAUSE OF ACTION

INJUNCTIVE RELIEF

(Plaintiffs Against Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING)

113. Plaintiffs incorporate by reference and re-allege each and every allegation contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

114. Plaintiffs are informed and believe and thereon allege that the actions and conduct of Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING, and each of them, as alleged herein, has caused, and threatens to cause, irreparable harm and injury to Plaintiffs inasmuch as Defendants, and each of them, continue to interfere with Plaintiff SDPCC's exclusive use and benefit of the Property during the terms of the Lease by preventing Plaintiff SDPCC from entering and/or occupying the Property, thereby preventing Plaintiff SDPCC from operating an MMCC on the Property.

115. The conduct of Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING, and each of them, unless enjoined and restrained by order of this Court, will cause great and irreparable injury to Plaintiff SDPCC inasmuch as Defendants, and each of them, contend that they have the right to restrict and/or deny Plaintiff SDPCC's access to the Property.

116. Plaintiff SDPCC has no adequate remedy at law for the injuries currently being suffered and/or which will be suffered, as it is, or will be, virtually impossible for Plaintiff to determine the precise amount of damages it will suffer if Defendants, and each of them, are not enjoined or restrained from interfering with Plaintiff SDPCC's exclusive use and benefit of the Property.

117. Plaintiffs also has no adequate remedy at law in that, without an injunction by the Court, preventing Defendants, and each of them, from further interfering with Plaintiff SDPCC's exclusive use and benefit of the Property, which includes operating an MMCC on the Property, the injury to Plaintiffs will continue indefinitely causing future losses and damages.

118. As a result of the foregoing acts and conduct, Plaintiffs requests that the Court enter a preliminary injunction and, thereafter, a permanent injunction, enjoining Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING, and each of them, and their agents, servants, employees, representatives, assigns, and all persons acting in concert with them, from directly or indirectly interfering with Plaintiff SDPCC's exclusive use and benefit of the Property during the terms of the Lease.

PRAYER

WHEREFORE, Plaintiffs SDPCC and HARCOURT pray for judgment against Defendants, and each of them, as follows:

AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF JOINT VENTURE AGREEMENT

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE SECOND CAUSE OF ACTION FOR BREACH OF LEASE AGREEMENT

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE THIRD CAUSE OF ACTION FOR ANTICIPATORY BREACH OF ORAL CONTRACT

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE FOURTH CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE FIFTH CAUSE OF ACTION FOR BREACH OF CONTRACT WITH RESPECT TO A THIRD PARTY BENEFICIARY

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE SIXTH CAUSE OF ACTION FOR PROMISSORY ESTOPPEL

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE SEVENTH CAUSE OF ACTION FOR FALSE PROMISE

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein;

3. For punitive and exemplary damages; and

4. For such other and further relief as the Court deems just and proper.

AS TO THE EIGHTH CAUSE OF ACTION FOR FRAUD

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein;

3. For punitive and exemplary damages; and

4. For such other and further relief as the Court deems just and proper.

AS TO THE NINTH CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein;

3. For punitive and exemplary damages; and

4. For such other and further relief as the Court deems just and proper.

AS TO THE TENTH CAUSE OF ACTION FOR INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONSHIP

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

1. For costs of suit incurred herein;

2. For punitive and exemplary damages; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE ELEVENTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

2. For consequential and incidental damages and prejudgment interest according to proof at trial.

3. For punitive and exemplary damages;

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court deems just and proper.

AS TO THE TWELFTH CAUSE OF ACTION FOR CIVIL CONSPIRACY

1. For consequential and incidental damages and prejudgment interest according to proof at trial.

2. For costs of suit incurred herein; and

3. For such other and further relief as the Court deems just and proper.

AS TO THE THIRTEENTH CAUSE OF ACTION FOR DECLARATORY RELIEF

1. For a declaration of Plaintiffs' rights and duties and Defendants' rights and duties, and Plaintiffs specifically seeks a declaration that during the terms of the Lease, Plaintiff SDPCC is entitled to the exclusive use and benefit of the Property.

AS TO THE FOURTEENTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF

1. An injunction preliminary and then permanently enjoining Defendants, and each of them and their agents, servants, employees, representatives, assigns, and all persons acting in concert with them, from directly or indirectly interfering with Plaintiff SDPCC's exclusive use and benefit of the Property during the terms of the Lease.

AS TO ALL CAUSES OF ACTION

1. For interest as may be provided by law;

2. For costs of suit incurred herein, and

3. For such other and further relief as the Court deems just and proper.

DATED: June 7, 2017

MESSNER REEVES LLP

By: _____

NIMA DAROUIAN
Attorneys for Plaintiffs,
SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC., and BRADFORD HARCOURT

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all claims and matters which it is entitled to a trial by jury.

DATED: June 7, 2017

MESSNER REEVES LLP

By: _____

NIMA DAROUIAN
Attorneys for Plaintiffs,
SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC., and BRADFORD HARCOURT

Exhibit 32

Steven A. Elia (State Bar No. 217200)
Maura Griffin (State Bar No. 264461)
James Joseph (State Bar No. 309883)
LAW OFFICES OF STEVEN A. ELIA, APC
2221 Camino Del Rio South, Suite 207
San Diego, California 92108
Telephone: (619) 444-2244
Facsimile: (619) 440-2233
Email: steve@elialaw.com
maura@elialaw.com
james@elialaw.com

Attorneys for Plaintiff
SALAM RAZUKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

v.

NINUS MALAN, an individual; MONARCH MANAGEMENT CONSULTING, INC. a California corporation; SAN DIEGO UNITED HOLDING GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; MIRA ESTE PROPERTIES, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; and DOES 1-100, inclusive,

Defendants,

CASE NO. 37-2018-00034229-CU-BC-CTL

COMPLAINT FOR DAMAGES FOR:

(1) BREACH OF CONTRACT
(2) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(3) BREACH OF ORAL AGREEMENT
(4) BREACH OF FIDUCIARY DUTY
(5) FRAUD AND DECEIT
(6) MONEY HAD AND RECEIVED
(7) CONVERSION
(8) ACCOUNTING
(9) APPOINTMENT OF RECEIVER
(10) INJUNCTIVE RELIEF
(11) DECLARATORY RELIEF
(12) CONSTRUCTIVE TRUST
(13) DISSOLUTION

DEMAND FOR JURY TRIAL

Plaintiff SALAM RAZUKI complains and alleges as follows:

I.
INTRODUCTION

1. For years, Salam Razuki ("Razuki") and Ninus Malan ("Malan") engaged in numerous business dealings and property investments. The two entered into certain oral agreements whereby Razuki would provide the initial cash investment to purchase a certain asset while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of that particular asset and Malan would be entitled to twenty-five percent (25%) of said profits & losses. Unfortunately, due to Malan's refusal to be completely forthcoming with the Partnership Assets (as defined below in Section III), this oral agreement became untenable and disputes arose. Instead of litigating the matter, Razuki and Malan decided to enter into an Agreement of Compromise, Settlement and Mutual General Release (referred to herein as the "Settlement Agreement") to memorialize their prior oral agreements and to describe additional duties and obligations for each of them. Under the Settlement Agreement, Razuki and Malan agreed to transfer all Partnership Assets into one entity, RM Property Holdings, LLC ("RM Holdings") which was formed for that particular business purpose. After recuperating any initial investments related to the Partnership Assets, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of RM Holdings and Malan would be entitled to twenty-five percent (25%) of the profits & losses of RM Holdings.

2. Even with the Settlement Agreement in place and RM Holdings formed, Malan continued to deceive Razuki and manipulate the Partnership Assets for his own gain. Shortly after the Settlement Agreement was signed, Malan began negotiations to sell some of the Partnership Assets while they were still under his name. During these sale negotiations, Malan never informed the potential buyer of Razuki's interest in the Partnership Assets. Based on information and belief, Malan intentionally stole and/or redirect revenue from the Partnership Assets to a new entity owned by Malan (*i.e.* Monarch). Given Malan's blatant breach of the Settlement Agreement and his clear intentions to conceal the profits of the Partnership Assets, Razuki now brings this instant Complaint in order to enforce the terms of the Settlement Agreement and take control of his Partnership Assets.

II.
PARTIES AND JURISDICTION

3. Plaintiff SALAM RAZUKI ("Razuki") is an individual residing in the County of San Diego, State of California.

4. Defendant NINUS MALAN ("Malan") is an individual residing in the County of San Diego, State of California.

5. Defendant MONARCH MANAGEMENT CONSULTING, INC. ("Monarch") is a California corporation organized under the laws of the State of California. Monarch's principal place of business is in the County of San Diego, State of California. Razuki is informed and believes and thereon alleges that Monarch has two shareholder, Chris Hakim (hereafter "Hakim") and Malan who are also the officers and directors of said corporation.

6. Defendant SAN DIEGO UNITED HOLDING GROUP, LLC ("SD United") is a California limited liability company organized under the laws of the State of California. SD United's principal place of business is in the in the County of San Diego, State of California.

7. Defendant FLIP MANAGEMENT, LLC ("Flip") is a California limited liability company organized under the laws of the State of California. Flip's principal place of business is in the in the County of San Diego, State of California.

8. Defendant MIRA ESTE PROPERTIES, LLC ("Mira Este") is a California limited liability company organized under the laws of the State of California. Mira Este's principal place of business is in the in the County of San Diego, State of California.

9. Defendant ROSELLE PROPERTIES, LLC ("Roselle") is a California limited liability company organized under the laws of the State of California. Roselle's principal place of business is in the in the County of San Diego, State of California.

10. The true names and capacities of defendants sued as DOES (the "DOE Defendants") are unknown to Razuki and therefore are sued under such fictitious names. Razuki is informed and believes, and based upon such information and belief alleges that defendants sued as DOES are in some manner responsible for the acts and damages alleged. Razuki will amend this complaint when the true names and capacities of such fictitiously named defendants are ascertained.

11. Malan, Monarch, SD United, Flip, Mira Este, Roselle and DOE Defendants are collectively referred to as "Defendants" hereinafter

12. Razuki is informed and believes, and thereon alleges that at all times mentioned

Defendants were acting as the agent, employee, attorney, accountant, and/or representative of each other and within the scope of the above-mentioned agency, employment, relationship, and/or representation. In doing the acts alleged, each defendant was acting with the full authority and consent of each other defendant.

13. Razuki is informed and believes and thereon alleges that some of the corporations, limited liability companies, and entities named as defendants herein including, but not limited to, Monarch, SD United, Flip, Mira Este, Roselle, and DOES 1 through 100, (hereinafter occasionally collectively referred to as the "Alter Ego Entities"), and each of them, were at all times relevant the alter ego of Malan (hereinafter occasionally collectively referred to as the "Individual Defendants") by reason of the following:

a. Razuki is informed and believes and thereon alleges that said Individual Defendants, at all times herein mentioned, dominated, influenced, and controlled each of the Alter Ego Entities and the officers thereof as well as the business, property, and affairs of each of said corporations.

b. Razuki is informed and believes and thereon alleges that, at all times herein mentioned, there existed and now exists a unity of interest and ownership between said Individual Defendants and each of the Alter Ego Entities; the individuality and separateness of said Individual Defendants and each of the Alter Ego Entities have ceased.

c. Razuki is informed and believes and thereon alleges that, at all times since the incorporation of each, each Alter Ego Entities has been and now is a mere shell and naked framework which said Individual Defendants used as a conduit for the conduct of their personal business, property and affairs.

d. Razuki is informed and believes and thereon alleges that, at all times herein mentioned, each of the Alter Ego Entities was created and continued pursuant to a fraudulent plan, scheme and device conceived and operated by said Individual Defendants, whereby the income, revenue and profits of each of the Alter Ego Entities were diverted by said Individual Defendants to themselves.

e. Razuki is informed and believes and thereon alleges that, at all times herein

mentioned, each of the Alter Ego Entities was organized by said Individual Defendants as a device to avoid individual liability and for the purpose of substituting financially irresponsible corporations in the place and stead of said Individual Defendants, and each of them, and accordingly, each Alter Ego Entities was formed with capitalization totally inadequate for the business in which said entities was engaged.

f. By virtue of the foregoing, adherence to the fiction of the separate corporate existence of each of the Alter Ego Entities would, under the circumstances, sanction a fraud and promote injustice in that Razuki would be unable to realize upon any judgment in his favor.

14. Jurisdiction is proper with the above-entitled Court as all parties are residents of this county and any contract/agreement that is the subject of this action was entered into in this jurisdiction and was to be performed entirely within the jurisdiction of this Court.

III.
GENERAL ALLEGATIONS

15. Since 2016, Razuki and Malan have engaged in numerous business dealings relating to property investments in San Diego County. The oral agreements between Razuki and Malan was simple: Razuki would provide the initial investment to purchase the property and Malan would manage the property (*e.g.* ensure upkeep and acquire tenants). After Razuki was paid back for his initial investment, Razuki would receive seventy-five percent (75%) of any profits while Malan would receive twenty-five percent (25%) of any profits.

16. Under this oral agreement, Razuki trusted Malan to provide proper accounting of the revenue generated from the various properties and provide him with the agreed upon profit split.

17. Over the years, Razuki and Malan have acquired the following interests, directly or indirectly, (the "Partnership Assets") in the following businesses and/or entities:

a. One hundred percent (100%) interest in SD United. SD United owns real property located at 8859 Balboa Avenue, Suites A-E, 8861 Balboa Avenue, Suite B, and 8863 Balboa Avenue, Suite E. Razuki and Malan own, directly or indirectly, a marijuana retail business located at 8861 Balboa Avenue and 8863 Balboa Avenue. Razuki provided all the initial monetary investment for SD United. However, on paper,

Malan owned a one-hundred percent (100%) in and to SD United.

b. One hundred percent (100%) interest in Flip. Flip served as the operating entity for Razuki and Malan's marijuana retail businesses located at 8861 Balboa Avenue and 8863 Balboa Avenue. Razuki provided all the initial monetary investment for this business. On paper, Malan owned a one-hundred percent (100%) in Flip.

c. Fifty percent (50%) interest in Mira Este. Mira Este owns real property located at 9212 Mira Este Court, San Diego, CA 92126. Razuki and Malan own, directly or indirectly, a marijuana distribution and manufacturing business located at 9219 Mira Este Court. Razuki provided fifty percent (50%) of the initial monetary investment for Mira Este. On paper, Malan owns a fifty percent (50%) ownership interest in Mira Este.

d. Fifty percent (50%) interest in Roselle. Roselle owns real property located at 10685 Roselle Street, San Diego, CA 92121. Razuki and Malan own, directly or indirectly, a marijuana cultivation business located at 10685 Roselle Street. Razuki provided fifty percent (50%) of the initial monetary investment for Roselle. On paper, Malan owns a fifty percent (50%) ownership interest in Roselle.

e. A twenty percent (20%) interest in Sunrise Property Investments, LLC ("Sunrise"). Sunrise owns real property located at 3385 Sunrise Street, San Diego, CA 92102.

f. A twenty-seven percent (27%) in Super 5 Consulting Group, LLC ("Super 5"). Super 5 is the operator of a marijuana dispensary located at 3385 Sunrise Street, San Diego, CA 92102.

18. For all the Partnership Assets, regardless of the paperwork, Razuki and Malan had an oral agreement that after recuperating the initial investments, Razuki would share in seventy-five percent (75%) of the profits & losses and Malan would share in twenty-five percent (25%) of the profits & losses.

19. For Mira Este and Roselle, Hakim provided fifty percent (50%) of the initial investment and owns a fifty percent (50%) ownership in Mira Este and Roselle.

20. SD United, Flip, Mira Este, and Roselle are all entities involved in Razuki and Malan's marijuana operations. The marijuana operations were structured as such:

a. California Cannabis Group (a non-profit entity where Malan serves as President and CEO), and Devilish Delights, Inc. (a non-profit entity where Malan serves as President and CEO) are the license holders for the marijuana operations.

b. Flip served as the operator for the marijuana operations.

c. SD United, Mira Este, and Roselle are the property owners for the physical location of the businesses and held the Conditional Use Permits (CUPs) for the marijuana operations.

21. Under this structure, Razuki believed all revenue and profits from the marijuana operations would be deposited into accounts owned by either SD United, Flip, Mira Este, or Roselle.

A. Dispute Regarding the Partnership Assets

22. Unfortunately, this oral agreement was untenable. The agreement provided Malan would maintain proper records of all the profits & losses from the businesses, which was not done.

23. Additional problems arose. In early 2017, Mira Este required capital for building renovations. Malan, as the property manager, approached The Loan Company of San Diego, LP to acquire a hard money loan for approximatley one million dollars ($1,000,000). Mira Este was the named borrower on the loan and Razuki signed on as the guarantor of the loan. Razuki provided additional property (property that was solely owned by Razuki) for collateral on the loan.

24. Because Razuki agreed to be guarantor and provided collateral, the loan was approved.

25. However, shortly after the funds were deposited into Mira Este's account, Malan intended and did take $390,000 of the new funds for his personal use.

26. To date, the funds Malan withdrew from Mira Este's account have not been repaid.

B. The Settlement Agreement

27. In order to memorialize the oral agreement and resolve any ambiguities in Razuki and Malan's business relationship, Razuki and Malan decided to enter into the Settlement Agreement. A copy of the Settlement Agreement is attached to this Complaint as **Exhibit A**.

28. The Settlement Agreement had three central components:

a. Razuki and Malan would transfer all the Partnership Assets into a newly created entity, RM Holdings within thirty (30) days;

b. Razuki and Malan would work together to calculate Razuki's cash investments

related to Partnership Assets within thirty (30) days; and,

c. After recuperating any initial cash investments, Razuki would receive seventy-five (75%) of the profits &loses of RM Holdings and Malan would receive twenty-five percent (25%) of the profits & loses of RM Holdings. This would essentially formalize the prior oral agreement Razuki and Malan had with respect to all their previous dealings regarding the Partnership Assets.

29. Razuki and Malan signed the Settlement Agreement on November 9, 2017.

C. Malan's Refusal to Perform on the Settlement Agreement and Fraudulent Conduct

30. Even after signing the Settlement Agreement, problems continued. After the thirty-day deadline to transfer Partnership Assets to RM Holdings had passed, Malan requested additional time to perform an accounting of the Partnership Assets.

31. Malan also made changes relating to the marijuana operations. Starting around late 2017, Malan contracted SoCal Building Ventures, LLC ("SoCal Building") to serve as the new operator for the marijuana operations located at SD United, Mira Este, and Roselle.

32. Under the terms of the contract with SoCal Building, SoCal Building would retain all revenue from the marijuana business. SoCal would then pay a monthly guaranteed payment to Monarch for the opportunity to manage and profit from the marijuana business. Despite this contract that required payment to Monarch, Malan informed Razuki that monthly guaranteed payment would be deposited into either SD United, Flip, Mira Este, or Roselle.

33. The contract with SoCal Building also entitled SoCal Building to an option to purchase a fifty percent (50%) interest in SD United, Mira Este, and Roselle.

34. Starting around January 2018, Malan and his counsel, David Jarvis, represented that Malan was close to completing the sale of SD United, Mira Este, and Roselle to SoCal Building. Malan and his counsel represented that transferring the properties to RM Holdings prior to the sale would make the deal "messy" and risk SoCal Building pulling out.

35. Based on these representations, Razuki trusted Malan and agreed to extend the time in which the parties were required to transfer all Partnership Assets to RM Holdings. Between January 2018 to May 2018, Malan consistently ensured Razuki that he was negotiating the sale and intended to split the assets 75/25.

36. While waiting for the sale to SoCal Building to be completed, Razuki requested information regarding the current cash flow for SD United, Flip, Mira Este, and Roselle. Malan informed Razuki that SD United, Flip, Mira Este, and Roselle were not producing any profits and were just breaking even. When asked for accounting, Malan said he would provide the accounting but never did.

37. On or about the second week of May 2018, Razuki met with the owner of SoCal Building, Dean Bornstein.

38. Mr. Bornstein informed Razuki that he was unaware of Flip. Rather, pursuant to the contract with Malan, SoCal Building deposited the monthly guarantee payment to Monarch.

39. Malan never informed Razuki of the existence of Monarch. Rather, Malan would consistently tell Razuki that revenue was being deposited to either SD United, Flip, Mira Este, or Roselle.

40. Mr. Bornstein also confirmed that the business was thriving and producing a significant profit (directly contradicting what Malan told Razuki between January 2018 and May 2018).

41. Mr. Bornstein was also unaware that Razuki had a substantial interest in SD United, Flip, Mira Este, and Roselle. Malan had concealed Razuki's involvement with the Partnership Assets and did not disclose the existence of RM Holdings to Mr. Bornstein. Rather, Mr. Bornstein believed he would be purchasing assets that solely belonged to Malan.

42. After having discovered this, Razuki learned of Malan's true intention, which was to cut Razuki out of any deal to sell SD United, Flip, Mira Este, and Roselle to SoCal Building thereby avoiding paying Razuki's his 75% share.

43. Razuki is informed and believes and thereon alleges that Malan intentionally concealed Razuki's interest in SD United, Flip, Mira Este, and Roselle as a member of RM Holdings.

44. To date, Malan has never transferred any of the Partnership Assets to RM Holdings. Nor has Malan signed any supplemental written agreements that would promise the proceeds of the sale of SD United, Flip, Mira Este, and Roselle to which Razuki was entitled.

45. As part of Razuki's efforts to perform under the Settlement Agreement, Razuki deposited roughly twenty-four thousand dollars ($24,000.00) into a bank account owned by RM Holdings. On July 9, 2018, Malan withdraw the funds without notifying Razuki and without stating any reason for

doing so. Malan withdrew this money without obtaining consent from RM Holdings.

46. Razuki is informed and believes and thereon alleges that Malan withdrew these funds from RM Holding for his personal use.

IV.
CAUSES OF ACTION

FIRST CAUSE OF ACTION
Breach of Written Contract
(Against Malan and DOES 1-100)

47. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

48. Razuki and Malan voluntarily entered into the written Settlement Agreement.

49. Razuki performed all duties required under the Settlement Agreement. Any duties Razuki may have failed to perform were excused either by circumstance or waived by Malan.

50. The Settlement Agreement requires Malan to:

a. transfer all the Partnership Assets into RM Holdings within thirty (30) days;

b. to calculate Razuki's cash investments related to Partnership Assets within thirty (30) days; and

c. reaffirm that after recuperating any initial cash investments, Razuki would receive seventy-five (75%) of the profits &losses of RM Holdings and Malan would receive twenty-five percent (25%) of the profits &losses of RM Holdings.

51. Malan has breached the Settlement Agreement by, *inter alia*, failing to transfer the Partnership Assets to RM Holdings and by not providing an accounting of Razuki's initial cash investments into the Partnership Assets. Instead, Malan has retained ownership of the Partnership Assets for his own personal benefit. Malan has also failed to provide an accounting of the monetary investments made for the Partnership Assets and hid the Partnership Assets' profits from Razuki.

52. As a direct and proximate cause of Malan's breach of the Settlement Agreement, Razuki has suffered substantial compensatory, incidental, and consequential damages.

SECOND CAUSE OF ACTION
Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against Malan and DOES 1-100)

53. Razuki realleges each and every paragraph of this Complaint as though fully set forth

here.

54. Razuki and Malan entered into the Settlement Agreement, which also created an implied covenant of good faith and fair dealing that the parties would not unfairly interfere with the rights of any other party.

55. The Settlement Agreement entitled Razuki to a portion of the profits and revenue generated by the Partnership Assets pursuant to its terms.

56. Malan has intentionally interfered with Razuki's right to these profits by, *inter alia*:

a. creating Monarch, and diverting revenue away from RM Holding and toward Monarch;

b. devaluing, taking and stealing the Partnership Assets (*e.g.* taking Mira Este's tenant improvement fund for his personal use and the $24,000 from RM Holdings bank account.);

c. intentionally concealing Razuki's interest in the Partnership Assets to third parties;

d. intentionally lying about the profits generated from the Partnership Assets; and

e. intentionally attempting to deny Razuki profits from the potential sale of the Partnership Assets.

57. As a direct and proximate cause of Malan's breach of the implied covenant, Razuki has suffered substantial compensatory, incidental, and consequential damages.

THIRD CAUSE OF ACTION
Breach of Oral Agreement
(Against Malan and DOES 1-100)

58. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

59. Pleading in the alternative, if the Court finds that the Settlement Agreement is not enforceable, Razuki and Malan previously entered into a valid oral agreement regarding the ownership interest for all Partnership Assets.

60. The oral agreement dictated that Razuki would provide the initial investment for the Partnership Assets and Malan would manage the assets. After recuperating the initial investment, Razuki would share in seventy-five percent (75%) of all the profits & losses and Malan would share in twenty-five percent (25%) of all the profits & losses.

61. The oral agreement also required Malan, as the manager of the properties and businesses, to provide Razuki with a proper accounting of all the Partnership Assets.

62. Razuki has fulfilled all obligations and duties required under the oral agreement by providing the initial investment for the Partnership Assets.

63. Malan has breached the oral agreement by not distributing the revenue and profits to Razuki and by not providing a proper accounting for Razuki.

64. As a direct and proximate cause of Malan's breach of the oral agreement, Razuki has suffered substantial compensatory, incidental, and consequential damages.

FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty
(Against Defendants Malan and DOES 1-100)

65. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

66. Malan, as a member of RM holding and as Razuki's agent/business partner, owed a fiduciary duty to Razuki.

67. Malan has breached his fiduciary duty in multiple ways including, but not limited to, the following:

a. failing to transfer ownership of the Partnership Assets to RM Holdings;
b. intentionally creating Monarch in order to divert revenue and profits away from Flip and/or RM Holdings for his own personal interest;
c. intentionally lying about the profits generated from the Partnership Assets;
d. intentionally concealing his intentions to maintain his sole ownership of the Partnership Assets by lying about his inability to provide proper accounting and delaying the transfer of Partnership Assets to RM Holdings; and
e. taking $24,000 out of RM Holdings bank account for his personal use.

68. These actions were not in the best interest of the business and constitute a blatant act of self-dealing.

69. As a direct and proximate cause of Malan's breach of his fiduciary duty, Razuki has suffered substantial compensatory, incidental, and consequential damages.

70. These actions were also intentional and fraudulent, entitling Razuki to seek punitive

and/or exemplary damages against Malan.

FIFTH CAUSE OF ACTION
Fraud and Deceit
(Against Malan and DOES 1-100)

71. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

Intentional Misrepresentation

72. Malan made a number of representations to Razuki. Specifically:

a. Between January 2018 and May 2018, on multiple occasions, Malan told Razuki that the Partnership Assets were not producing profits and were merely breaking even;

b. Between January 2018 and May 2018, on multiple occasions, Malan told Razuki that he was preparing an accounting of the Partnership Assets as per the Settlement Agreement; and

c. Between January 2018 and May 2018, on multiple occasions, Malan told Razuki that it was necessary to delay the transfer of the Partnership Assets to RM Holdings because effectuating the transfer immediately would sabotage the sale of the Partnership Assets to SoCal Building.

73. These representations made by Malan were false.

74. Malan knew these representations were false:

a. Since January 2018, Malan was fully aware of the truthful financial information regarding the Partnership Assets and knew they were producing profits;

b. Since January 2018, Malan knew he was not preparing the accounting for the Partnership Assets; and

c. Since January 2018, Malan knew that transferring the Partnership Assets to RM Holdings would not affect the deal with SoCal Building.

75. Malan intended to have Razuki to rely on these representations. Malan knew that telling Razuki these fraudulent misrepresentations would placate Razuki and would allow Malan to hide the profits and cash flow from the Partnership Assets.

76. Razuki reasonably reliable on these representations. He believed that he could trust Malan and that Malan would honor the Settlement Agreement. Because of this trust, Razuki did not

attempt to litigate this matter or make further demands upon Malan.

Intentional Concealment

77. Malan, as a fiduciary and business partner to Razuki, owed a duty to truthfully inform Razuki of all relevant information regarding the Partnership Assets.

78. Malan intentionally concealed a number of material facts from Razuki. Specifically:

a. Malan never informed Razuki that Malan created Monarch and directed SoCal Building to deposit all profits of the retail business into Monarch's account instead of Flip's account;

b. Malan never informed Razuki of his intention to sell off SD United, Flip, Mira Este, and Roselle without the agreed upon compensation owed to Razuki under both their oral agreement, as well as the Settlement Agreement.

79. Malan also concealed material facts from Razuki by denying Razuki access to the financial records of SD Untied, Flip, Mira Este, and Roselle.

80. Before May 2018, Razuki had no knowledge of Monarch or of Malan's true intention regarding the Partnership Assets. To date, Razuki is still being denied access to the accounts for SD Untied, Flip, Mira Este, and Roselle.

81. Malan intentionally concealed these facts in order to deceive Razuki into thinking that Malan would continue to honor their agreement (*i.e.* agreed upon profit split). Had Malan properly disclosed these facts, Razuki would have acted differently (*e.g.,* he likely would not have allowed any delay in transferring all Partnership Assets to RM Holdings).

False Promise

82. In November 2017, Malan agreed to the terms of the Settlement Agreement. However, when Malan agreed to this promise, he never intended on carrying out the terms of the Settlement Agreement. This is evidenced by Malan's immediate attempts to delay the execution of the Settlement Agreement in order to carry out the sale of SD United, Flip, Mira Este, and Roselle to SoCal Building.

83. Malan intended to have Razuki rely on this promise. Specifically, Malan believed that making this promise would placate Razuki so that Razuki would not demand further review or accounting of the Partnership Assets.

84. Razuki relied on the Settlement Agreement and assumed Malan would agree to the stated

promises.

85. Malan did not perform his promise, as he never performed any of the duties outlined in the Settlement Agreement.

86. As a direct and proximate cause of Malan's fraudulent misrepresentations, intentional concealment and false promises, Razuki has suffered substantial compensatory, incidental, and consequential damages.

87. These actions were also intentional and fraudulent, entitling Razuki to seek punitive or exemplary damages against Malan.

SIXTH CAUSE OF ACTION
Money Had and Received
(Against SD United, Flip, Mira Este, Roselle and DOES 1-100)

88. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

89. Pleading in the alternative, if the Court finds that the Settlement Agreement and the oral agreement are not enforceable, Razuki is entitled to have his initial investment returned or his ownership interest secured.

90. Over the course of his business relationship with Malan, Razuki has given money into SD United, Flip, Mira Este, and Roselle.

91. This money given to SD United, Flip, Mira Este, and Roselle by Razuki was intended to be an investment for Razuki for which he would receive substantial returns. Specifically, Razuki gave this money to secure a seventy-five percent (75%) ownership interest in SD United and Flip and a thirty-seven and one half percent (37.5%) ownership interest in Mira Este and Roselle.

92. The money given was not used for the benefit of Razuki, as Razuki still has not secured an ownership interest in these entities, nor have the entities been transferred to RM Holdings pursuant to the terms of the Settlement Agreement.

93. SD United, Flip, Mira Este, and Roselle have not returned to Razuki the funds which he contributed to the Partnership Assets.

94. Razuki is entitled to have any money given to these entities returned in full or have his ownership interest secured.

SEVENTH CAUSE OF ACTION
Conversion

(Against Malan, Monarch, and DOES 1-100)

95. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

96. Razuki holds a seventy-five percent (75%) interest in RM Holdings. RM Holdings, pursuant to the Settlement Agreement has a right to full ownership of all the Partnership Assets, and all revenue generated from the Partnership Assets. Therefore, any conduct that interferes with, devalues, or converts property of RM Holdings would directly interfere with Razuki's property rights.

97. Malan and Monarch have interfered with RM Holdings' property. Specifically:

a. Malan has refused to transfer all Partnership Assets to RM Holdings as per the Settlement Agreement;

b. Malan intentionally withdrew $1,000,000 from Mira Este's account that was intended for construction renovations;

c. Malan and Monarch have diverted funds away from Flip and towards Monarch thereby stealing money that belonged to RM Holdings and Razuki; and

d. Malan has withdrawn $24,000 from RM Holdings' bank account without permission from RM Holdings or Razuki and used said money for his personal gain.

98. Razuki has never consented to any of these actions by Malan or Monarch. In fact, Malan and Monarch have done most of these actions without even informing Razuki.

99. As a direct and proximate cause of Malan's fraudulent misrepresentations, intentional concealment and false promises, Razuki has suffered substantial compensatory, incidental, and consequential damages.

100. These actions were also intentional and fraudulent, entitling Razuki to seek punitive or exemplary damages against Malan.

EIGHTH CAUSE OF ACTION
Accounting
(Against Malan and DOES 1-100)

101. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

102. Malan has maintained exclusive control and possession of the Partnership Assets' books

and accounts. Razuki is informed and believes that Malan has taken, for his own use, large sums of money from the receipts and profits of the Partnership Assets exceeding his rightful share. It is impossible to know the amount owned to Razuki or whether outstanding debts are sufficient to exhaust the Partnership Assets without said accounting.

103. The Settlement Agreement required Malan to provide proper accounting for all Partnership Assets. Despite this written agreement, Malan has refused and continues to refuse to account to Razuki concerning their allocation of Partnership Assets profits/loses.

104. Razuki demands a full and proper accounting of the Partnership Assets to properly assess potential damages.

NINTH CAUSE OF ACTION
Appointment of Receiver
(Against SD United, Flip, Roselle, Mira Este, Monarch and DOES 1-100)

105. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

106. Razuki is informed and believes and upon such information and belief alleges that unless a receiver is appointed, the property and accounts of the Partnership Assets are in danger of being lost, removed or materially injured since Malan are in control of all Partnership Assets and is applying those assets to their own use.

107. Razuki is informed and believes and thereon alleges that Malan is intentionally concealing his true intention with the hope of diverting funds away from the Partnership Assets and towards other entities that are separate from Razuki. In order to protect these entities from further waste and, the Court must appoint a receiver to take control of SD United, Flip, Mira Este, Roselle, and Monarch.

108. Razuki requests that a temporary restraining order and preliminary and permanent injunctions in aid of the receiver prohibiting Malan and their agents, employees, and/or representatives from engaging in, or performing, directly or indirectly, any or all of the following acts:

a. committing or permitting any waste of the SD United, Flip, Mira Este, Roselle, and Monarch;

b. interfering, hindering or molesting in any way whatsoever the receiver in the performance of the receiver's duties and in this performance of any duties incidental

thereto;

c. transferring, directly or indirectly, any interest by sale, assignment or encumbrance in any manner any of SD United, Flip, Mira Este, Roselle, and Monarch, and all proceeds thereof;

d. moving any of the assets of SD United, Flip, Mira Este, Roselle, and Monarch from any location;

e. transferring, concealing, destroying, defacing and altering any of SD United, Flip, Mira Este, Roselle, and Monarch's books and records;

f. demanding, collecting, receiving or in any way diverting or using the assets of SD United, Flip, Mira Este, Roselle, and Monarch or proceeds therefrom;

g. Failing or refusing to immediately turn over to the receiver all assets of SD United, Flip, Mira Este, Roselle, and Monarch, and all moneys, checks, funds or proceeds belonging to or for the benefit of Razuki.

TENTH CAUSE OF ACTION
Injunctive Relief
(Against Malan and Monarch and DOES 1-100)

109. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

110. Currently, revenue that is meant for Flip is wrongly being diverted to Monarch.

111. Also, there is a genuine possibility that Malan will transfer a substantial portion of the Partnership Assets before the conclusion of this instant litigation.

112. Unless Malan is immediately enjoined from selling, transferring, conveying, or otherwise secreting receipts, profits, and/or property of the Partnership Assets, Razuki will suffer great irreparable harm, as selling the Partnership Assets will make it impossible for Razuki to determine and receive his share of the Partnership Assets.

113. For this reason, we ask the Court to impose an injunction that:

a. Prohibits sale of SD United, Flip, Mira Este, and Roselle until the conclusion of this litigation;

b. Prohibits the sale of Monarch and imposes a freeze on all accounts associated with Monarch;

c. Requires that all future monies paid to Monarch be transferred and deposited into an account owned by Flip;

d. Requires the transfer of all Partnership Assets to RM Holdings; and

e. Require Malan to return the $24,000 he withdrew from RM Holdings' account.

ELEVENTH CAUSE OF ACTION
Declaratory Relief
(Against Malan and DOES 1-100)

114. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

115. An actual controversy has arisen and now exists between Razuki and Malan concerning their respective interest, rights and duties related to the Partnership Assets and RM Holding.

116. A judicial declaration is necessary and appropriate at this time under the circumstances in order that Razuki may ascertain the rights and duties of the parties.

117. Razuki has suffered, and continues to suffer, financially by the unsettled state of affairs. Malan's actions in denying Razuki's interest in the Partnership Assets has been to Razuki's detriment and Razuki has incurred damages in an amount to be proven at trial.

118. Razuki desires a judicial determination of his rights and duties, and a declaration as to the ownership and management of the Partnership Assets. Specifically, Razuki request the Court declares:

a. Razuki has a seventy-five percent (75%) ownership interest in all Partnership Assets;

b. Razuki has not fully recuperated his initial investment in the Partnership Assets and is entitled to full recuperation before any additional profits or revenue are distributed;

c. Malan wrongfully utilized the tenant improvement funds intended for Mira Este for their own personal gain; and,

d. All funds currently owned or possessed by Monarch are ill-gotten gains and truly belong to Flip or RM Holdings.

TWELFTH CAUSE OF ACTION
Constructive Trust
(Against Malan and Monarch and DOES 1-100)

119. Razuki realleges each and every paragraph of this Complaint as though fully set forth here.

120. Malan has gained an ownership interest in the Partnership Assets by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act.

121. Malan have wrongfully taken money designated for use by Mira Este for his personal gain.

122. Monarch has received ill-gotten funds by Malan's scheme to wrongfully divert funds intended for Flip to Monarch

123. Razuki is entitled to seventy-five percent (75%) of all Partnership Assets, including seventy-five percent (75%) of all money transferred to Monarch.

124. Razuki is entitled to relief in the form of a constructive trust and asks the Court to declare:

a. Seventy-five (75%) ownership interest in Partnership Assets were wrongfully obtained by Malan and are therefore held in involuntary trust for the benefit of Razuki, pursuant to Civ. Code. §2223 and §2224; and

b. All proceeds of Monarch received by SoCal Building were wrongfully obtained by Monarch and are therefore held in involuntary trust for the benefit of Flip and/or RM Holdings.

c. All money taken by Malan from Mira Este that were supposed to be used for renovations were wrongfully obtained and therefore held in involuntary trust for the benefit of Mira Este.

d. The $24,000 withdrawn from RM Holdings' account by Malan was wrongfully obtained and therefore held in involuntary trust for the benefit of RM Holdings.

THIRTEENTH CAUSE OF ACTION
Dissolution of RM Holdings
(Against Malan and DOES 1-100)

1. Razuki realleges each and every paragraph of this Complaint as though fully set forth

here.

2. For the reasons stated in this Complaint, dissolution of RM Holdings is necessary to protect the rights of Razuki, the majority interest member.

3. For the reasons stated in this Complaint, dissolution of RM Holdings is necessary as Malan is guilty of persistent fraud mismanagement and abuse of his authority.

4. Razuki request the Court issue a judicial decree dissolving RM Holdings after all Partnership Assets are transferred to RM Holdings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the court for judgment as follows:

For the First Cause of Action (Breach of Written Contract)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For costs incurred in this action;
4. For such other and further relief as the Court may deem proper.

For the Second Cause of Action (Breach of the Implied Covenant)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For costs incurred in this action;
4. For such other and further relief as the Court may deem proper.

For the Third Cause of Action (Breach of the Oral Agreement)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For costs incurred in this action;
4. For such other and further relief as the Court may deem proper.

For the Fourth Cause of Action (Breach of Fiduciary Duty)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For punitive/exemplary damages;

4. For costs incurred in this action;
5. For such other and further relief as the Court may deem proper.

For the Fifth Cause of Action (Fraud and Deceit)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For punitive/exemplary damages;
4. For costs incurred in this action;
5. For such other and further relief as the Court may deem proper.

For the Sixth Cause of Action (Money Had and Received)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For punitive/exemplary damages;
4. For costs incurred in this action;
5. For such other and further relief as the Court may deem proper.

For the Seventh Cause of Action (Conversion)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For punitive/exemplary damages;
4. For costs incurred in this action;
5. For such other and further relief as the Court may deem proper.

For the Eighth Cause of Action (Accounting)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;
3. For an accounting of all Partnership Assets.
4. For costs incurred in this action;
5. For such other and further relief as the Court may deem proper.

For the Ninth Cause of Action (Appointment of Receiver)

1. For just compensation as determined by the Court;
2. For attorneys' fees as permitted by contract and/or law;

3. For costs incurred in this action;
4. For an appoint of a Receiver to take control of SD United, Flip, Mira Este, Roselle and Monarch until the parties' rights to each entity are determined.
5. For a temporary restraining order and preliminary and permanent injunctions in aid of the receiver prohibiting Malan and his agents, employees, and/or representatives from engaging in, or performing, directly or indirectly, any or all of the following acts:
    a. committing or permitting any waste of the SD United, Flip, Mira Este, Roselle, and Monarch;
    b. interfering, hindering or molesting in any way whatsoever the receiver in the performance of the receiver's duties and in this performance of any duties incidental thereto;
    c. transferring, directly or indirectly, any interest by sale, assignment or encumbrance in any manner any of SD United, Flip, Mira Este, Roselle, and Monarch, and all proceeds thereof;
    d. moving any of the assets of SD United, Flip, Mira Este, Roselle, and Monarch from any location;
    e. transferring, concealing, destroying, defacing and altering any of SD United, Flip, Mira Este, Roselle, and Monarch's books and records;
    f. demanding, collecting, receiving or in any way diverting or using the assets of SD United, Flip, Mira Este, Roselle, and Monarch or proceeds therefrom;
    g. Failing or refusing to immediately turn over to the receiver all assets of SD United, Flip, Mira Este, Roselle, and Monarch, and all moneys, checks, funds or proceeds belonging to or for the benefit of Razuki.
6. For such other and further relief as the Court may deem proper.

For the Tenth Cause of Action (Injunctive Relief)

1. For an injunction that:
    a. Prohibits sale of SD United, Flip, Mira Este, and Roselle until the conclusion of this litigation;

b. Prohibits the sale of Monarch and imposes a freeze on all accounts associated with Monarch;

c. Requires that all future monies paid to Monarch be transferred and deposited into an account owned by Flip; and,

d. Requires the transfer of all Partnership Assets to RM Holdings.

e. Require Malan to return the $24,000 he withdrew from RM Holdings' account.

2. For costs incurred in this action;

3. For such other and further relief as the Court may deem proper.

For the Eleventh Cause of Action (Declaratory Relief)

1. For a judicial declaration stating:

a. Razuki has a seventy-five percent (75%) ownership interest in all Partnership Assets;

b. Razuki has not fully recuperated his initial investment in the Partnership Assets and is entitled to full recuperation before any additional profits or revenue are distributed;

c. Malan wrongfully utilized the tenant improvement funds intended for Mira Este for their own personal gain; and,

d. All funds currently owned or possessed by Monarch are ill-gotten gains and truly belong to Flip or RM Holdings.

2. For costs incurred in this action;

3. For such other and further relief as the Court may deem proper.

For the Twelfth Cause of Action (Constructive Trust)

1. For a judicial declaration stating:

a. Seventy-five (75%) ownership interest in Partnership Assets were wrongfully obtained by Malan and are therefore held in involuntary trust for the benefit of Razuki, pursuant to Civ. Code. §2223 and §2224; and

b. All proceeds of Monarch received by SoCal Building were wrongfully obtained by Monarch and are therefore held in involuntary trust for the benefit of Flip and/or RM Holdings.

c. All money taken by Malan from Mira Este that were supposed to be used for renovations were wrongfully obtained and therefore held in involuntary trust for the benefit of Mira

Este.

d. The $24,000 withdrawn from RM Holdings' account by Malan was wrongfully obtained and therefore held in involuntary trust for the benefit of RM Holdings.

2. For costs incurred in this action;

3. For such other and further relief as the Court may deem proper.

For the Thirteenth Cause of Action (Dissolution)

1. For a judicial decree dissolving RM Holdings after all Partnership Assets have been transferred to RM Holdings.

2. For costs incurred in this action;

3. For such other and further relief as the Court may deem proper.

DATED: 7/10/18

LAW OFFICES OF STEVEN A. ELIA, APC

By: _____

Steve A. Elia
Maura Griffin
James Joseph
Attorneys for Plaintiff SALAM RAZUKI

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully requests a trial by jury.

DATED: 7/10/18

LAW OFFICES OF STEVEN A. ELIA, APC

By: _____

Steve A. Elia
Maura Griffin
James Joseph
Attorneys for Plaintiff SALAM RAZUKI

EXHIBIT A

AGREEMENT OF COMPROMISE, SETTLEMENT, AND MUTUAL GENERAL RELEASE

This AGREEMENT OF COMPROMISE, SETTLEMENT, AND MUTUAL GENERAL RELEASE ("Agreement") is entered into by and between SALAM RAZUKI (hereinafter collectively "RAZUKI"), on the one hand, and and NINUS MALAN (hereinafter "MALAN"), on the other. The persons to this Agreement may sometimes be referred to collectively as the "Parties" or separately as "Party". This Agreement is entered into with reference to the recitals set forth in the Article titled "Recitals" below and constitutes (i) a settlement agreement between the Parties and (ii) a mutual release of all liabilities of the Parties arising out of the matters described below and except as expressly otherwise noted herein.

ARTICLE I.
RECITALS

This Agreement is entered into with reference to the following facts:

1.1 RAZUKI and MALAN have engaged in several business transactions, dealings, agreements (oral and written), promises, loans, payments, related to the acquisition of real property and interests in various medical marijuana businesses. Specifically, RAZUKI and MALAN have each invested certain sums of capital for the acquisition of the following assets (collectively hereinafter referred to as the "Partnership Assets"):

(a) MALAN'S one hundred percent (100%) membership interest in SAN DIEGO UNITED HOLDING GROUP LLC, a California Limited Liability Company, and record owner of the following properties:

i. The real property commonly known as 8859 BALBOA AVE., STE.. A, SAN DIEGO, CA 92123.

ii. The real property commonly known as 8859 BALBOA AVE., STE.. B, SAN DIEGO, CA 92123.

iii. The real property commonly known as 8859 BALBOA AVE., STE.. C, SAN DIEGO, CA 92123.

iv. The real property commonly known as 8859 BALBOA AVE., STE.. D, SAN DIEGO, CA 92123.

v. The real property commonly known as 8859 BALBOA AVE., STE.. E, SAN DIEGO, CA 92123.

vi. The real property commonly known as 8861 BALBOA, STE. B, SAN DIEGO, CA 92123.

vii. The real property commonly known as 8863 BALBOA, STE. E,

SAN DIEGO, CA 92123.

(b) One hundred percent (100%) membership interest in FLIP MANAGEMENT LLC, a California Limited Liability Company.

(c) MALAN'S fifty percent (50%) membership interest in MIRA ESTE PROPERTIES LLC, a California Limited Liability Company, and record owner of the real property commonly known as 9212 MIRA ESTE CT., SAN DIEGO, CA 92126.

(d) MALAN'S Fifty percent (50%) membership interest in ROSELLE PROPERTIES, LLC, a California Limited Liability Company, and record owner of the real property commonly known as 10685 ROSELLE ST., SAN DIEGO, CA 92121.

(e) RAZUKI'S twenty percent (20%) membership interest in SUNRISE PROPERTY INVESTMENTS, LLC, a California Limited Liability Company, the record owner of the real property located 3385 SUNRISE STREET, SAN DIEGO, CA 92012.

(f) RAZUKI'S twenty seven percent (27%) membership interest in SUPER 5 CONSULTING GROUP, LLC, a California Limited Liability Company, which is the operator of a medical marijuana dispensary located at 3385 SUNRISE STREET, SAN DIEGO, CA 92012.

1.2 RAZUKI and MALAN have an understanding such that regardless of which Party or entity holds title and ownership to the Partnership Assets, RAZUKI is entitled to a seventy-five percent (75%) interest in the capital, profits, and losses of each Partnership Asset and MALAN is entitled to a twenty five percent (25%) interest, and no Party is entitled to receive any profits whatsoever until, and unless the Parties have first been repaid their investment in full (hereinafter referred to as the "Partnership Agreement").

1.3 RAZUKI and MALAN have now formed RM PROPERTY HOLDINGS, LLC, a California Limited Liability Company (the "Company"), whereby RAZUKI and MALAN have agreed to transfer title to the Partnership Assets to the Company, and forever resolve any and all matters, claims or controversies that each Party may have against each other related to the Partnership Agreement as stated in this Agreement.

1.4 RAZUKI and MALAN have not recouped their financial investments in the Partnership Assets.

1.5 The Parties consider it to be in their best interests, in light of the cost of litigation, and to their best advantage, to forever dismiss, settle, adjust and compromise all claims and defenses which have been, or could have been asserted relative to their Partnership Agreement.

1.6 All claims are denied and contested, and nothing contained herein should be construed as an admission by any Party hereto of any liability of any kind to any other Party hereto or to any other person.

1.7 The Parties now wish to settle the dispute between them and forever release,

discharge, and terminate any and all liabilities arising out of, or existing or emanating from their Partnership Agreement, including all demands and causes of action, whether state, federal, or administrative, and whether actually raised or could have been raised by way of complaint, supplemental complaint, or cross-complaint except as expressly otherwise set forth within this Agreement. In order to effectuate this release, the Parties hereto enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants, and upon the conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE II
TERMS OF SETTLEMENT

2.1 Transfer of Partnership Assets to the Company. The Parties shall use their best efforts to effectuate the transfer of the Partnership Assets to the Company within thirty (30) days, and shall execute any and all further documents as may be necessary to carry out the same.

2.2 Financial Accounting. The Parties agree to work in good faith to calculate each of their respective cash investment amounts in the Partnership Assets within thirty (30) days and shall execute an amendment or exhibit to this Agreement to memorialize the same. Once executed, the exhibit or amendment shall be incorporated and become a part of this Agreement as though set forth originally (the "Accounting"). For avoidance of doubt, the amount agreed to in the Accounting shall be the amount of cash capital investment that must be first repaid to the Parties by the Company before either Party receives any profits therein (each referred to as the "Partners' Cash Investment").

2.3 The Company's Operating Agreement. The Parties hereby reaffirm and acknowledge the terms of the Operating Agreement provide for repayment of the Partners' Cash Investment prior to any distribution of profits and losses. The Parties further reaffirm that once the Partners' Cash Contribution has been repaid by the Company, then RAZUKI shall receive seventy five percent (75%) of the profits and losses of the Company and MALAN shall receive twenty five percent (25%), all as set forth under the terms of the Operating Agreement. It is the Parties' intention that once the Partnership Assets have been transferred to the Company and the Accounting has been agreed upon, then all other business matters shall be governed and controlled by the terms of the Operating Agreement and the Parties shall thereafter be released from all further liability to each other arising under their Partnership Agreement as set forth below.

ARTICLE III
MUTUAL GENERAL RELEASE OF ALL CLAIMS

3.1 General Release. In consideration of the terms and provisions of this Agreement, the Parties hereto, on behalf of themselves, successors, and assigns, hereby forever relieve, release, and discharge each other, and their respective successors and assigns, and all of their respective present and former attorneys, accountants, agents, employees, representatives,

administrators, insurers, partners, directors, officers, shareholders, and heirs of and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs, and expenses, including but not limited to attorney's fees, damages, actions, and causes of action of whatsoever kind or nature, specifically including those related to in any way, directly or indirectly, to any alleged past, present, or future claims for violations of any state, federal, or administrative code or statue, or any type of tort or conversion, or indemnification, contribution, or declaratory relief based on any type of allocation of fault, whether now known or unknown, suspected or unsuspected, based on, arising out of, or in connection with anything whatsoever done, omitted, or suffered to be done at any time, relating to, or in any matter connected with, directly or indirectly, the matters, facts or claims related to their Partnership Agreement as set forth in the Article of this Agreement titled "Recitals". This Agreement shall not be interpreted to bar any claims for the enforcement of the provisions of this Agreement or any provision of the Company's Operating Agreement. Furthermore, this release and settlement shall only be effective upon (i) the transfer to the Company of the Partnership Assets pursuant to section 2.1 above, and (ii) execution of an amendment or exhibit related to the Accounting. Thereafter, the Parties shall forever be barred from bringing any claims related to the Partnership Agreement as set forth herein, and all claims or controversies shall be governed by the terms of the Company's Operating Agreement.

3.2 Waiver under Section 1542 of the California Civil Code. The Parties hereto expressly waive any and all rights under Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

In connection with such waiver and relinquishment, the Parties acknowledge that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believes to be true. Nevertheless, it is the intention of the Parties, through this Agreement, and with the advice of counsel, if any, to fully, finally, and forever settle this dispute. Pursuant to that intention, the Parties expressly consent that this release shall have the same full force and effect as to unknown and unsuspected claims, demands, and causes of action, if any, as to those terms and provisions relating to claims, demands, and causes of action hereinabove specified.

3.3 Representations and Warranties. The Parties hereby represent and warrant to, and agree with each other as follows:

(a) The Parties hereto, and each of them, represent and declare that in executing this Agreement they have relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, if any, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by the other party hereto or by any person representing him or it.

(b) Except as expressly stated in this Agreement, neither of the Parties have made any statements or representations regarding any fact relied upon in entering into this Agreement, and the Parties specifically do not rely on any statements, representations, or promises in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement;

(c) The Parties, and their attorneys, if desired, have made such investigation of the facts pertaining to this Agreement and all of the matters pertaining thereto, as they deem necessary;

(d) The terms of this Agreement are contractual, not a mere recital, and are the result of negotiations between the Parties;

(e) The Recitals to this Agreement are expressly made a part hereof;

(f) This Agreement has been carefully read by the Parties hereto, and if they choose, by their attorneys; it is signed freely by each person executing this Agreement and each person executing this Agreement is empowered to do so.

(g) In entering into this Agreement, the Parties recognize that no facts or representations are absolutely certain. The Parties acknowledge that they are aware that they may, after execution of this Agreement, discover facts different from or in addition to those they now know or believe to be true with respect to the liabilities, actions or causes of action to be released. Accordingly, the Parties each assume their own risk of any incomplete disclosure or mistake. If the Parties, or each of them, should subsequently discover that any fact it relied upon in entering into this Agreement was untrue, or that any understanding of the facts or of the law was incorrect, such party shall not be entitled to set aside this Agreement by reason thereof. This Agreement is intended to be final and binding between the Parties hereto, and is further intended to be effective as a final accord and satisfaction between the Parties. The Parties are relying on the finality of this Agreement as a material factor inducing the Parties' execution of this Agreement.

(h) The consideration specified herein is given for the purpose of (i) settling and compromising all claims and disputes which have arisen between the Parties, and (ii) releasing the Parties by operation of this Agreement from any an all claims and liabilities, past, present, and future, that have or may arisen out of the matters described in the Article titled "Recitals". Neither the payment nor tender of consideration, nor anything herein, shall be construed as an admission by any of the Parties, their agents, servants or employees , of any liability of any kind to the other.

(i) The Parties represent and warrant that they have not heretofore transferred or assigned or purported to transfer or assign to any person, firm, or corporation any claim, demand, damage, debt, liability, account, action or cause of action herein to be released.

(j) The Parties acknowledge the adequacy of the consideration given for the release

of all Parties in this Agreement and understands that irrespective of whether the consideration is expressly described herein, adequate consideration exists for the release of all Parties under this Agreement.

3.4 Non-Disparagement. The Parties further agrees not to make any statement or take any action, directly or indirectly, that harms, or could harm, the other Party's business interests, reputation or good will, including any statements that may be made to any past, current, or prospective employees, vendors, or any other third parties whatsoever. Accordingly, the Parties shall not make any statements, written or oral, which disparage the other; however, this provision shall not prevent the any Party from truthfully responding to any inquiry required by law or pursuant to a court order.

ARTICLE IV
GENERAL PROVISIONS

4.1 Integration. This Agreement constitutes a single, integrated, written contract expressing the entire Agreement of the Parties hereto relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as specifically set forth in this Agreement. All prior discussions and negotiations, if any, are superseded by this Agreement.

4.2 No Construction Against Drafter. Each party to this Agreement and its legal counsel have reviewed and revised this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement. This Agreement shall not be deemed prepared or drafted by one party or another, or its attorneys, and will be construed accordingly.

4.3 Modification. No modification, waiver, amendment, discharge, or any change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

4.4 Heirs, Successors, and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the heirs, successors, and assigns of the Parties hereto, and each of them.

4.5 Severability. In the event that any term, covenant, condition, or provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions hereof shall remain in full force and effect.

4.6 Governing Law. This Agreement shall be construed in accordance with, and be governed by the laws of California.

4.7 Venue and Jurisdiction. In the event that any action, suit, or other proceeding arising from this Agreement is instituted, the parties agree that venue for such action shall be in San Diego County, and that personal jurisdiction and subject matter jurisdiction shall be

exercised by the Superior Court of the State of California, in and for the County of San Diego, Central Division.

4.8 Execution in Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement shall be deemed to be executed on the last date any such counterpart is executed.

4.9 Facsimile Signatures. This Agreement may be executed and a copy of such executed Agreement transmitted by facsimile, which when received can be used as an original of the Agreement for all purposes.

4.10 Costs and Attorney's Fees. The Parties hereto agree to bear his or its own costs and attorney's fees, and each party hereby waives any statute, rule of court, or other law, awarding costs, fees, or expenses relating to any litigation. Said waiver shall be effective with respect to the statutes, rules of court, or other laws or provisions of the United States and/or of each state, including, without limitation, the State of California. However, in the event that any action, suit, or other proceeding is instituted to interpret and/or enforce this Agreement, or arising out of a breach of this Agreement, the prevailing party shall recover all of such party's reasonable attorney's fees and costs incurred in each and every action, suit, or other proceeding, including any and all appeals or petitions therefrom.

4.11 Waiver. Any waiver of a default under this Agreement must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. Consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or a subsequent act.

4.12 Confidentiality. The terms of this Agreement are confidential. The Parties expressly understand and agree that it shall constitute a breach of this Agreement to disclose or communicate the terms of this settlement or to disseminate this Agreement to any third party (unless required by Court order or operation of law or to the Parties' respective attorneys, accountants or tax advisers).

4.13 Time of Essence. The Parties hereto agree and confirm that time is of the essence for execution, completion, and full performance of the terms and conditions of this agreement.

////

////

////

////

IN WITNESS WHEREOF, the Parties hereto have each approved and executed this Agreement on the dates set forth opposite their respective signatures.

RAZUKI

Dated: 11/9/17

By: _____
SALAM RAZUKI

MALAN

Dated: 11/9/17

By: _____
NINUS MALAN

Exhibit 33

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALAM RAZUKI (1),
SYLVIA GONZALES (2),
and
ELIZABETH JUAREZ (3),

Defendants.

Case No.: 18MJ5915

COMPLAINT

Title 18, United States Code, Section 956 - Conspiracy to kill, kidnap, maim an individual
Title 18, United States Code, Section 1201(c) - Conspiracy to kidnap

The undersigned complainant being duly sworn states:

COUNT 1

On a date unknown and continuing through on or about November 16, 2018, within the Southern District of California, defendants SALAM RAZUKI, SYLVIA GONZALES, and ELIZABETH JUAREZ did knowingly and intentionally conspire to commit at a place outside the United States, to wit: Mexico, an act that would constitute the offense of murder, kidnapping or maiming if committed in the special maritime and territorial jurisdiction of the United States, in violation of Title 18, United States Code, Section 956.

COUNT 2

On a date unknown and continuing through on or about November 16, 2018, within the Southern District of California, defendants SALAM RAZUKI, SYLVIA GONZALES, and ELIZABETH JUAREZ did conspire with one another to willfully seize, confine, inveigle, kidnap, abduct and carry away N.M. for another purpose, to wit: intimidation and murder, and to transport N.M. in foreign commerce from the United States to Mexico, in violation of Title 18, United States Code, Section 1201(c).

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

MICHELLE HART
FBI Special Agent

Sworn to before me and subscribed in my presence

this 16 day of November, 2018.

HONORABLE WILLIAM V. GALLO
UNITED STATES MAGISTRATE JUDGE

Probable Cause Statement

On or about October 17, 2018, SALAM RAZUKI and SYLVIA GONZALES met with a Confidential Human Source (CHS1) requesting CHS1 arrange to kill one of their business associates, N.M.[1] According to RAZUKI and GONZALES, they had invested in multiple properties and business ventures together and were now involved in a civil dispute over their assets. RAZUKI and GONZALES told CHS1 that they wanted CHS1 to "shoot him [N.M.] in the face," "to take him to Mexico and have him whacked," or kill him in some other way. RAZUKI and GONZALES provided CHS1 a picture of N.M., which CHS1 provided to the FBI.

On or about November 5, 2018, CHS1 met with GONZALES at The Great Maple in San Diego, CA. During the meeting, GONZALES asked if CHS1 could "get rid of Salam's [RAZUKI] other little problem, [N.M.], because it looks like they're going to appeal.... I would love for him [N.M.] to go to TJ and get lost. Just leave him over there." GONZALES said the civil dispute between her, RAZUKI, and N.M. was over $44 million dollars. GONZALES went on to say, "It's no joke, Salam [RAZUKI] has a lot of money tied up right now, and he's paying attorney fees. You need to get rid of this asshole [N.M.], he's costing me too much money!" GONZALES wanted this to occur before the next court date in their civil suit scheduled on or about November 15, 2018. At a certain point during the conversation, a server was close to their table and GONZALES said, "You don't have to kill him, you don't have to put him off the face of the earth." Despite her words at the time, GONZALES was making a slashing movement across her neck indicating she

---

[1] CHS1 has been cooperating with the FBI since 2009 and had provided information, which was vetted and later determined credible, reliably over the years leading to the successful identification and prosecution of drug traffickers, money launderers, and other subjects in numerous FBI criminal investigations. RAZUKI is also a confidential source for the FBI and has been since approximately May 2014. However, RAZUKI has not informed the FBI of any of his actions, or those of GONZALES or JUAREZ, in attempting to have N.M. kidnapped and killed.

wanted N.M. to be killed. During the conversation, GONZALES advised that there was no reason to involve RAZUKI in planning for the kidnapping of N.M. because "I am the one with the balls, any time they [business partners, including RAZUKI] have a problem, they come after me … they say Sylvia is like a little … honey badger … they're like send the honey badger after them."

On November or about 8, 2018, CHS1 met with GONZALES at Banbu Sushi Bar and Grill in La Mesa, CA. At the outset of the meeting, GONZALES continued to complain about N.M. and the ongoing civil lawsuit. According to GONZALES, another individual was coming, later identified as ELIZABETH JUAREZ, to talk about how to handle N.M. GONZALES said, "Elizabeth [JUAREZ] right here, Elizabeth is going to give you a proposition also on that problem. She said all you got to do is get him to Mexico and she'll take care of him over there." CHS1 asked, "She will?" and GONZALES replied, "Yes, that's why she's coming."

Approximately one hour, 20 minutes into GONZALES' and CHS1's meeting at Banbu Sushi Bar and Grill, JUAREZ joined them. JUAREZ said that all CHS1 needed to do was to get N.M. down to Mexico and she would take care of the rest. JUAREZ and GONZALES said a lot of people have it out for N.M. so nothing would come back on RAZUKI. GONZALES said she wanted to watch and wanted N.M. to know that it had come from them [GONZALES and RAZUKI], but JUAREZ cautioned GONZALES shouldn't watch because it would be gruesome and haunt her. JUAREZ said this "wasn't her first rodeo" and went on to talk about a previous incident involving a female from Vista, CA, who was drugged and kidnapped. CHS1, GONZALES, and JUAREZ discussed a cost of $2,000 for the job. CHS1 clarified whether GONZALES and JUAREZ wanted this to happen in the United States or Mexico. JUAREZ said, "No, I don't want it done here [in the United States]." GONZALES added, "No, let's do it in Mexico because we can't be charged in the US. Let's do it in Mexico in case anything comes back to us." JUAREZ said, "In Mexico it's easier to make things go away. You pay for your freedom."

GONZALES and JUAREZ said they wanted to "put the turkey up to roast before Thanksgiving." After the meeting, CHS1 positively identified a driver's license photo of ELIZABETH JUAREZ as the individual that joined them and talked of the kidnapping and murder of N.M. This is the same individual observed by FBI agents as joining the meeting as well. GONZALES advised that RAZUKI often referred to N.M. as "the midget" and near the end of the dinner, JUAREZ handed CHS1 her cellphone to take a picture of GONZALES and JUAREZ and said, "You can take a picture of us when we were going to get rid of the midget [decided to kidnap and kill N.M.]."

After dinner, CHS1 called GONZALES and confirmed that CHS1 could kidnap and murder N.M. During the call, CHS1 told GONZALES to provide information on N.M., including his address, what car he drives, and other identifying information. GONZALES asked to meet the next day so she could give CHS1 the information requested.

On or about November 9, 2018, GONZALES called CHS1 and asked CHS1 to meet her, RAZUKI, and JUAREZ. During the meeting, RAZUKI'S assistant, GIOVANNA CONTRERAS, was also present in the room, but did not participate in the conversation and had headphones in her ears most of the time. RAZUKI, GONZALES, and JUAREZ, discussed with CHS1 several loans they were trying to secure for their businesses, including cannabis dispensaries, as well as RAZUKI's frustration with the ongoing civil suit with N.M. At times during the meeting, RAZUKI went to the other side of the room to work, though CHS1 believes it was close enough to overhear the continued conversation between CHS1, GONZALES, and JUAREZ. GONZALES asked CHS1 if CHS1 needed money [for the kidnapping of N.M.] and said she would go get $1,000, but asked if CHS1 wanted the full payment instead. CHS1 indicated that $1,000 fine for the time being and GONZALES went to the Goldn Bloom Dispensary and returned with $1,000 cash. Surveillance agents observed GONZALES walk to the Goldn Bloom Dispensary across the street and return.

After the meeting, CHS1 provided agents with $1000 cash provided by GONZALES as well as an envelope with a piece of paper inside, which had also been provided by GONZALES. The paper had two business addresses for N.M. according to GONZALES in a later meeting.

On or about November 13, 2018, GONZALES contacted CHS1 again via phone and informed CHS1 that RAZUKI and GONZALES would be with N.M. in court at the Hall of Justice located at 330 West Broadway, San Diego, CA. GONZALES requested CHS1 join them so CHS1 could see N.M. in person. CHS1 declined going into the courtroom, but agreed to stand outside the building and wait for N.M. to exit. While inside the Hall of Justice, GONZALES took a picture of N.M. with her phone and sent it to CHS1 and then called CHS1 and described what N.M. was wearing at the hearing. GONZALES exited the Hall of Justice and met with CHS1 to further discuss the description of N.M., which was recorded. During this meeting, GONZALES explained that "10605 Roselle St." and "9212 Mira Est. Ct 218 SD 92126" were locations of businesses N.M. manages. She did not specifically explain the address, "2815 Camino Del Rio S. #124 San Diego, CA 92108." According to GONZALES, the information on the envelope and back of the paper, was to assist CHS1 in locating N.M. for the kidnapping and murder in Mexico. GONZALES also stated during the meeting "if they take him now, it's gunna be good." GONZALES went back into the courthouse and provided CHS1 with updates as N.M. was departing the Hall of Justice to ensure CHS1 observed N.M. as he left. GONZALES told CHS1 that N.M. would be exiting the courthouse and that GONZALES, RAZUKI, JUAREZ, and their attorney would exit after him. FBI agents observed N.M exit the courthouse after CHS1 had been told this and agents observed RAZUKI, GONZALES, and JUAREZ proceeded on foot to the vehicle they arrived in and departed.

In an interview with FBI on November 15, 2018, N.M. advised that he had invested in real estate with RAZUKI in order to lease buildings to various entities – mainly marijuana dispensaries. Later on November 15, 2018, CHS1 met with RAZUKI, which

was recorded and surveilled by FBI agents. CHS1 said, "I took care of it." RAZUKI replied, "So he will take care of it, or it's done?" CHS1 replied, "Done." RAZUKI quickly changed the subject to discuss other business investments and pending loans. Later in the conversation, CHS1 said, "Well, when I talked to what's her name, she said that she wanted to have proof. Do you want to see it, or are you ok with it?" RAZUKI replied, "No, I'm ok with it. I don't want to see it." Shortly thereafter, CHS1 requested the remainder of the agreed-upon payment and RAZUKI directed CHS1 to follow up with GONZALES for payment.

On November 15, 2018, GONZALES was arrested and advised of her Miranda rights and agreed to speak with agents. During her interview, GONZALES admitted the existence of the ongoing civil lawsuit between N.M. and RAZUKI, GONZALES, and JUAREZ, but denied involvement in any conspiracy to kidnap and kill N.M.

On November 16, 2018, JUAREZ was arrested and advised of her Miranda rights and agreed to speak with agents. JUAREZ admitted to having the meetings and conversations about kidnapping and killing N.M., but said she didn't think the group would actually go through with it.

On November 16, 2018, RAZUKI was arrested and advised of his Miranda rights and agreed to speak with agents. During his interview, RAZUKI admitted the existence of the ongoing civil lawsuit between N.M. and RAZUKI, GONZALES, and JUAREZ involving approximately $40 million. RAZUKI heard that N.M. was missing, but thought it was a joke and denied involvement in any conspiracy to kidnap and kill N.M.

Exhibit 34

Austin Legal Group
LAWYERS
3990 OLD TOWN AVE, STE. A-112
SAN DIEGO, CA 92110

ATTORNEYS LICENSED IN CALIFORNIA, HAWAII, AND ARIZONA
TELEPHONE
(619) 924-9600

FACSIMILE
(619) 881-0045

Writer's Email:
gaustin@austinlegalgroup.com

April 13, 2018

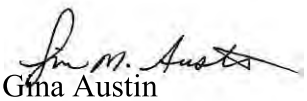
To whom it may concern:

The City of San Diego codified its zoning amendments in section 141.0504 et seq. of the San Diego Municipal Code to allow marijuana outlets with a conditional use permit ("CUP".) The CUP requires discretionary review and approval and runs with the land. The CUP is not tied to the specific licensee or property owner.

The permit issued by the City of San Diego are attached hereto as Exhibit A as required by section 5010 (b)(1) of Title 16 Division 42 of the California Code of Regulations. The CUP was recorded on July 29, 2015.

The permit runs with the land and the name of the Licensee is only for reference purposes. The City of San Diego does not amend CUPs once recorded. Subsequent to the recorded the property was purchased by San Diego United Holdings Group, LLC in March of 2017. (Grant Deed Attached hereto as Exhibit B.) The operator is currently Balboa Ave. Cooperative. Balboa Avenue Cooperative does business as Balboa Treehouse. A fictitious business was filed in the County of San Diego and is attached hereto as Exhibit C.)

Sincerely,



Gina Austin

Exhibit A

DOC# 2015-0399133

Jul 29, 2015 10:11 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: $51.00

PAGES: 13

13P
1C

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004643

CONDITONAL USE PERMIT NO. 1296130
8863 BALBOA STE E MMCC - PROJECT NO. 368347
PLANNING COMMISSION

This Conditional Use Permit No. 1296130 is granted by the Planning Commission of the City of San Diego to LEADING EDGE REAL ESTATE, LLC, Owner and UNITED PATIENTS CONSUMER COOPERATIVE, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 2.51-acre site located at 8863 Balboa Avenue is in the IL-3-1 Zone, the Airport Influence Area (Miramar and Montgomery Field), Montgomery Field Safety Zone 2, 5, and 6, the 60-65 dB CNEL for Montgomery Field, and within the Kearny Mesa Community Plan Area. The project site is legally described as: Lot 9, Industrial Park No. 2, Map No. 4113, March 12, 1959.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) and subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 9, 2015, on file in the Development Services Department.

The project shall include:

a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 999 square-foot tenant space within an existing, 4,995 square-foot, one-story building on a 2.51-acre site;

b. Existing landscaping (planting, irrigation and landscape related improvements);

c. Existing off-street parking;

ORIGINAL

d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by July 9, 2018.

2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on July 9, 2020.

3. In addition to the provisions of the law, the MMCC must comply with; Chapter 4, Article 2, Division 15 and Chapter 14, Article 1, Division 6 of the San Diego Municipal Code.

4. No construction, occupancy, or operation of any facility or improvement described herein shall commence, nor shall any activity authorized by this Permit be conducted on the premises until:

a. The Owner/Permittee signs and returns the Permit to the Development Services Department.

b. The Permit is recorded in the Office of the San Diego County Recorder.

c. A MMCC Permit issued by the Development Services Department is approved for all responsible persons in accordance with SDMC, Section 42.1504.

5. While this Permit is in effect, the MMCC shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

6. This Permit is a covenant running with the MMCC and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

ORIGINAL

8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ORIGINAL

PLANNING/DESIGN REQUIREMENTS:

13. The use within the 999 square-foot tenant space shall be limited to the MMCC and any use permitted in the IL-3-1 zone.

14. Consultations by medical professionals shall not be a permitted accessory use at the MMCC.

15. Lighting shall be provided to illuminate the interior of the MMCC, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

16. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This facility shall also include alarms and two armed security guards to the extent the possession of a firearm is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guards shall be licensed by the State of California. One security guard must be on the premises 24 hours a day, seven days a week, the other must be present during business hours. The security guards should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days.

17. The Owner/Permittee shall install bullet resistant glass, plastic, or laminate shield at the reception area to protect employees.

18. The Owner/Permittee shall install bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in adjoining walls with other tenants, reception area, and vault room (manager's office).

19. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the MMCC in character size at least two inches in height.

20. The MMCC shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

21. The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this section and condition, a vending machine is any device which allows access to medical marijuana without a human intermediary.

22. The Owner/Permittee or operator shall maintain the MMCC, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed within 24 hours.

ORIGINAL

23. Medical marijuana shall not be consumed anywhere within the 2.51-acre site.

24. The Owner/Permittee or operator shall post anti-loitering signs near all entrances of the MMCC.

25. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Sign colors and typefaces are limited to two. Ground signs shall not be pole signs. A sign is required to be posted on the outside of the MMCC and shall only contain the name of the business.

26. Interior spaces exposed to exterior aircraft noise sources shall be attenuated to achieve an indoor noise level of 50 dB CNEL.

ENGINEERING REQUIREMENTS:

27. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the replacement of the two easterly driveways with City standard driveways on Balboa Avenue per Standard Drawings SDG-159, satisfactory to the City Engineer.

TRANSPORTATION REQUIREMENTS:

28. No fewer than 5 parking spaces (including 1 van accessible space) for the proposed 999 square-foot MMCC (with 99 existing surface parking spaces -including 4 accessible spaces on the entire 2.5 acre site) shall be maintained on the property at all times in the approximate locations shown on Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Department.

29. Prior to any building permit/tenant improvement for 8861 Balboa Avenue Suite #B, the applicant shall demonstrate that the converted portion of the warehouse space to 2-car parking garage at 8861 Balboa Suite #B is to be accessed accessible for minimum turning path for passenger car design vehicle to accommodate ingress/egress of two (2) side-by-side dimensionally acceptable interior garage parking spaces, one of which is to be assigned to this CUP for 8863 Balboa Avenue Suite #E as employee parking while the other to be assigned to 8861 Balboa Avenue Suite #B, which may in turn require its own building permit to convert a portion of Suite #B into a parking garage satisfactory to BDR - Structural Review staff. Improvements to the existing garage space that may be required include, but are not limited to, a wider garage door and improvements required for separation of the parking and warehouse uses in 8863 Balboa Avenue Suite #E, satisfactory to BDR - Structural Review staff.

POLICE DEPARTMENT RECOMMENDATION:

30. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on July 9, 2015 and Resolution No. PC-4716.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Edith Gutierrez
Development Project Manager

NOTE: Notary acknowledgment must be attached per Civil Code section 1189 et seq.

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

LEADING EDGE REAL ESTATE, LLC
Owner

By _____
Michael D. Sherlock
Managing Member

UNITED PATIENTS CONSUMER COOPERATIVE
Permittee

By _____
Michael D. Sherlock
Permittee

NOTE: Notary acknowledgments must be attached per Civil Code section 1189 et seq.

ORIGINAL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of *San Diego*)

On *July 27, 2015* before me, *Vivian M. Gies, Notary Public*
Date *Here Insert Name and Title of the Officer*

personally appeared *~~~~~~~~~Edith Gutierrez~~~~~~~~~~~*
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

VIVIAN M. GIES
Commission # 2046017
Notary Public - California
San Diego County
My Comm. Expires Oct 18, 2017

Signature *Vivian M. Gies*
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document *PTS 368347/8863 Balboa Ste.E MMCC/CUP #1296130*
Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

ORIGINAL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

On July 23rd, 2015 before me, Christine Gasparyan, Notary Public
Date *Here Insert Name and Title of the Officer*

personally appeared Michael DeCarlo Sherlock
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

CHRISTINE GASPARYAN
Commission # 2073117
Notary Public - California
San Diego County
My Comm. Expires Jun 29, 2018

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Christine Gasparyan
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Conditional Use Permit #1296130 Document Date: _____
Number of Pages: 7 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney In Fact	☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____

ORIGINAL

Exhibit B

Recording requested by:
TH3165

DOC# 2017-0126556

Mar 20, 2017 04:59 PM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: $323.50
PCOR: YES
PAGES: 3

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

Name
Street Address: San Diego United Holdings Group, LLC
City: 7977 Broadway Avenue
State: Lemon Grove, CA 91954
Zip

RECORDERS USE ONLY

ORDER NO. 410-17001140-42
ESCROW NO. 146318S-CG

GRANT DEED

TAX PARCEL NO. 369-150-13-23 and 369-150-13-15

The undersigned grantor declares that the documentary transfer tax is $302.50 and is
____ computed on the full value of the interest of the property conveyed, or is
X computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale.
The land, tenements or realty is located in
____ unincorporated area X city San Diego and
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Razuki Investments, LLC , a California Limited Liability Company
hereby GRANT(S) to

San Diego United Holdings Group, LLC , a California Limited Liability Company

The following described real property in the City of San Diego, County of San Diego, State of California:
AS MORE COMPLETELY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Dated 03/01/2017

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA,)
COUNTY OF San Diego)
On March 2, 2017 before me,
Yancy Diandra Fuentes , Notary Public
personally appeared Salam Razuki

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Yancy Fuentes, Notary Public (Notary Seal)

Razuki Investments, LLC, a California Limited Liability Company,

By: Salam Razuki, Member

YANCY DIANDRA FUENTES
Notary Public - California
San Diego County
Commission # 2161685
My Comm. Expires Jul 31, 2020

MAIL TAX STATEMENTS TO PARTY SHOWN BELOW: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE.

Attn: Alfonso Malan 5065 Logan Ave, Suite 101, San Diego CA 92113
Name Street Address City & State

NOTARY SEAL CERTIFICATION

(Government code 27361.7)

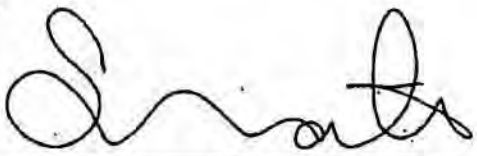
I CERTIFY UNDER PENALTY OR PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

Name of the Notary: Yancy Diandra Fuentes

Commission Number: 2101485 Date Commision Expires: July 31, 2020

County Where Bond is Filed: San Diego

Manufacturer or Vendor Number: NNA1
(Located on both sides of the notary seal border)

Signature: 

Ariana Serrato, DPS Agent

Place of Execution: San Diego Date: 3-9-17

EXHIBIT A
Legal Description

Parcel 1:
The land hereinafter referred to is situated in the City of San Diego, County of San Diego, State of CA, and is described as follows:

A Condominium Comprised of:

Parcel 1:

An undivided 1/46th interest in and to the Southwesterly 219.55 feet of the Northeasterly 413.55 feet of Lot 9 of the City of San Diego Industrial Park Unit No.2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 4113, filed in the Office of the County Recorder of San Diego County, March 12, 1959.

Excepting therefrom all office units and industrial units as shown upon that certain Condominium Plan recorded July 31, 1981 as File/Page No. 81-242888 of official records.

Also excepting therefrom the exclusive right to use and possession of all those exclusive use areas designated as parking spaces as shown upon the Condominium Plan above referred to.

Parcel 2:

Unit No. 8863E as shown on the Condominium Plan referred to in Parcel 1 above.

Parcel 3:

The exclusive right to use and possession of those portions of said land described in Parcel 1 above, designated as Parking Space Nos. E-32 and E-31.

APN: 369-150-13-23

Parcel 2:
The land hereinafter referred to is situated in the City of San Diego, County of San Diego, State of CA, and is described as follows:

A Condominium comprised of:

Parcel 1:

An undivided 1/46ths interest in and to the Southwesterly 219.55 feet of the Northeasterly 413.55 feet of Lot 9 in the City of San Diego Industrial Park Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 4113, filed in the Office of the County Recorder of San Diego County, March 12, 1959.

Excepting therefrom all office units and industrial units as shown upon that certain Condominium Plan recorded July 31, 1981 as Instrument No. 81-242888, of Official Records.

Also excepting therefrom the exclusive right to use and possession of all those exclusive use areas designated as parking spaces and airplane parking spaces as shown upon the Condominium Plan above referred to.

Parcel 2:

Unit 8861B as shown on the Condominium Plan referred to in Parcel 1 above.

Parcel 3:

The exclusive right to use and possession of those portions of said land described in Parcel 1 above, designated as Parking Space No. B48, B47, Airplane Parking Space No. (None).

APN: 369-150-13-15

Exhibit C

1600 PACIFIC HIGHWAY, SUITE 260, SAN DIEGO, CA 92101
P.O. BOX 121750, SAN DIEGO, CA 92112-1750
(619) 237-0502

Ernest J. Dronenburg, Jr.
County of San Diego
Recorder/County Clerk
www.sdarcc.com

FBN# 2017-9029410

Dec 04, 2017 10:11 AM
FILED
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY CLERK
FEES: $42.00 PAGES: 1
Expires: Dec 04, 2022

FICTITIOUS BUSINESS NAME STATEMENT

FEE SCHEDULE

FILING:	$42.00	(Includes one business name and one business owner on statement)
ADDITIONAL OWNER(S):	$5.00	(Fee is exempt to include the name of a spouse when transacting business as a married couple)
ADD BUSINESS NAME(S):	$5.00	(Fee applies to additional business names on statement at the same location)
ADDITIONAL COPIES:	$2.00	(Additional $1.00 fee for a certification of copy)

All information on this statement is public information and is required to appear in the newspaper pursuant to Business and Professions Code 17913.

(1) FICTITIOUS BUSINESS NAME(S):

a. The Tree House Balboa
Print Fictitious Business Name(s)

b.
Print Fictitious Business Name(s)

(2) LOCATED AT: 8863 Balboa Ave unit E, San Diego, CA, San Diego, USA, 92123
Physical Business Address (No P.O. Box or Postal Mailbox Facilities) | City | State | County | Zip Code

Mailing Address (If different from above) | City | State | Zip Code

(3) REGISTRANT INFORMATION: (Individual, Corp., LLC, Gen. Partner, etc.)

a. Balboa Ave cooperative
Print Full Complete Name (e.g. First, Middle, Last or Corp. /LLC)

8863 Balboa Ave unit E, San Diego, CA, 92123
Residence Address, If Corp. or LLC enter physical address (No P.O. Box or Postal Mailbox Facilities) | City | State | Zip Code

California
If Corporation or LLC – Print State of Incorporation/Organization

b. /
Print Full Complete Name (e.g. First, Middle, Last or Corp. /LLC)

Residence Address, If Corp. or LLC enter physical address (No P.O. Box or Postal Mailbox Facilities) | City | State | Zip Code

If Corporation or LLC – Print State of Incorporation/Organization

(4) THIS BUSINESS IS CONDUCTED BY: (Please check one)

- ☐ A. Individual
- ☐ B. Married Couple
- ☐ C. General Partnership
- ☐ D. Limited Partnership
- ☐ E. Joint Venture
- ☒ F. Corporation
- ☐ G. Trust
- ☐ H. Co-Partners
- ☐ I. Limited Liability Company
- ☐ J. Limited Liability Partnership
- ☐ K. Unincorporated Association-Other than a Partnership
- ☐ L. State or Local Registered Domestic Partners

(5)-REGISTRANT FIRST COMMENCED TO TRANSACT BUSINESS UNDER THE ABOVE NAME(S) AS OF (MM/DD/YYYY): 4/6/17 (Cannot be a future date)
☐ CHECK HERE IF THE REGISTRANT HAS NOT YET BEGUN TO TRANSACT BUSINESS UNDER THE NAME(S) ABOVE

I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000).)

(6) Print Name of Registrant: Balboa Ave cooperative
(Print name as it appears above on the statement)

Signature of Registrant: Vinas Malan

Print Name of Signor: Vinas Malan (If Corporation or LLC) Print Title of Person Signing: President (If Corporation or LLC)

This statement was filed with the San Diego Recorder/County Clerk as indicated by the file stamp above.

NOTICE: IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS (5) FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.
THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE)

CC230 (Rev. 07/5/17)

This is a true certified copy of the record
if it bears the seal, imprinted in purple ink

ERNEST J. DRONENBURG JR.
Assessor/Recorder/Clerk
San Diego County, California

Deputy

DEC 0 4 2017

Exhibit 35

Gina M. Austin (SBN 246833)
E-mail: *gaustin@austinlegalgroup.com*
Tamara M. Leetham (SBN 234419)
E-mail: *tamara@austinlegalgroup.com*
AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110
Phone: (619) 924-9600
Facsimile: (619) 881-0045

Attorneys for Defendants
Ninus Malan

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO- CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

vs.

NINUS MALAN, an individual; CHRIS HAKIM, an individual; MONARCH MANAGEMENT CONSULTING, INC., a California corporation; SAN DIEGO UNITED HOLDINGS GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC. a California nonprofit mutual benefit corporation; and DOES 1-100, inclusive;

Defendants.

CASE NO. 37-2018-00034229-CU-BC-CTL

DECLARATION OF GINA M. AUSTIN

[Imaged File]

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

I, Gina M. Austin, declare:

1. I am attorney admitted to practice before this Court and all California courts and, along with Tamara M. Leetham, represent defendant Ninus Malan ("Malan") in this matter. I make this declaration in support of Malan's ex parte application to vacate order appointing receiver. Unless otherwise stated, all facts testified to are within my personal knowledge and, if called as a witness, I would and could competently testify to them.

2. I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation.

3. I have represented Ninus Malan, San Diego United Holdings Group, Balboa Ave Cooperative, and California Cannabis Group in multiple matters in San Diego County Superior Court.

4. My firm also performs additional legal services for these defendants to include corporate transactions and structuring, land use entitlements and regulations related to cannabis, and state compliance related to cannabis.

5. On Tuesday July 17, 2018, I specially appeared in Judge Medel's department in response to an ex parte application by Salam Razuki to appoint a receiver and for a temporary restraining order in the instant litigation. The purpose of my special appearance was to inform the court that none of the defendants had been served, that our office had not been retained to represent any of the defendants in this matter, and request that the court set the matter for a proper noticed hearing after the defendants had been served. A true and correct copy of the transcript from that hearing is attached as Exhibit A and incorporated by reference.

6. Judge Medel summarily granted the application and Plaintiff's request to appoint Mr. Essary as the receiver. There was no discussion of the proposed order or any response from the court regarding the lack of notice, service, or harms that would create a need for immediate relief.

7. Outside the courtroom I asked opposing counsel to send me a courtesy copy of the order as soon as it was signed. I did not receive a courtesy copy of the order until late that evening.

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

8. At approximately noon on July 17, 2018, Heidi Rising, the manager of a separate dispensary Golden State Greens and then contract operator of the Balboa dispensary, called me and informed me that the prior operators of the Balboa dispensary were outside and harassing customers and that the prior security guard was there brandishing a gun. Golden State Greens is a separate client of Austin Legal Group. I instructed Ms. Rising to call the police and drove up to the dispensary to meet with police when they arrived to explain the events that had happened in court earlier that morning.

9. At approximately 2pm, upon reviewing a copy of the register of actions in this case, I telephoned Mr. Essary to (i) request a copy of the order and the bond, (ii) discuss the issues in the case, and (iii) determine the process for moving forward. Mr. Essary informed me that he was going to immediately "take possession of all assets" including the dispensary and put the prior operator back in control of the dispensary. I informed him that I could not allow him to do that until the defendants had been served with an order. I specifically informed Mr. Essary that neither my office nor any of the defendants had been served with the court's order appointing the receiver. Mr. Essary informed me that he had years of experience and taken control of millions of dollars and would take possession of the dispensary immediately. In response to my objections that none of the parties had been served with the order or bond, Mr. Essary stated that he didn't have to serve anyone as he had a court order appointing him the receiver and that was enough.

10. Around 3 pm on July 17th, Heidi rising telephoned me because a man was pounding on the dispensary's door and demanding he be let in. Heidi did not feel safe leaving the dispensary. The man with a gun was outside, and people working with him were sitting on her car. I drove to the dispensary to pick her up and help her escape.

11. When I arrived at the dispensary I was speaking with Ms. Rising on the phone to determine where to pick her up. She stated that the people outside were trying to break down the front door and we agreed I would pick her and two other Golden State Greens employees up in the back of the dispensary. When I arrived the people outside had just broken down the front door of the dispensary and there were people running around the corner of the dispensary towards

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

my car as if to attack us. Out of fear, as soon as Heidi and her two other associates were in my car, I drove away as fast as I could. We were chased by the man who had been at the dispensary earlier in the day brandishing his gun.

12. Despite the fact that none of the defendants had been served with the court's order, on July 19, 2018 I emailed Mr. Essary and informed him of the issues I believed to need immediate attention. A true and correct copy of this email is attached as Exhibit I to the Declaration of Tamara M. Leetham. In a response email on July 19, 2018, Mr. Essary acknowledged receipt of my email and stated that he had retained an attorney Mr. Griswold.

13. I am informed and believe that either Mr. Essary or Mr. Griswold or both have taken possession of the Balboa dispensary and have placed the prior operator SoCal Building Ventures as operator.

14. Allowing Mr. Essary to control the dispensary is a violation of State law. The Bureau of Cannabis Control ("BCC") requires all owners to submit detailed information to the BCC as part of the licensing process. An owner is defined as:

> (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.
> (2) The chief executive officer of a nonprofit or other entity.
> (3) A member of the board of directors of a nonprofit.
> (4) ***An individual who will be participating in the direction, control, or management of the person applying for a license*** [emphasis added]**.**

Cal. Bus. Prof Code § 26001(al).

15. Based upon the definition of an Owner, Mr. Essary would be deemed by the BCC to be an owner and would have to submit all the requisite information required by Title 16 Chapter 42 of the California Code of Regulations before he would be allowed to legally take possession and control of the Balboa dispensary.

16. Based upon the definition of Owner, SoCal Building Ventures would also be deemed an owner. I am informed and believe that its re-appointment as operator of the Balboa dispensary is also a violation of state law as none of the CCR Title 16 information has been submitted to the BCC.

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

17. Allowing Mr. Essary to control the dispensary is also a violation of the San Diego Municipal Code ("SDMC"). The SDMC requires all *responsible persons* to have a background checks and a valid Marijuana Outlet Operating Permit. (SDMC Article 2, Division 15.) A true and correct copy of SDMC Article 2, Division 15 is attached hereto as Exhibit B.

18. The SDMC defines *Responsible Person* as "a person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term Responsible Person includes but is not limited to a property owner, tenant, person with a Legal Interest in real property or person in possession of real property." (SDMC §11.0210). The term also includes "a permittee and each person upon whom a duty, requirement or obligation is imposed by this Article, or who is otherwise responsible for the operation, management, direction, or policy of a police-regulated business. It also includes an employee who is in apparent charge of the premises." (SDMC 33.0201.)

19. Mr. Essary and SoCal Building Ventures are responsible persons and are in violation of the SDMC for failure to obtain the requisite background checks and permits.

20. I am informed and believe that SoCal Building Ventures has caused the Balboa dispensary to be in violation of the SDMC and the City of San Diego has issued various notices of violation that if left uncured will threaten the ability of Balboa to maintain its Conditional Use Permit to operate. A true and correct copy of the current code enforcement action pending against the Balboa dispensary is attached hereto as Exhibit C.

21. I am informed and believe that upon the appointment of Mr. Essary as the receiver, the Balboa dispensary has engaged in additional violations of the SDMC by failing to provide two security guards during operating hours and one security guard during non-operating hours.

22. The Balboa dispensary is currently in the process of a compliance and tax audit by the City of San Diego. The City has demanded responses by Friday August 3rd. Failure to provide these responses included financial data from the databases that are in the exclusive control of Mr. Essary and/or SoCal Building Ventures could cause irreparable harm and a loss of the Balboa dispensary's right to operate.

23. There are two hearings scheduled before the Hearing Officer for the City of San

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

Diego for land use entitlements for the properties located at 8859 Balboa ("8859 CUP") and 9212 Mira Este ("9212 CUP"). These hearings are of critical importance to the future rights and privileges of those two properties. Approval by the Hearing Officer at each of these hearings requires specific knowledge and skills of the City of San Diego licensing process and historical facts that neither Mr. Essary or SoCal Building Ventures has.

24. The 8859 CUP is scheduled for a public hearing on August 15, 2018. Ninus Malan and the various entities that he is a member of will be irreparably harmed if this hearing is delayed or if they are not adequately represented. The City of San Diego is only issuing 40 permits. If the 8859 CUP is not heard by the Hearing Office on August 15, 2018, it is possible that the 8859 CUP would be unable to be approved in the future.

25. The 9212 CUP is scheduled for a public hearing in early September. Ninus Malan and the various entities that he is a member of will be irreparably harmed if this hearing is delayed or they are not adequately represented. Due to the permit number limitations, if the 9212 CUP is not heard by the Hearing Office in early September, it is possible that the 9212 CUP would be unable to be approved in the future as there are more than 60 applications for only 40 permits.

26. Our office has been responsible for processing the state applications related to cannabis operations at both the Balboa dispensary and 9212 Mira Este. Processing of these applications requires specific knowledge and skill of the state licensing requirements as well as the current state cannabis rules and regulations. An immediate response is required by the BCC from the Balboa dispensary and the Mira Este operations. It is my opinion that neither Mr. Griswold nor Mr. Essary have the knowledge and skills relevant to state cannabis law to effectively process these applications. Failure to immediately respond to the BCC and California Department of Public Health will likely jeopardize the permits and the ability to legally operate at these locations.

///

///

///

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed in San Diego, California, on July 30, 2018.

Gina M. Austin

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

EXHIBIT A

EXHIBIT A

In The Superior Court Of The State Of California

In And For The County Of San Diego

Department 66; Hon. KENNETH MEDEL, Judge

SALAM RAZUKI,

Plaintiff,

vs. Case No. 37-18-00034229

NINUS MALAN

Defendants.

Reporter's Transcript

JULY 17, 2018

Appearances:

For the Plaintiff: STEVEN ELIA, ESQ.
2221 CAMINO DEL RIO S. #207
SAN DIEGO, CALIFORNIA 92108

For the Defendant: GINA AUSTIN, ESQ.
3990 OLD TOWN AVENUE, A-112
SAN DIEGO, CALIFORNIA 92110

Darla Kmety, RPR, CSR 12956
Official Court Reporter
San Diego Superior Court
San Diego, California 92101

JULY 17, 2018; San Diego, California; 1:30 P.M.

-- OOo --

THE COURT: Item 4. Razuki versus Malan.

MR. ELIA: Good morning. Steven Elia on behalf of Mr. Razuki.

MS. GRIFFIN: Maura Griffin on behalf of plaintiff.

THE COURT: Mr. Elia.

MS. AUSTIN: Your Honor? Gina Austin specially appearing on behalf of all defendants.

THE COURT: When you say "specially," what does that mean?

MS. AUSTIN: It means we're here only to oppose this and protect their interests. They have been served. We are not retained as counsel yet for this matter.

THE COURT: All right. Counsel, tell me -- flush this out for me. I need a little more history. I only had a peripheral chance to read your papers.

MR. ELIA: Yes, your Honor. It's a lengthy set of facts. I'll do my best to summarize.

This case is about three properties that operate three legal dispensaries: There's a retail location at Balboa. There's a manufacturing, cultivation at the Murriesta. And there is a third location which hasn't engage in operations at this moment. We're really dealing with the two operations.

My client invested millions of dollars. Her client invested nothing. If he did, it's a nominal

amount.

THE COURT: What was the role of her client?

MR. ELIA: To be the operator. But the deal was that my client would be 75 percent owner; her client would be 25 percent owner after my client recouped his investment, which hasn't happened.

THE COURT: Okay.

MR. ELIA: This oral agreement was memorialized into a settlement agreement where both sides were represented by an attorney. They met several times as Exhibit D. It's very clear as to what the ownership of the assets are. There's no ambiguity.

At this point, Mr. Malan, who is the defendant, and Mr. Hakim want to cut my client out of the deal completely. Essentially, they want to steal these operations. So in October of 2017, they brought in a management company, a professional management company, that would operate these operations. Counsel is here on behalf of SoCal. And they entered into three agreements for the three locations.

SoCal has paid about $2.6 million so far. That money -- some of that money was supposed -- probably about a million dollars of it -- was supposed to go to an entity called Flip. My client was a 50 percent -- I'm sorry -- 75 percent owner, and her client would be a 25 percent owner, as I previously stated.

What Mr. Malan did, what Mr. Hakim did is they set up another entity called Monarch. Didn't tell my

client about it and funneled over a million dollars of that amount.

Now, under these three management agreements, SoCal was supposed to pay a hundred thousand dollars a month. So 50,000 per location. It's a substantial amount of money we're talking about. This was since October of 2017.

Now, when SoCal eventually found out about a month ago that Mr. Razuki, my client, had a substantial interest in these operations, they sent a letter over to her client saying, What is this all about? Tell us why you didn't tell us Mr. Razuki had this ownership interest. Then they withhold payments.

So what her client does is he locks them out. Resorts to self-help, locks them out. Although they've got a million dollars worth of machinery at the cultivation location. Locks him out. Locks him out of the retail establishment. Brings in a new operator.

SoCal has already paid million of dollars, and her client has granted options under this agreement. They've paid $225,000 for these options to purchase half of these operations, and they just locked him out and brought in a new operator.

They did this to conceal the fact and to cut my client out of the transaction. The new operator has no idea that my client owns 75 percent of these operations.

Now, we're asking for a receiver because these are extraordinary circumstances and conduct by the

defendants. All we're asking for is to preserve the status quo that we've had the last ten months with the defendants. We're just asking for the appointment of a receiver that would take over the marijuana operations, temporary restraining order so they don't commit waste. The problem, your Honor --

THE COURT: What underlying suit do you have?

MR. ELIA: The complaint?

THE COURT: Yeah.

MR. ELIA: It's basically to enforce the settlement agreement that's attached as Exhibit D.

THE COURT: There was a settlement in this case?

MR. ELIA: There was a settlement.

THE COURT: It's not agree -- they agreed to.

MR. ELIA: Yes. Exhibit D to our moving papers. That and for damages of the millions of dollars their clients have taken not told us about. They told us, Look. They're not really paying. In fact, they did pay. They're paying a hundred thousand dollars a month. They paid 225,000 for options we never knew about. All this money needs to be accounted for.

We're not asking for any harm to anybody. We just want a receiver to take over so that we can stop the wasting. We need some internal controls so that her clients don't continue to steal and put in a new operator that is eventually going to end up joining this complaint, and then we have a multiplicity of lawsuits.

THE COURT: You want an injunction.

MR. EILA: Yes, your Honor.

THE COURT: The injunction it to maintain the status quo.

MR. ELIA: Maintain the status quo, to not waste. And one of things, your Honor, her client is the record owner on the LLCs; however, the settlement agreement says no matter who owns it, the deal is 75/25. He's free to sell the properties.

In fact, when we look at the management agreements, he's sold furniture, fixtures, and equipment that belonged to my client. He can't sell something that he doesn't own. There's irreparable harm. He's free to sell -- transfer the properties tomorrow. My client is guarantor on millions of dollar of real estate loans on this.

THE COURT: Another party wanted to intervene today.

MR. ELIA: Yes, your Honor. Rob Fuller. We filed our motion today ex parte.

THE COURT: You did that today without a --

MR. ELIA: We filed ex parte before 10:00 yesterday. Gave notice. Should have been with the court.

THE COURT: I don't have it, but isn't that supposed to be a full-blown motion? Can I do that on an ex parte basis?

MR. ELIA: I believe it's appropriate for ex parte under the rules. We cite that in our brief.

THE COURT: Counsel?

MS. AUSTIN: Good morning, your Honor. As I mentioned, I am specially appearing on behalf of all the defendants. None of the defendants have been served with either the motion or the complaint intervention, nor the underlying complaints for this ex parte. We're here to Protect their rights.

THE COURT: You have not served them?

MR. ELIA: Your Honor, we haven't located them, but I did speak to their counsel on Friday. He told me at 10:00 a.m. on Friday he downloaded the complaint. He represented he represents both sides and that I asked him -- I had a 15-minute conversation with him, fully explained everything. I told him -- asked him to please let your clients know, and he assured me that he would.

MS. AUSTIN: Your Honor, the person he spoke to is not a litigation counsel. He does, as I understand it, he does represent some of the defendants in some business transactional work but does not represent them in this. I don't know the nature of that nor do I --

THE COURT: Did you not know them beforehand?

MS. AUSTIN: Did I not know who?

THE COURT: Did you have no relationship with the moving parties beforehand?

MS. AUSTIN: No. I only have relationship with -- no. I have relationship with Ninus Malan in other matters, so we may end up representing them, but we haven't done conflicts checks.

We have another attorney we're talking to, George Fleming, who is looking at but hasn't done conflicts checks. We're not even sure the nature of the complaint. The notice we received for their ex parte which was in email on Friday, didn't even tell us the nature of the ex parte.

THE COURT: All right.

MS. GRIFFIN: That's the Number 1 thing is we haven't been served. The second thing is there's no urgency here. I briefly read the papers as we were sitting out there -- or sitting here waiting, listening and there's no urgency. What is going on today has been going on for -- Ninus Malan having control of the entities, which he's entitled to, has been going on a very long time. There's no evidence of any urgency in this particular matter.

And I think most in importantly here is that as I skimmed through the declaration, which is Mr. Razuki, which is all hearsay, none of it shows just why there is a need to change anything today.

If we were able to get into the factual matter of this, we -- you would get evidence presented to you that would show that, in fact, SoCal Builders was -- the reason that they had to be terminated was because of mismanagement, was because the HOA was looking at revoking the permit, because they weren't doing proper permits under the state licensing.

I don't want to get into all the merits. We

don't represent them yet. We don't know that we will.

THE COURT: Okay. Thank you. Anything further, counsel?

MR. FULLER: Yes, your Honor. I found the citation. Code of Civil Procedure 387(c) that says it can be brought ex parte.

THE COURT: I'm going to grant your motion to intervene.

MR. FULLER: Thank you, your Honor.

THE COURT: On yours, the only thing is the receivership?

MR. FULLER: May I address that briefly?

THE COURT: Yes.

MR. FULLER: We believe that we have a very long, detailed authored dispute resolution clause in our contracts.

THE COURT: Detailed --

MR. FULLER: This seller undercut. We're in the position we've got until next Tuesday, July 24, to make $170,000 of payments. Right now, we have the unavailable task to decide whether to give to Mr. Malan and Mr. Hakim, or whether Mr. Razuki should get a hundred percent or 75 percent of that. We don't know where to put that money. We feel more comfortable giving it to the receiver.

MR. ELIA: Your Honor, I brought the receiver in court, Mr. Essary. I've had Judge Sturgeon appoint sua sponte without anyone asking for it. He's trusted by

other judges here. I know some judges have reservations with receiver, but Mr. Essary would be appropriate for this case.

MS. AUSTIN: Your Honor, we haven't seen briefing on this. We don't know anything about what is going on. If they don't know where to put the money, we suggest they interplead with the court.

THE COURT: All right. I'm going to grant the relief requested. The injunction is granted. Receivership is appointed. Hope you all can sort this out. I would have some really good communication with people. See if you can work out --

MS. AUSTIN: Your Honor, you're granting the receivership? We're not even served. How are we going -- we don't even know if this is the case.

THE COURT: Well, the order is granted at this point.

MR. ELIA: Thank you, your Honor. Appreciate it.

[Whereupon the proceeding concluded.]

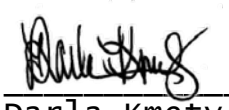
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

I, Darla Kmety, Court-Approved Official Pro Tem Reporter for the Superior Court of the State of California, in and for the County of San Diego, do hereby certify:

That as such reporter, I reported in machine shorthand the proceedings held in the foregoing case;

That my notes were transcribed into typewriting under my direction and the proceedings held on July 17, 2018, contained within pages 1 through 10, are a true and correct transcription.

This Day 20th of July 2018



Darla Kmety, CSR 12956

EXHIBIT B

EXHIBIT B

Article 2: Health Regulated Businesses and Activities

Division 15: Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana

("Medical Marijuana Consumer Cooperatives" added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Retitled from "Medical Marijuana Consumer Cooperatives" to "Marijuana Outlets" on 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
("Retitled from "Marijuana Outlets" to "Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1501 Purpose and Intent

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing but strictly regulating the retail sale of marijuana at *marijuana outlets*, and the raising, harvesting, processing, wholesaling, distributing, storing, and producing of *marijuana* and *marijuana* products at *marijuana production facilities* in accordance with state law. It is further the intent of this Division to ensure that *marijuana* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the cultivation, sale, distribution, possession of *marijuana*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7-11362.83), the Medicinal and Adult-Use Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1502 Definitions

For the purpose of this Division, the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as cannabis in California Business and Professions Code section 26001.

Marijuana outlet means a retail establishment operating with a Conditional Use Permit in accordance with section 141.0504, where *marijuana*, *marijuana* products, and *marijuana* accessories, as defined in California Health and Safety Code sections 11018, 11018.1, and 11018.2, respectively, are sold to the public in accordance with dispensary or retailer licensing requirements contained in the California Business and Professions Code sections governing *marijuana* and *medical marijuana*. A *marijuana outlet* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

Marijuana production facility means individual or combined uses, operating with a Conditional Use Permit in accordance with section 141.1004, engaged in the agricultural raising, harvesting, and processing of *marijuana*; wholesale distribution and storage of *marijuana* and *marijuana* products; and production of goods from *marijuana* and *marijuana* products consistent with the requirements of State of California Statutes and the California Departments of Food and Agriculture, Consumer Affairs, and Public Health regulations.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief, in accordance with state law, including California Health and Safety Code section 11362.5.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210, and includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a *marijuana outlet* or a *marijuana production facility*. It also includes an employee who is in apparent charge of a *marijuana outlet* or a *marijuana production facility*.

State identification card means the card issued to a *qualified patient* or *primary caregiver* in accordance with California Health and Safety Code sections 11362.71-11362.76.

Violent felony means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1504 Marijuana Outlets and Marijuana Production Facilities–Permit Required

(a) It is unlawful for any person to operate any *marijuana outlet* without a *Marijuana Outlet* Permit or a *marijuana production facility* without a *Marijuana Production Facility* Permit issued pursuant to this Division.

(b) *Marijuana outlets* and *marijuana production facilities* shall designate one officer or manager to act as a responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *marijuana outlet* or a *marijuana production facility*.

(c) The issuance of a *Marijuana Outlet* Permit or *Marijuana Production Facility* Permit pursuant to this Division does not relieve any person from obtaining any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.

(d) A permit applicant must obtain a Conditional Use Permit as required by sections 141.0504 and 141.1004 prior to obtaining a permit under this Division.

(e) Applications for *Marijuana Outlet* Permits and *Marijuana Production Facility* Permits shall be filed with the City Manager.

(f) The City Manager shall act upon the application within thirty calendar days, except that notice of an incomplete application shall be given within five business days.

(g) *Marijuana Outlet* Permits and *Marijuana Production Facility* Permits issued pursuant to this Division shall be valid for one year.

(h) An application for a *Marijuana Outlet* Permit or a *Marijuana Production Facility* Permit shall be denied if the applicant has had any permit issued pursuant to this Division revoked by the City Manager within the past twelve months of the date of application.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Permit Required" to "Outlets–Permit Required" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Permit Required" to "Marijuana Outlets and Marijuana Production Facilities–Permit Required" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1505 Exemptions

(a) This Division does not apply to the cultivation of *marijuana* by a *qualified patient* at that patient's home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.

(b) This Division does not apply to the cultivation of six or fewer *marijuana* plants within a private residence or an accessory structure to that residence that is fully enclosed and secure. For the purposes of this section, a private residence means a house, apartment unit, mobile home, or other similar dwelling.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1506 Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *marijuana outlets* and *marijuana production facilities*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Retitled from "Cooperatives–Cost Recovery Fees" to "Outlets–Cost Recovery Fees" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Cost Recovery Fees" to "Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1507 Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions

(a) Prior to acting as a *responsible person* in a *marijuana outlet* or a *marijuana production facility*, all persons shall undergo fingerprinting. The fingerprints shall be provided to and kept on file with the City.

(b) The City shall conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years, cannot act as a *responsible person* for a *marijuana outlet* or a *marijuana production facility*.

A conviction is complete upon entry of judgment upon a finding of guilty, or upon entry of a plea of guilty, or upon entry of a plea of nolo contendere or "no contest," regardless of the pendency of any appeal, or expungement pursuant to California Penal Code section 1203.4, 1203.4a, or 1203.41.

(c) It is unlawful for any *responsible person* to act as a *responsible person* for a *marijuana outlet* or a *marijuana production facility* if he or she:

(1) fails to provide their fingerprints to the City; or

(2) has been convicted of a *violent felony* or crime of moral turpitude within the past seven years.

(d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person*.

(e) A *responsible person* who is convicted of a *violent felony* or crime of moral turpitude shall report the conviction to the City Manager within 48 hours.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Background Checks" to "Outlets– Background Checks" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Background Checks" to "Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1508 Marijuana Outlets and Marijuana Production Facilities–Operational Requirements

(a) Verification and Documentation

A *marijuana outlet* and a *marijuana production facility* shall maintain and provide upon request by the City a current list of all *responsible persons.*

(b) Age Limitations

(1) No person under the age of twenty-one is allowed at or in any *marijuana outlet* or *marijuana production facility* unless the person is a *qualified patient* or *state identification card* holder, and if under the age of eighteen, is accompanied by a parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.

(2) No person under the age of twenty-one may be employed by or act as a *responsible person* on behalf of a *marijuana outlet* or a *marijuana production facility*.

(Retitled from "Cooperatives–Verification and Documentation" to "Cooperatives–Operational Requirements" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Operational Requirements" to "Outlets–Operational Requirements" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Operational Requirements" to "Marijuana Outlets and Marijuana Production Facilities–Operational Requirements" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1509 Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit

(a) In addition to any penalties and remedies provided by law, and any other bases for regulatory action provided by law, a *Marijuana Outlet* Permit and a *Marijuana Production Facility* Permit are subject to regulatory actions for the following reasons:

(1) non-compliance with this Division or any condition of this permit;

(2) conviction of any crime which would have been grounds for denial of the permit;

(3) failure to take corrective action after timely written notice of a violation;

(4) failure to supervise the business, resulting in a pattern of violations of the San Diego Municipal Code or other provisions of law by the *responsible persons* or patrons, or both. A revocation based on the act or omission of a patron may be based on a determination that a *responsible person* caused or condoned the act or omission, or failed to take reasonable corrective action after a timely written notice of violation; or

(5) violation of any state or local law or regulation pertaining to the business.

(b) Regulatory action includes the following:

(1) Issuance of a verbal warning;

(2) Issuance of a written warning;

(3) Issuance of a notice of violation;

(4) Placing conditions upon the permit which are reasonably related to any violation. Unless otherwise stated as part of the condition, all such conditions expire when the permit expires, excluding any time stayed during an appeal;

(5) Suspension of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit; or

(6) Revocation of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit.

(c) Written notice of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) shall be provided to the individual identified as the responsible managing officer pursuant to section 42.1504(b).

(d) A request for an appeal hearing of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) may be made by the responsible managing officer.

(e) The request for an appeal hearing must be made in writing to the City Manager within ten calendar days of the receipt of the notice of regulatory action.

(f) Upon receiving the request for a hearing, the City Manager shall set hearing not more than thirty calendar days from the date of the receipt of the request, unless a later date is agreed to by the City and the responsible managing officer in writing.

(g) The City Manager shall notify the responsible managing officer of the date, time, and place of the hearing by means of registered or certified mail, or hand delivery.

(h) The hearing shall be conducted by a hearing officer provided by the City Manager.

(i) The hearing officer may affirm, deny, or modify the regulatory action, and shall furnish the reason for the decision to the responsible managing officer in writing within thirty calendar days of the conclusion of the hearing.

(j) The regulatory action shall be suspended while an appeal is pending, or until the time for filing such an appeal has expired, except for regulatory action taken when the City Manager determines there is a need to take immediate action to protect the public from injury or harm or when the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

(Retitled from "Cooperatives–Not-for-Profit" to "Cooperatives-Regulatory Actions on Permit" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

("Retitled from "Cooperatives–Regulatory Actions on Permit" to "Outlets–Regulatory Actions on Permit" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
("Retitled from "Outlets–Regulatory Actions on Permit" to "Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1510 Transportation

The transportation of *marijuana* and *marijuana* products between facilities licensed by the State of California pursuant to Business and Professions Code, Division 10, is permitted.

("Transportation" added 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

EXHIBIT C

EXHIBIT C

OpenDSD
Development Services Department

Search + New

Announcements Register for an Account Login

Click here to access the Code Enforcement Staff Directory, or here to initiate an Investigation.

Search...

Home DSD Permits DSD Code Enforcement

Search Applications

Record CE-0501875:

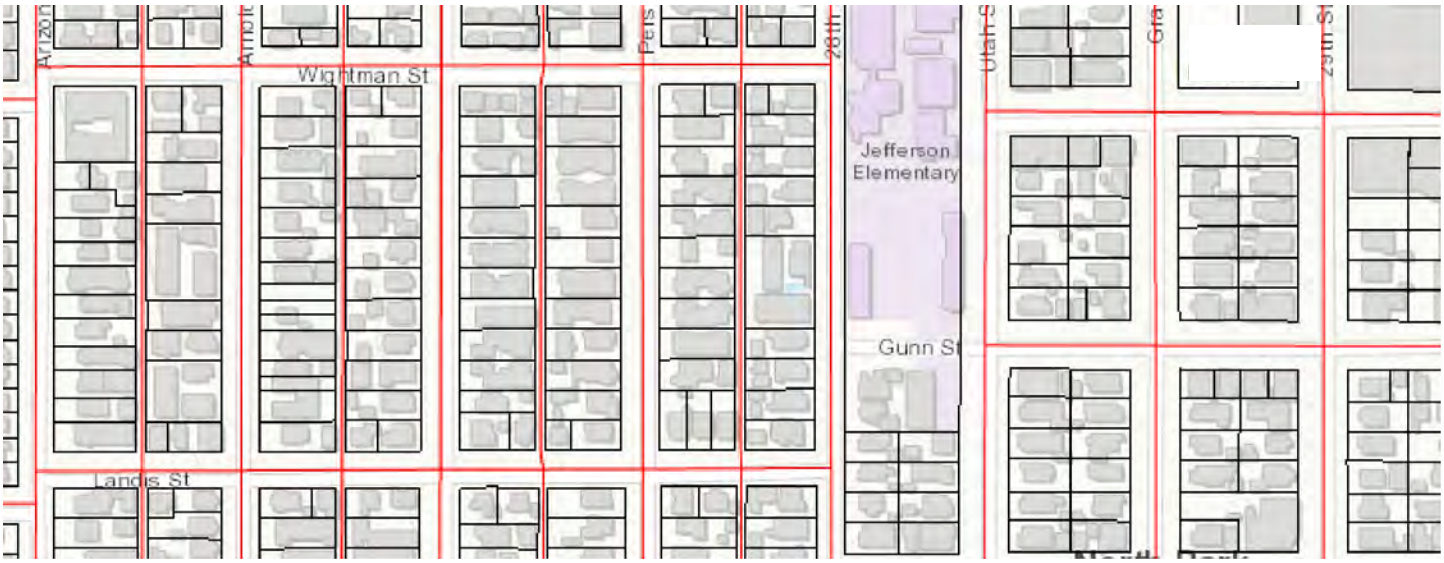
Complaint

Record Status: Active Enforcement

Record Info

Work Location

8863 Balboa Av
E
San Diego CA 92123



Record Details

Project Description:

Zoning-Discretionary Permit Violations
Online - SMR "RLS- CUP Violations. Signage electrical and potential others. Site Visit conducted at MO. Met with Manager (James) who stated only one security guard, new signage seen which some include electrical. No permits seen in PTS."

Owner:

SAN DIEGO UNITED HOLDINGS GROUP LLC
7977 Broadway
Lemon Grove Ca
Lemon Grove CA 91945

More Details

- Application Information
- Parcel Information

OpenDSD
Development Services Department

Search + New

Announcements Register for an Account Login

Click here to access the Code Enforcement Staff Directory, or here to initiate an Investigation.

Search...

Home DSD Permits DSD Code Enforcement

Search Applications

Record CE-0501875:

Complaint

Record Status: Active Enforcement

Record Info

Processing Status

Case Opened

Due on 06/04/2018, assigned to TBD
Marked as Assigned on 06/05/2018 by Rowdy Sperry

Prep Research

Due on 06/05/2018, assigned to Rowdy Sperry
Marked as Ready for Investigator Action on 06/05/2018 by Rowdy Sperry

---

Due on 06/05/2018, assigned to TBD
Marked as Research Complete on 06/05/2018 by Rowdy Sperry

Investigator Action

Due on 06/05/2018, assigned to Rowdy Sperry
Marked as Civil Penalty Notice and Order on 06/05/2018 by Rowdy Sperry

---

*Due on **06/05/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/05/2018** by **Rowdy Sperry***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/06/2018** by **Lisa Poston***

---

*Due on **06/05/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/06/2018** by **Rowdy Sperry***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/07/2018** by **Joana Flores***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/07/2018** by **Rowdy Sperry***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/15/2018** by **Crystal Andrade***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/15/2018** by **Crystal Andrade***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **07/03/2018** by **Amalia Ontiveros***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **07/03/2018** by **Amalia Ontiveros***

---

*Due on **07/13/2018**, assigned to **Denney J Bryan***
*Marked as **TBD** on **TBD** by **TBD***

Closed

Exhibit 36

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 8, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057774

APPEARANCES

FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND CROSS-DEFENDANT REBECCA BERRY:
FERRIS & BRITTON
BY: MICHAEL R. WEINSTEIN, ESQUIRE
BY: SCOTT H. TOOTHACRE, ESQUIRE
BY: ELYSSA K. KULAS, ESQUIRE
501 West Broadway, Suite 1450
San Diego, California 92101
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
ATTORNEY AT LAW
BY: JACOB P. AUSTIN, ESQUIRE
1455 Frazee Road, Suite 500
San Diego, California 92108
619.357.6850
jpa@jacobaustinesq.com

week, which is Thursday at noon -- we may be approaching the beginning of the defendant's case in chief.

In any event, plaintiff's case in chief, Counsel, your next witness will be?

MR. WEINSTEIN: Gina Austin.

THE COURT: She's out in the hallway?

MR. WEINSTEIN: I believe so.

THE COURT: Madam Deputy, could you retrieve Ms. Austin, please.

Good morning, Ms. Austin. If you could follow the directions of my deputy and my clerk, please.

Gina Austin,

being called on behalf of the Plaintiff/Cross-Defendant, having been first duly sworn, testified as follows:

THE CLERK: Please state your full name and spell your first and last name for the record.

THE WITNESS: Gina Austin, G-i-n-a A-u-s-t-i-n.

THE COURT: All right. Whenever you're ready, Counsel.

MR. WEINSTEIN: Thank you, your Honor.

(Direct examination of Gina Austin)

BY MR. WEINSTEIN:

Q Good morning, Ms. Austin.

A Good morning.

Q We will be showing you some documents on the screen, but there are books in front of you with tabs if

Q Are you aware that Mr. Geraci has been sanctioned for illegal cannabis activity on three occasions for owning property in which illegal marijuana principals were housed?

A No.

Q You're not aware of that?

A No.

Q Did you do any type of -- actually, have you worked with Mr. Geraci on any project other than the 6176 CUP?

A I'm not sure I can answer that for client privilege. I know he waived with regard to this. If someone could instruct me whether or not it's been waived to everything, that would be helpful.

MR. WEINSTEIN: Waived, your Honor.

THE COURT: I'm sorry?

MR. WEINSTEIN: We will waive the privilege.

THE WITNESS: Okay. Yes. I did work with him on -- working on some other land use entitlement projects.

BY MR. AUSTIN:

Q Were those marijuana related?

A They were not.

Q So in the forms that we saw up on the board, you said that Rebecca Berry's name was all that was required because the -- any CUP runs with the land. Correct?

A That's correct.

Q So if Ms. Berry was Mr. Geraci's agent, wouldn't you say that in fact Mr. Geraci did have an interest in the CUP?

A I'm sorry. The question is I would say that Mr. Geraci has an interest in the CUP because Rebecca Berry was his agent?

Q Yes.

A Yeah. I believe that they were working together to obtain the CUP.

Q So in Exhibit 30, which has already been admitted into evidence, the first page, Part 1, it's fine print. But three lines down, does it not say to list -- and by the list it's referring to -- anyone --

THE REPORTER: Can the reporter hear that last part again, and louder Counsel.

BY MR. AUSTIN:

Q Okay. In Part 1, it refers to the ownership disclosure statement. And three lines down, it says the list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest, including tenants who will benefit from the permit, all individuals who own the property.

A Yes.

Q So after reading that, why does it seem unnecessary to list Mr. Geraci?

A I don't know that it -- it was unnecessary or necessary. We just didn't do it.

Q But at some point, his involvement would have to be disclosed. Correct?

A Like I said, this -- the purpose of this form is for conflict of interests. And so at some point -- and it happens all the time -- the applicant isn't the name of the person who's -- who's on the form. And we go to planning commission. And the planning commissioners have reviewed all the documents. And they wouldn't have seen Mr. Geraci's name. And had he known one of them or had done work with one of them and they would need to recuse, they would then be upset that it didn't get listed on the form.

Q Right. That makes sense.

So if Mr. Geraci has been sanctioned for illegal cannabis activity --

MR. WEINSTEIN: Objection, your Honor. May we have a sidebar?

THE COURT: The objection is sustained.

Next question. And the request for sidebar is deferred at this time.

BY MR. AUSTIN:

Q On the state level, would Mr. Geraci's interest have to be disclosed in his -- his involvement with the CUP?

A Yes. At the -- when -- once the CUP -- if the CUP had been issued and a state permit had been applied for, then they're -- the state's rules are much more explicit as to what -- who needs to be disclosed as an

owner and a financially interested party. But we didn't get to that point.

Q Okay. So as the main attorney on the CUP application, you were involved in pretty much all important conversations?

MR. WEINSTEIN: Object. Vague and ambiguous as phrased.

THE COURT: Do you -- do you understand the question, Ms. Austin?

THE WITNESS: I think he's asking me if I was involved in every conversation.

THE COURT: All right. The objection is overruled.

Please answer.

THE WITNESS: I wasn't involved in every conversation.

BY MR. AUSTIN:

Q Just the most important ones that would have an effect on the outcome?

A I would hope so.

Q All right. And you're familiar with Abhay Schweitzer?

A Abhay Schweitzer, yes.

Q Did you ever have an email conversation with Mr. Schweitzer asking that Mr. Geraci's name not be included in any of the applications?

A Maybe. I worked with Abhay on dozens of projects. And this is several years ago. But maybe.

Exhibit 37

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 8, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057774

APPEARANCES

FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND CROSS-DEFENDANT REBECCA BERRY:
FERRIS & BRITTON
BY: MICHAEL R. WEINSTEIN, ESQUIRE
BY: SCOTT H. TOOTHACRE, ESQUIRE
BY: ELYSSA K. KULAS, ESQUIRE
501 West Broadway, Suite 1450
San Diego, California 92101
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
ATTORNEY AT LAW
BY: JACOB P. AUSTIN, ESQUIRE
1455 Frazee Road, Suite 500
San Diego, California 92108
619.357.6850
jpa@jacobaustinesq.com

focus your practice on?

A Currently, almost exclusively in cannabis law.

Q And would you explain generally what the area of cannabis law covers.

A It covers land use entitlements. So getting a dispensary or a manufacturing facility permitted in a jurisdiction of San Diego. Every city is different. It includes compliance for those companies so that they're compliant with the state law as well as the local jurisdiction law. It has a lot of mergers and acquisitions since there's been a lot of roll-up in the industry in the last year.

Q And you practice in jurisdictions outside California?

A Yeah. Twenty-five different local jurisdictions in California and then four other states.

Q Okay. Now, have you represented persons or businesses in connection with regulatory compliance for getting conditional use permits in the City of San Diego?

A Yes.

Q On how many occasions?

A At least 50.

Q And that includes pending applications?

A That includes pending ones, correct.

Q And how many of your clients within the City of San Diego have obtained a CUP license?

A I have to count that.

Q Do you have an estimate?
A Somewhere between 20 and 25.
Q Okay. Now, do you consider yourself one of the experts in the San Diego area as it relates to cannabis law and regulation?
A Yes, I do.
Q And do you speak regularly at industry conferences on subjects related to cannabis law and regulation?
A Yes, I do.
Q Can you give me some examples of conferences you've spoken at.
A The most recent -- well, most recently, I did a law school panel, a panel for the Thomas Jefferson law school. Before that, I think I was in Chicago speaking at the Arcview conference. And before that, it would have been at the NCIA, National Cannabis Industry Association, conference in Los Angeles.
Q And what type of topics have you spoken at those conferences?
A Regulatory compliance issues, corporate structuring, funding mechanisms, local -- dealing with local jurisdictions and municipalities.
Q And do you know Larry Geraci?
A Yes.
Q And was Mr. Geraci your client?
A Yes.
Q Had your firm provided services to him in

Exhibit 38

Austin Legal Group
LAWYERS
3990 OLD TOWN AVE, STE A-112
SAN DIEGO, CA 92110

LICENSED IN CALIFORNIA & HAWAII
TELEPHONE
(619) 924-9600

FACSIMILE
(619) 881-0045

Writer's Email:
gaustin@austinlegalgroup.com

January 14, 2015

City of San Diego
City Planning Commission
122 First Ave., 5th Floor
San Diego, CA 92101

Re: Appeal of Hearing Officer Decision Approving Conditional Use Permit for Project No. 368344

Dear Members of the Planning Commission:

The purpose of this letter is to provide additional information in support of the application for a conditional use permit submitted by Point Loma Patients Cooperative ("Applicant") in light of the appeals filed by D&D Cooperative, Scott Chipman, and Kurtz Street Cooperative. As explained in more detail below, the appeals are without merit and the Applicant requests the Planning Commission uphold the Hearing Officer's determination and grant the conditional use permit because the statements and evidence relied upon by the hearing officer were accurate and all the requisite findings can be made.

A. ***The Project Application Was Not Based On Materially Erroneous and Misleading Information***

The General Application submitted to the City by Point Loma Patients Cooperative identifies the Legal Description as "Lot Nos. 37, 38, Block 1, Resub. PL 277, Aschoff & Kellys Sub., Map No 578." (See Exhibit A.) Mr. Martin, on behalf of Appellant Dana Gagnon and Kurtz Street Cooperative, contends that "the real property upon which the Project intends to operate…consists of four(4) equally sized lots (not just the two (2) lots erroneously claimed by the Applicant[.]" Contrary to Appellant's assertions, lots 37, 38, 39 and 40 have never constituted a single property and common ownership does not in-and-of-itself create a single property or change the legal description.

A search of property records reveals that the subject lots were subdivided in 1889. (See Exhibit B for the original subdivision Map No. 578). In 1961, due to the common ownership of Lots 37 and 38 and the separate common ownership of Lots 39 and 40, the assessor's office created two tax parcels[1] (See Master Property Record for Lots 37, 38 attached as Exhibit C-1 and

[1] Per conversation with John K. at County Recorder Mapping Division.

Lots 29, 40 attached as Exhibit C-2 and early property deeds attached as Exhibit C-3.) These tax parcels are reflected on the first tax assessor map for this area. (See Exhibit D.) Contrary to Mr. Martin's assertions, the subject lots were not under common ownership in 1959 and do not appear to have come under common ownership until around 1966 for a short period of time and then again in 1993. However, common ownership alone is irrelevant to the property ownership and the construct of "merger".

Merger of two or more parcels into a single parcel can be achieved either voluntarily by the property owner or involuntary by operation of law. Property records show, and the current owner affirms, that the subject parcels have not been voluntarily merged. Thus, the only way all 4 lots could have been merged into one single property, as claimed by Mr. Martin, would have been by operation of law. As explained in more detail below, no merger has occurred by operation of law with regard to lots 37, 38, 39, and 40.

California added merger provisions to its Subdivision Map Act ("SMA") in or around 1973.[2] The effect of this legislation was to formally do away with the notion that parcels automatically merge by virtue of common ownership and establish a scheme by which parcels would be merged, under certain limited circumstances.[3] In 1983 and 1984, California amended the SMA to require local agencies to record notices of merger for any parcels they deemed as merged before January 1, 1984.[4] Pursuant to these amendments, no parcel purportedly merged prior to January 1, 1984 shall be considered still merged, unless a notice of merger was recorded prior to January 1, 1986.[5] No notice of merger was filed by January 1, 1986 for the property represented by lots 37 and 38 or the property represented by lots 39 and 40. Therefore, 4 lots shall not be deemed merged because of anything that happened prior to January 1, 1984, including common ownership.

Since 1983, the merger provisions in the SMA have provided "the sole and exclusive authority for local agency initiated merger of contiguous parcels." After January 1, 1984, parcels could be merged only in accordance with the specific merger provisions of the SMA, which require, *inter alia*, notice to the parcel owner[6] and a notice of merger to be filed with the recorder in the county in which the parcels are situated[7]. Common ownership and/or operation alone are insufficient for merger.[8] As there is no notice of merger on record for any of the subject parcels,

---

[2] *See* former § 66424.2 and current § 66451.10 et seq. of the SMA. *See also Morehart v. County of Santa* Barbara, 7 Cal.4th 725 (1994); *Gomes v. County of Mendocino*, 37 Cal.App.4th 977 (1995); *Moores v. Board of Sup'rs of Mendocino* County, 122 Cal.App.4th 883 (2004).

[3] *Id.*

[4] *See* §§ 66451.30 and 66451.19 of SMA. *See also Morehart v. County of Santa Barbara*, 7 Cal.4th 725 (1994); *Gomes v. County of Mendocino*, 37 Cal.App.4th 977 (1995); *Moores v. Board of Sup'rs of Mendocino* County, 122 Cal.App.4th 883 (2004).

[5] *Id.*

[6] *See* § 66451.11 of the SMA.

[7] *See* § 66451.12 of the SMA.

[8] *See Lakeview Meadows Ranch v. County of Santa* Clara, 27 Cal.App.4th 593 (1994); *Moores v. Board of Sup'rs of Mendocino* County, 122 Cal.App.4th 883 (2004); *Morehart v. County of Santa* Barbara, 7 Cal.4th 725 (1994); Stell *v. Jay Hales Development Co.*, 11 CalApp.4th 1214 (1992)

there cannot have been a merger of the parcels as Appellant claims. It should be noted, the fact that the four lots (two tax parcels) were transferred to the Sinner Brothers, the current owner, by a single deed does not change the forgoing analysis.[9]

Because the subject parcels could not have been involuntarily merged and have not been voluntarily merged, Appellant's assertions that the four subject lots constitute a single property are completely without merit and should not be considered in determining whether the appeal should be granted. The information previously submitted by Applicant in this matter was and is correct and no factual error exists to be appealed.

B. The Project's Lack of Sidewalk is Consistent with the General and Specific Plan

Mr. Martin also suggests that the lack of sidewalk is a fatal defect of the project. Mr. Martin contends that the lack of sidewalk is inconsistent with the community plan for Midway/Pacific Highway and questions whether the project is compliant with the American with Disabilities Act.

Contrary to Mr. Martin's assertions, the lack of sidewalk is not inconsistent with the community plan. The Midway/Pacific Highway community plan seeks to "establish an interconnecting system of sidewalks throughout the community." It does not create a sidewalk mandate. Further, the Property fronts Hancock and there is a sidewalk on the Hancock side of the Property. The entrance is proposed off of Picket Street. Picket Street is actually a 20' alley. The community plan does not suggest that there should be sidewalks in alleys and City staff did not request the Applicant include a sidewalk. None-the-less, the Applicant is not opposed to adding a sidewalk to the project and would do so upon the City's request.

The lack of a sidewalk is not grounds to sustain the appeal.

C. ***This is an improper forum to review the City's MMCC Approval Process Or The Ordinance Generally***

Ms. Donna Jones, on behalf of D&D Cooperative (MMCC Applicant 3430 Hancock St.) suggests that Ordinance No. 20356 ("MMCC Ordinance") and the accompanying staff report (Staff Report No. PC-13-134) are fundamentally flawed because there are no clear procedures for the order of approval when multiple "MMCC CUP applications [are] received simultaneously or in close time proximity to one another." Ms. Jones continues that approving the first four applications in a district "does not ensure that the most appropriate applications are approved." Similarly, Mr. Martin's letter of December 17, 2014 argues that "the City has failed to prescribe and/or to implement a clear set of procedures regarding the order of approval for multiple competing MMCC CUP applications in this area.

[9] *See Lakeview Meadows Ranch v. County of Santa Clara*, 27 Cal.App.4th *593* at 619 (1994).

Ms. Jones and Mr. Marin are apparently concerned that their clients will be excluded from obtaining a CUP if the instant CUP for 3452 Hancock is granted because D&D's Cooperative located at 3430 Hancock and the Kurtz Street Cooperative located at 3486 Kurtz Street are within 1000 feet. It is unlikely that this same argument would be made by Mr. Martin or Ms. Jones if one of their client's applications was the first application to be approved by the Hearing Officer. Moreover, this City's process is consistent with other City ordinances that proscribe separation distances (e.g. adult book stores.) As Ms. Jones points out, "the City's June 3, 2014 news release announcing the order of the applications (with D&D first in District 2) stated that the order of applications at the time did not guarantee the order in which the applications would be approved." The process here is the same as with any other development project - - the applicant assumes the risks and costs associated with an application for a discretionary permit until the permit is issued.

The Applicant not only disagrees with Appellant D&D's assertions that the City's process for granting MMCUPs is fundamentally unfair, but also contends that Appellant's appeal as to this issue is untimely and barred by the statute of limitations contained in CA Gov. Code § 65009 ("Section 65009" hereafter). Therefore, the City should disregard all arguments in all appeals by any Appellant that pertain to the adoption of the medical marijuana ordinances, their fairness, or the processes related thereto.

Section 65009 of the Government Code was enacted "to provide certainty for property owners and local governments regarding decisions" relating to land use planning and zoning and provides for a shortened statute of limitations to bring actions relating the same.[10] Pursuant to Section 65009, all actions or proceedings to attack, review, set aside, void, or annul the adoption or amendment of an ordinance must be commenced within 90 days from the date of adoption or amendment. The City passed its medical marijuana ordinances on February 25, 2014, which went into effect 30 days later.[11] The adoption of the medical marijuana ordinance is well past the 90 day statute of limitations contained in Section 65009 and, thus, all Appellants are barred from appealing Applicant's application on the basis of fairness or content of the medical marijuana ordinances.

Similarly, the Appeal filed by Mr. Chipman is an exposition on his beliefs regarding the harms of marijuana. The CUP approval process is neither the time nor the forum for discussions on the benefits of marijuana. Further, as explained above, his arguments are designed to address the validity of the ordinance which is barred by the statute of limitations.

As none of the information submitted by the Appellants creates a factual error, new information, conflict, or unsupported findings, the Appellants contentions are not grounds to sustain the appeal.

D. ***The Applicant Is Not Currently Operating or Affiliated with a Dispensary***

[10] CA Gov. Code § 65009(a)(3). *See also, Travis v. County of Santa Cruz*, 33 Cal.4th 757 (2004).
[11] *See* CA GOV. Code § 36937 (ordinances take effect 30 days after final passage)

In her letter of December 2, 2014, Ms. Jones argues that Mr. Knopf is affiliated with Point Loma Patients Association and that Point Loma Patients Association is a dispensary currently operating in the City of San Diego in violation of the zoning ordinance. Ms. Jones, however, is misinformed.

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.

While the Applicant agrees with Ms. Jones that the "City can best promote the rights of medical cannabis patients by ensuring a model of legally compliant Cooperatives" it would be improper for the Planning Commission to deny a conditional use permit to Point Loma Patients Cooperative based upon the alleged illegal operations of a 3rd party. Mr. Knopf is not affiliated with the 3rd party and is not a "habitual violator" or "an applicant with a history of breaking the medical marijuana laws established by the City" as Ms. Jones would like the Commission to believe. Further, the Applicant and the Property owner both contend that this Property location has never been utilized by a cooperative. The ordinance itself provides no language for denial of an application due to an applicant's prior affiliation with a cooperative and it would be an abuse of discretion for the Planning Commission to deny this Application based upon such.

* * *

For the reasons stated above, Point Loma Patients Cooperative, respectfully requests that the Planning Commission deny the appeals and affirm the hearing officer's determination and grant the requested Conditional Use Permit.

Sincerely,

AUSTIN LEGAL GROUP, APC

Gina M. Austin, Esq.

EXHIBIT A

THE CITY OF SAN DIEGO

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

General Application

FORM DS-3032
AUGUST 2013

Part I *(Must be completed for all permits/approvals)*

1. Approval Type: *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☑ Other: CUP

2. Project Address/Location: *Include Building or Suite No.*	**Project Title:**	**Project No.:** *For City Use Only*
3452 Hancock Street, San Diego, CA 92110	3452 Hancock MMCC	368344
Legal Description: *(Lot, Block, Subdivision Name & Map Number)*		**Assessor's Parcel Number:**
Lot Nos. 37,38, Block 1, Resub. PL 277, Aschoff & Kellys Sub., Map No. 578		441-581-12-00

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Project Description:
Conditional Use Permit for a Medical Marijuana Consumer Cooperative. Approximately 831 SF tenant improvement and parking lot striping.

3. Property Owner/Lessee Tenant Name: *Check one* ☐ Owner ☑ Lessee or Tenant

Name:	Telephone:	Fax:
Point Loma Patients Consumer Cooperative	(619) 886-4251	(858) 230-6139

Address:	City:	State:	Zip Code:	E-mail Address:
2188 Balfour Ct.	San Diego	CA	92109	adamearth73@gmail.com

4. Permit Holder Name - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.

Name:	Telephone:	Fax:
Point Loma Patients Consumer Cooperative	(619) 886-4251	(858) 230-6139

Address:	City:	State:	Zip Code:	E-mail Address:
2188 Balfour Ct.	San Diego	CA	92109	adamearth73@gmail.com

5. Licensed Design Professional (if required): (check one) ☑ Architect ☐ Engineer License No.: C-19371

Name:	Telephone:	Fax:
Michael R. Morton	(619) 857-8144	

Address:	City:	State:	Zip Code:	E-mail Address:
3956 30th Street	San Diego	CA	92104	abhay@techne-us.com

6. Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -

a. Year constructed for all structures on project site: 01/01/1959
b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☑ Yes ☐ No
d. Does the project include any foundation repair, digging, trenching or other site work? ☐ Yes ☑ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Adam Knopf Signature: Date: 04/23/2014

7. Notice of Violation - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☑ No ☐ Yes, copy attached

8. Applicant Name: *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other Person per M.C. Section 112.0102

Name:	Telephone:	Fax:
Point Loma Patients Consumer Cooperative	(619) 886-4251	(858) 230-6139

Address:	City:	State:	Zip Code:	E-mail Address:
2188 Balfour Ct.	San Diego	CA	92109	adamearth73@gmail.com

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Date: 04/23/2014

EXHIBIT A
PLANNING COMMISSION APPEAL PROJECT NO. 368344

Exhibit 39

Image taken on 4/22/2024 @ 2850 Garnet Avenue San Diego, CA

Advertising having been in business since 2009

Exhibit 40

The San Diego Union-Tribune

POLITICS

San Diego OK's first medpot permit

By David Garrick

Jan. 29, 2015 11:40 AM PT

SAN DIEGO — San Diego gave final approval on Thursday to the city's first legal marijuana dispensary, which will be run by an HIV-positive San Diego State lecturer who smokes pot daily to relieve his symptoms.

It will be the first legal dispensary to operate in the city since California voters approved the use of medical marijuana in 1996. Located near the Otay Mesa international border, it's expected to open in early March.

San Diego joins nearly 50 other cities across the state that allow legal medical marijuana dispensaries, but it will be the only city in this county to allow them. The county government, however, allowed a dispensary to open last summer on the outskirts of El Cajon.

The Planning Commission unanimously approved the Otay dispensary on Thursday after nearly three hours of testimony. Three other legal dispensaries in San Diego are scheduled to receive their final approvals on March 12, one in Clairemont, one in San Ysidro and one in the Midway district near the Valley View Casino arena.

"We feel as though we hit the lottery being selected first," said David Blair, owner of the Otay dispensary and a business ethics teacher.

Blair said his goal is helping sick people in the South Bay and other parts of San Diego use marijuana to control their pain like he has — and to improve the quality of their

lives.

“I suffer from such pain and inflammation in my joints and muscles that the tears would flow out of me even after taking 600 milligrams of ibuprofen,” said Blair, noting that he suffers from several other illnesses in addition to being HIV-positive. “With medical marijuana, I don’t have any pain. I don’t believe in miracles, but this is pretty close.”

San Diego’s legalization of marijuana sales follows a nationwide trend, with 23 states allowing the sale of medical marijuana and four others — Colorado, Washington, Oregon and Alaska — allowing the sale of recreational pot.

Supporters of medical marijuana and the dispensary, A Green Alternative, said Thursday’s approval was a major milestone.

Some also predicted the emergence of legal dispensaries, which must be nonprofits and allow their products to be tested, would accelerate the closure of an estimated 100 illegal pot shops that continue to operate across the county while authorities try to shut them down.

“We’re creating a safer environment for the patients,” said Dr. Bob Walder, Blair’s partner and the dispensary’s chief medical officer. “The requirements we have to test for mold and pesticides are finally now on the books to ensure people are getting high-quality medicine.”

Critics of the dispensary said on Thursday that it’s in a high-crime area and near businesses where many children go frequently, including multiple fast food chains. They also said the dispensary will prompt excessive loitering and smoking of marijuana in the parking lot.

“Marijuana will permeate the adjacent businesses,” Barbara Gordon said.

No merchants or landlords near the dispensary spoke during Thursday's hearing.

Planning Commissioner Anthony Wagner said the city's level of regulation was so aggressive that he was highly confident there would be no problems at the dispensary.

"You could go have your July 4 picnic in the parking lot and be quite safe," he said.

Edith Gutierrez, the city official overseeing medical marijuana approvals, said the dispensary satisfies all the requirements in a city ordinance approved last winter. Those include that it be at least 100 feet away from residential property and at least 1,000 feet from schools, playgrounds, libraries, parks, churches and facilities focused on youth activities.

Scott Chipman, leader of the anti-marijuana group San Diegans for Safe Neighborhoods, said the dispensary should be rejected despite it satisfying all of the city's conditions.

"This is a bureaucratic checking of boxes," Chipman said.

Supporters said Thursday, however, that the Otay Mesa site, a 1,400-square-foot suite in a two-story building on Roll Drive, was ideally located in an industrial zone nearly five miles from the closest residential area.

In addition, they stressed that the dispensary will have 24-hour armed security even though the business will only be open from 7 a.m. to 9 p.m.

The landlord of the site. Michael Vogt, said "this is the right tenant at the right time in the right location."

Blair said the dispensary would be a model business.

“We know right from wrong,” he said. “The reason we floated to the first position is every time the city requested something of us, we doubled it.”

Walder said studies show there’s no connection between dispensaries and a rise in nearby crime. He also downplayed claims that many doctors recklessly prescribe medical marijuana, contending the vast majority of doctors are ethical.

Blair, 59, and Walder, 62, are both newcomers to the medical marijuana industry; neither has ever operated a dispensary or worked at one, and Walder has never used his medical license to prescribe pot.

Blair said the Otay location was chosen partly because he lives nearby in the Eastlake neighborhood of Chula Vista, and partly because there was expected to be little competition to open a city-approved dispensary in the South Bay.

A maximum of 36 dispensaries are allowed under city rules, with a cap of four in each of the nine City Council districts.

But the total is expected to be far lower, with most of the 38 proposed dispensaries concentrated in the Midway area of council district No. 2 and the communities of Kearny Mesa and Mira Mesa in council district No. 6.

Even without such competition in District 8, Blair said he and his partners have spent more than $200,000 on lawyers, consultants, city fees and roughly $27,000 they’ve paid in rent to secure the unopened dispensary location since last February.

Planning commissioners stressed on Thursday that their role was only to determine whether the proposed dispensary meets the city’s land-use criteria and other regulations in the ordinance, not to decide whether marijuana should be legalized or whether the city ordinance should be amended.

“We can’t overturn a statewide referendum from 1996,” said commission chairman Tim Golba.

The conditional use permit approved by the Planning Commission expires in five years.

David Garrick

Exhibit 41

No. D081109

COURT OF APPEAL, STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

AMY SHERLOCK as Guardian ad Litem, etc., et al.

Plaintiffs and Appellants,

vs.

GINA M. AUSTIN, et al.

Defendants and Respondents.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
SUPERIOR COURT NO. 37-2021-00050889-CU-AT-CTL
THE HONORABLE JAMES A. MANGIONE

RESPONDENTS' BRIEF

Douglas A. Pettit, Esq., SBN 149673
Kayla R. Sealey, Esq., SBN 323363
Annie F. Fraser, Esq., SBN 144662
PETTIT KOHN INGRASSIA LUTZ & DOLIN PC
11622 El Camino Real, Suite 300
San Diego, CA 92130
(858) 755-8500 / Fax: (858) 755-8504
dpettit@pettitkohn.com
ksealey@pettitkohn.com
afraser@pettitkohn.com
Attorneys for Defendants/Respondents
Gina M. Austin and Austin Legal Group

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Rules

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

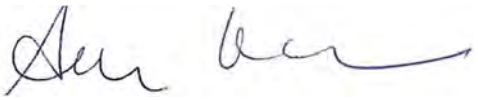
The following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate (Cal. Rules of Court, rule 8.208(e)(1)), or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves (Cal. Rules of Court, rule 8.208(e)(2)):

Full name of interested entity or person:	Nature of Interest:
Amy Sherlock	Plaintiff/Appellant
Minors T.S. and S.S.	Plaintiffs/Appellants
Andrew Flores	Plaintiff/Appellant
Gina M. Austin	Defendant/Respondent
Austin Legal Group	Defendant/Respondent
Larry Geraci	Defendant
Rebecca Berry	Defendant
Finch, Thornton and Baird	Defendant
Abhay Schweitzer	Defendant
Techne	Defendant
Jim Bartell	Defendant
Natalie Trang-My Nguyen	Defendant
Aaron Magagna	Defendant
Jessica McLees	Defendant
Salam Razuki	Defendant
Ninus Malan	Defendant
Bradford Harcourt	Defendant

Logan Stellmacher	Defendant
Eulenthias Duane Alexander	Defendant
Stephen Lake	Defendant
Allied Spectrum, Inc.	Defendant
Prodigious Collectives, LLC	Defendant

Respectfully submitted,

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC



Dated: February 14, 2023 By: _____

Douglas R. Pettit, Esq.
Kayla R. Sealey, Esq.
Annie F. Fraser, Esq.
Attorneys for Respondents
Gina M. Austin and Austin Legal Group

I.

INTRODUCTION

Appellants filed a lawsuit based on activity that is clearly protected by Code of Civil Procedure section 425.16, the anti-SLAPP[1] statute. Respondents Gina M. Austin and her law firm, Austin Legal Group ("Respondents") specialize in cannabis licensing and entitlement at the state and local levels. Appellants--attorney Andrew Flores, Amy Sherlock, and her minor children--filed a lawsuit against Respondents and 17 other parties, alleging a grand conspiracy to monopolize the cannabis market. The allegations against Respondents relate to their role on behalf of their clients in petitioning for Conditional Use Permits ("CUPs").

As the activity alleged against Respondents is directly grounded in their protected activity of petitioning an administrative agency, it falls directly within the protections of the anti-SLAPP statute, a procedural remedy designed "to dispose of lawsuits brought to chill the valid exercise of a party's constitutional right of petition or free speech." (*Digerati Holdings, LLC v. Young Money Ent't, LLC* (2011) 194 Cal.App.4th 873, 882-883) Thus, the trial court granted Respondents' Special Motion to Strike the First Amended Complaint.

On appeal, Appellants again argue large conspiracies, based on conclusory allegations without support, many of which have nothing to do with Respondents or the anti-SLAPP motion.

---

[1] "SLAPP" stands for "Strategic Lawsuits Against Public Participation." It will also be referred to herein as "Section 425.16."

With regard to the anti-SLAPP motion, Appellants argue, without support, that the petitioning activity for the CUPs is "illegal petitioning activity as a matter of law." (AOB 8-9, 11, 20-21, 24-25.) In addition to conclusory allegations, Appellants provide documents from unrelated cases, that were not presented to the trial court.

The trial court properly granted Respondents' Special Motion to Strike Pursuant to Code of Civil Procedure section 425.16. It is uncontested that Respondents' petitioning activity is protected activity. Appellants' argument is the activity is illegal as a matter of law, but it is based on conclusory allegations, unsupported by any facts in the record. Furthermore, once it was established that the activity was protected, the burden shifted to Appellants to show there was a probability of success on the merits. Appellants failed to present any evidence. Therefore, the trial court properly granted the motion.

II.

STATEMENT OF THE CASE

On December 21, 2021, attorney Andrew Flores, in pro per, filed the First Amended Complaint ("FAC") in San Diego Superior Court on his behalf, as well as on behalf of Amy Sherlock and her minor children T.S. and S.S. ("Appellants") (RJN 68-108.)[2] The FAC alleged, inter alia, conspiracy to monopolize in violation of the Cartwright Act, conversion, civil

[2] Appellants filed a Request for Judicial Notice ("RJN") of the FAC. While the proper mechanism is a Motion to Augment, Respondents will cite to the RJN provided by Appellants.

conspiracy, declaratory relief, unfair competition and unlawful business practices, against 19 parties. (RJN 68.)

Three of the causes of action were against all defendants, including Gina Austin and Austin Legal Group ("Respondents"), including conspiracy to monopolize in violation of the Cartwright Act (RJN 101-102), unfair competition (RJN 104-106), and civil conspiracy (RJN 107-108). The other causes of action did not have any allegations against Respondents.

On June 16, 2022, Respondents filed a Special Motion to Strike the FAC pursuant Section 425.16, the anti-SLAPP statute, as the causes of action asserted against Respondents arose from constitutionally protected activity, and Appellants could not establish a probability of prevailing on their claims. (CT 5-121.) Appellants filed an Opposition on July 25, 2022. (CT 122-145.) Respondents filed a Reply on August 2, 2022. (CT 146-154.)

On August 12, 2022, the trial court issued a tentative opinion granting Respondents' anti-SLAPP motion. (CT 155-156.) The court heard argument on August 12, 2022, and confirmed its ruling that same day. (RT 3-6; CT 157-158, 170-171.)

On August 16, 2022, Appellants filed a Notice of Appeal. (CT 166.)

III.

STATEMENT OF FACTS[3]

Gina Austin, an attorney, and her law firm, Austin Legal Group ("ALG"), specialize in representing parties in obtaining Conditional Use Permits ("CUPs") to operate cannabis facilities at the state and local level. (RJN 74.) This lawsuit arises from her representation of clients in advising them about, or obtaining CUPs.[4]

Appellants alleged and now argue that Respondents were operating an illegal law practice because Larry Geraci ("Geraci") submitted a CUP application in his assistant, Rebecca Berry's name, on the property Geraci was attempting to purchase from Darryl Cotton ("Cotton"). (RJN 83-85; AOB 12-16.)

---

[3] The Statement of Facts is taken from the FAC and other evidence presented to the trial court. Although Respondents do not agree with many of the allegations, for purposes of the anti-SLAPP motion, a court accepts the plaintiff's evidence as true, along with evidence presented to the trial court. (*Weeden v. Hoffman* (2021) 70 Cal.App.5th 269, 277, fn. 1, 287.) Appellants cite to evidence that they present in this appeal, and was not presented to the trial court. (AOB 13-14.) This Court cannot consider the evidence that was not presented to the trial court. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 684; Cal. Rules of Court, rule 8.204(a)(2)(C).)

[4] The FAC has general allegations, against numerous defendants, including those in the cannabis industry and their attorneys, of a broad and far-reaching conspiracy "to create an unlawful monopoly in the cannabis market" in San Diego. (RJN 69.) The complaint tells a long tale, involving named defendants committing attempted kidnap and murder (RJN 75-76, 82), using "Mexican gangs to commit violent acts" (RJN 76), fraudulently forging documents to divest Sherlock of her interest in property that her husband, who committed suicide, owned (RJN 77-80, 92), committing acts and threats of violence to end the litigation (RJN 95), and bribing witnesses (RJN 96-97). As these allegations do not involve Respondent, they are not relevant, and are not included in the recitation of the Statement of Facts.

Respondents were involved with the acquisition of a CUP at 6176 Federal Boulevard, but abandoned their efforts after another CUP was issued within 1000 feet. (CT 28.)

A. Respondents' Involvement in Applying for a CUP at 6176 Federal Boulevard Was Protected Activity

Plaintiffs' allegations regarding the property at 6176 Federal Boulevard, including their allegations of conspiracy, have been litigated in three separate lawsuits. Geraci, also named in the underlying lawsuit, owned T&F Tax Center, a tax, financial and accounting services business. (RJN 83.) Geraci hired ALG to assist in drafting an agreement for the purchase and sale of the property, and in acquiring a CUP. (CT 28.)

Geraci became interested in the property in mid-2016, and began negotiating with Cotton to purchase the property. (RJN 83.) In November 2016, Geraci and Cotton entered into an agreement regarding the sale of the property. (RJN 84.) Geraci claimed the terms of the agreement were to buy the property for $800,000 with a $10,000 nonrefundable deposit, and were memorialized in a written and notarized document. (RJN 142-143 [Geraci declaration attached as exhibit to FAC]; see also RJN 129-130 [notarized document attached as exhibit to the FAC].) Cotton claimed the parties entered into an oral agreement, and that the nonrefundable deposit was $50,000, which Geraci failed to pay, and that the agreement provided Cotton with a 10 percent equity stake in the CUP, and $10,000 per month or 10 percent of net profits. (RJN 84; CT 70-71 [Cotton's federal complaint].)

In March 2017, Cotton informed Geraci that he was entering into a different agreement with a third party for the sale

of the property. (RJN 86.) On March 21, 2017, Geraci, represented by a law firm other than Austin or ALG, filed a lawsuit against Cotton for breach of contract. (CT 13, 28, 31-38.) On August 25, 2017, Cotton filed a second amended cross-complaint. (CT 13, 39-57.) Initially, Cotton alleged, as Appellants do here, that Rebecca Berry submitted the CUP application in her name because Geraci could not obtain a CUP, but then revised the causes of action to drop these allegations. (RJN 87-88.) A jury found in favor of Geraci on both the complaint and cross-complaint. (CT 13, RJN 94.)[5] Cotton then filed an action in federal court, with the same allegations. (CT 58-118.)

Irrespective of the disputes regarding this property, Respondents' only involvement that is raised in the FAC is their activity in obtaining a CUP on the property. (RJN 83-85; AOB 12-16.)

B. Respondents Were Not Involved In The CUP Applications for The Other Properties that Are Part of the Alleged Conspiracy

According to the FAC, the lawsuit was based on the acquisition of four CUPs, but not the one at 6176 Federal Boulevard. The CUPs were (1) in Ramona; (2) on Balboa Avenue; (3) on 6220 Federal Boulevard; and (4) in Lemon Grove (at 6859 Federal Blvd.) (RJN 70.) Respondents were not involved in the

[5] In spite of the jury finding to the contrary, in the instant FAC, Appellants claimed the lawsuit "was filed without factual or legal probable cause because the November Document [written document] cannot be a lawful contract for at least two reasons: it lacks mutual assent and a lawful object." (RJN 86.)

Ramona CUP, the Federal CUP, or the Lemon Grove CUP. (CT 28.) Respondents were tangentially involved in the Balboa CUP, in helping Michael Sherlock's attorney with the initial application. (CT 28.)

In spite of Appellants' allegations that the lawsuit was based on the four CUPs above, their allegations regarding Respondents involve the CUP at 6176 Federal Boulevard, and their arguments on appeal are based on that CUP. (See AOB 12-18 [facts are all about application for a CUP in Berry's name].)

C. The Causes of Action Against Respondents

Appellants alleged against all defendants, in their first cause of action, a violation of Business and Professions Code section 16700 *et seq.*, the Cartwright Act, in that they "designed, implemented and/or ratified a combination and conspiracy with the specific intent to prevent competition and/or create a monopoly in the cannabis market" in San Diego. (RJN 101-102.)

In their fifth cause of action, Appellants alleged the "acts and practices" of all the defendants were unlawful, unfair, and in violation of the Unfair Competition Law, under Business and Professions Code section 17200. (RJN 104-106.) Specifically related to Respondents, they alleged that "ALG's Proxy Practice is illegal and violates numerous State and City laws, most notably, Bus. & Prof. Code, §§ 19323 *et seq*. and 26057 *et seq*." (RJN 105.) In their seventh cause of action, Appellants alleged a civil conspiracy against all defendants, in that they "took or ratified acts in furtherance of the Antitrust Conspiracy." (RJN 107-108.)

IV.

ARGUMENT

A. Standard of Review

This Court reviews the denial of a Code of Civil Procedure section 425.16 Special Motion to Strike de novo. (*Newport Harbor Offices & Marina, LLC v. Morris Cerullo World Evangelism* (2018) 23 Cal.App.5th 28, 42; *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 405.) In exercising its independent review, this Court engages in the same two-pronged analysis as the trial court. (*Newport Harbor*, at p. 42.)

First, the court considers whether defendants have made "a threshold showing that the challenged cause of action is one 'arising from' protected activity." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 735, citing *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76.) Second, "[i]f the court concludes that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Hailstone*, 169 Cal.App.4th at p. 736.) If the plaintiff failed to produce evidence demonstrating its likelihood of success, the special motion to strike should be granted. (*Contreras*, 5 Cal.App.5th at p. 404 [plaintiff may not rely upon unverified allegations and those made "upon information and belief" to show the merits of the claim].)

In making its determination, the Court "considers the pleadings and evidentiary submissions of both the plaintiff and the defendant . . . ." (*Jarrow Formulas, Inc. v. LaMarche* (2003)

31 Cal.4th 728, 741, fn. 10, quoting *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821, and citing Code Civ. Proc., § 425.16, subd. (b)(2).) However, "the court does not weigh the credibility or comparative probative strength of competing evidence. . . ." (*Ibid*.)

B. The Trial Court Properly Granted Respondents' Anti-SLAPP Motion as the Lawsuit Involves Protected Activity

Section 425.16, also known as the "anti-SLAPP Statute," was enacted by the California legislature in order to combat "the disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (Code Civ. Proc., § 425.16.) The anti-SLAPP statute provides for a special motion to strike a cause of action if it arises from the exercise of such rights and lacks minimal merit. Section 425.16 therefore, "provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384, emphasis original; see also *Bel Air Internet v. Morales* (2018) 20 Cal.App.5th 924, 929.)

California's anti-SLAPP statute provides, in relevant part:

> A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(Code Civ. Proc., § 425.16, subd. (b)(1).) The statute is construed broadly to maximize protection for acts in furtherance of the right to petition the courts. (Code Civ. Proc., § 425.16, subd. (a)*; Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119-1121.) As shown below, the activity here was protected, and clearly comes within the statute.

1. Austin's Representation of Her Clients in Obtaining CUP Approvals Is Protected Activity Thereby Satisfying the First Prong of the Inquiry

Section 425.16 sets forth a two-pronged process to evaluate whether a claim should be stricken under the statute. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88) First, the Court must determine if the movant has made a threshold showing that the challenged claim or claims arise out of activity which is protected under the statute. (Code Civ. Proc., § 425.16, subd. (b)(1); *Navellier*, at p. 88.) The inquiry on the first prong focuses only on whether the actions underlying the challenged claims fall under one of the categories of protected activity described in Section 425.16, subdivision (e). (*Malin v. Singer* (2013) 217 Cal.App.4th 1283, 1292) Here, it is undisputed that the activity in obtaining CUPs on behalf of clients is protected activity.

a. *Representing Clients in Obtaining CUPs Are Protected*

Under Section 425.16, subdivision (e), protected acts include "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under

consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law."

"[A]ll communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute." (*Contreras*, at p. 408.) In determining whether a claim "arises out of" protected conduct, the court looks at the "allegedly wrongful and injury-producing conduct that provides the foundation for the claims." (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 490-491) The court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based" to determine whether the actions underlying the challenged claims constitute protected activity. (Code Civ. Proc., § 425.16, subd. (b)(2).) The focus is not on the plaintiff's cause of action; rather it is on "the defendant's activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Navellier*, at p. 92.)

Here, the activity is all protected. It is based on or related to Austin and ALG's acquisition of CUPs on behalf of their clients, which are proceedings before the local zoning authority. "It is well established that the protection of the anti-SLAPP statute extends to lawyers and law firms engaged in litigation-related activity." (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 113.) Filing applications on behalf of clients fall under the anti-SLAPP statute as protected activity because a local zoning authority

proceeding is a proceeding of a governmental administrative body. (*Briggs, supra* 19 Cal.4th at 1115 [the constitutional right to petition includes seeking administrative action].)

b. *Appellants Have Not Shown Respondents' Activities Are Illegal as a Matter of Law*

Appellants argue, as they did in the trial court, that Respondents' activity is illegal as a matter of law. (AOB 9-11, 19-22; RT 3-6.) Here, like in the trial court, they make unsupported allegations and bold conclusions that the practice is illegal. Appellants' conclusions are not sufficient. "[C]onduct that would otherwise come within the scope of the anti-SLAPP statute does not lose its coverage . . . simply because it is alleged to have been unlawful or unethical." (*Contreras*, at p. 414, quoting *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 910-911.)

And while Section 425.16 cannot be invoked for activity that is illegal as a matter of law, for that narrow exception to apply, either the defendant must concede the conduct is illegal, or the evidence must conclusively show that the activity was illegal as a matter of law. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 315, 320.) Appellants have the burden of conclusively proving the defendant's conduct is illegal, and thus not protected activity. (*Cross v. Cooper* (2011) 197 Cal.App.4th 356, 385) Here, Respondents did not concede illegal conduct, and Appellants presented no evidence of illegal conduct, just conclusory allegations, which do not suffice. Thus, this is not "one of those rare cases in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law." (*Id.* at p. 386.)

2. Appellants Forfeited Their Arguments That The Petitioning Activity Is Illegal As A Matter of Law Pursuant to Penal Code section 118 and Health and Safety Code section 11362.765, subdivision (a)

In the trial court, Appellants argued that Respondents' petitioning activity is illegal as a matter of law because (1) the Business and Professions Code sections 19323 and 26057 that license cannabis owners mandate denial of a license for those sanctioned for unlicensed commercial cannabis activities; (2) California Code of Regulations Section 5032 prohibits parties from working on behalf of those who are not qualified applicants; and (3) the applications contained false statements in violation of Penal Code section 115, knowingly procuring or offering a false or forged instrument for filing in a public office. (CT 134-137.) On appeal, Appellants do not advance the second theory that the practice is illegal, but have new theories that the petitioning activity is illegal as a matter of law—that it is in violation of Penal Code section 118 (perjury), and Health and Safety Code section 11362.765(a) (tax fraud and evasion). (AOB 19-22.) They argue again, like they did in the trial court, that the petitioning activity was a violation of Penal Code section 115 and Business and Professions Code section 19323 and 26057. (AOB 20-24.)

Appellants have forfeited their argument that Respondents' petitioning activity was illegal as a matter of law in violation of Penal Code section 118 or Health and Safety Code section 11362.765, subdivision (a). "It is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the

trial court." (*Hunter v. CBS Broadcasting Inc.* (2013) 221 Cal.App.4th 1510, 1526, quotation marks and citation omitted [declining to decide a new theory under the anti-SLAPP statute that was not raised in the trial court].) However, even had they not forfeited these theories, they fail on the merits.

3. The Evidence Does Not Show The Petitioning Activity Is Illegal as a Matter of Law Under Penal Code Sections 115 and 118

Appellants claim the petitioning activity is illegal as a matter of law, and cite to Penal Code sections 118, the perjury statute, and 115, for filing false or forged instruments. (AOB 19-20.) Their theory appears to be that Respondents submitted applications for CUPs in Berry's name, when "Geraci was the sole and true proposed beneficial owner of the CUP applied for." (AOB 20.) They merely cite to Austin's declaration in another case, that was not before the trial judge, for their proposition that Geraci and Razuki were required to be disclosed as owners. (AOB 20.)[6]

The elements of perjury are that an untrue statement must be made under oath which is (1) material and (2) knowingly made. (*McGill v. Superior Court* (2011) 195 Cal.App.4th 1454, 1488; Pen. Code, § 118.) Penal Code section 115 provides that it is a felony for a person to knowingly procure or offer a false or

[6] Appellants submitted a Request for Judicial Notice, whereby they requested this Court to notice various documents that were not before the trial court. Respondents have filed an opposition to their request for the items that were not presented to the trial court. As the documents were not presented to the trial court, they are not relevant, and therefore, not a proper subject for judicial notice. (*Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 359, fn. 11.)

forged instrument to be filed, registered, or recorded in any public office if the instrument, if genuine, might be filed, registered or recorded under any law of the state. (Pen. Code, § 115.)

Appellants did not present any evidence in the trial court that the activity was illegal or violated either of these statutes. Appellants merely made unsupported allegations that the conduct was illegal. (*Contreras*, *supra*, at p. 414.) And Appellants certainly have not shown that the activity is illegal as a matter of law, as is required. (*Flatley*, *supra*, at pp. 320.)

In the FAC, Appellants alleged that "Austin, Bartell, and Schweitzer were hired by Geraci and responsible for preparing, submitting, and lobbying a CUP application with the City at the Federal Property that was submitted in the name of Geraci's assistant, Berry." (RJN 83.) It further alleged that "On October 31, 2016, Geraci had the Berry CUP Application filed with the City." (RJN 83.) Appellants attached the CUP application to the FAC, which is signed by Abhay Schweitzer and Rebecca Berry. (RJN 127.) Appellants did not allege that Respondents made a statement under oath, or even that they submitted the application. Further, Appellants did not submit any evidence that any untrue statements were knowingly made. To the contrary, Appellants' allegations show that Respondents did not knowingly present any untrue statements. Appellants allege that Austin had previously testified about the CUP, and said she was not aware of the "Geraci judgments" (which presumably refers to his sanctions) and did not know or remember why Geraci used Berry as an agent for the CUP application. (RJN 93-

94; see also AOB 14.)[7] And lastly, as required for perjury, there is no evidence that the statements were material. In order to show materiality, Appellants needed to show that the allegedly untrue statement "could probably have influenced the outcome of the proceedings." (*People v. Pierce* (1967) 66 Cal.2d 53, 61.) Appellants' own allegations in the FAC show the allegedly untrue statement could not have influenced the outcome of the proceedings, as there is no evidence that the CUP was ever issued. Appellants allege that Cotton "took numerous actions to seek to prevent Geraci from being able to process" the CUP application, and that in the action between Cotton and Geraci, the court found that the application would have been approved but for Cotton's actions, thereby implying the application was not approved. (RJN 93; see also RJN 95 [other parties offered to take over the CUP application], 96 [Bartell "owned" the CUP application and he was getting it denied; Geraci was using his best efforts to get the CUP application approved in court and through political lobbying efforts].)

Appellants argue nothing more than conclusory allegations of conspiracy and illegal activity. "Bare allegations of aiding and abetting or conspiracy do not suffice to remove these acts from the protection" of the anti-SLAPP statute. (*Contreras*, *supra*, at p. 399.)

---

[7] The FAC also states that the "Cotton I judgment found, inter alia, that Geraci is not barred bylaw . . . from owning a Marijuana Outlet conditional use permit issued by the City of San Diego." (RJN 94.) Certainly if it is alleged that a court found Geraci was not barred from obtaining a CUP, it cannot be said that Respondents knowingly submitted untrue statements to obtain a CUP on Geraci's behalf.

4. Appellants Did Not Present Any Evidence of Tax Fraud or Evasion

Even had Appellants preserved their theory that Appellants' petitioning activity were illegal because it violates tax fraud and evasion laws, it does not fare any better. (AOB 21-22.) As Appellants did not raise this argument in the trial court, they did not present any evidence to support it. Thus, their argument fails from the outset.

Appellants cite Health and Safety Code section 11362.765, subdivision (a) for their argument that the petitioning activity was illegal as a matter of law. (AOB 21.) That section provides defenses to the Medical Marijuana Program Act. (*People v. Mitchell* (2014) 225 Cal.App.4th 1189, 1205.) It provides that the individuals listed in the statute (qualified medical marijuana patients, caregivers, or those who provide assistance to a patient) shall not be subject to criminal liability under various Health and Safety Code sections relating to medical marijuana. It further provides, as cited by Appellants, that "[t]his section does not authorize the individual to smoke or otherwise consume cannabis unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute cannabis for profit." (Health & Saf. Code, § 11362.765.) It is not a statute that criminalizes any conduct, and is not a tax fraud or evasion statute, as Appellants claim. (AOB 21.)

Appellants next cite a United States Supreme Court case addressing whether "aliens who commit certain federal tax crimes are subject to deportation as aliens who have been

convicted of an aggravated felony." (AOB 21, *Kawashima v. Holder* (2012) 565 U.S. 478, 480.) This case is inapplicable and does not provide any support for Appellants' position.

Citing to this Court's unpublished case in Razuki, which was not before the trial court, appellants argue that because the agreement was entered into prior to the time when for-profit commercial cannabis activity was allowed, it violated Health and Safety Code section 11362.765, subdivision (a), "and was therefore illegal." (AOB 21.) Assuming the code Appellants cited to was a criminal statute, it is not clear how it relates to Respondents' petitioning activity in acquiring a CUP. They do not have any evidence that Respondents incurred a tax liability, failed to return a tax return, intentionally provided false information on a tax return or aided, abetted, advised, encouraged or counseled someone to evade their taxes. (See Rev. & Tax. Code, § 19701) As there was no evidence that the CUP was approved, and /or that Respondents were responsible for filing their tax returns, Appellants' argument fails.

Appellants next argue that "there was and is no lawful manner for Razuki or Malan (or Geraci and Berry) to have reported their respective profit distributions from their nonprofit medical cannabis operations." (AOB 22.) Appellants further elaborate that dispensaries are lucrative, cash businesses, so that Razuki and Malan operated a nonprofit entity and "necessarily submitted fraudulent tax returns and engaged in tax evasion/fraud." (AOB 22.) Even if these statements were based on some evidence, it does not relate to Respondents. Again,

Appellants argue nothing more than conclusory allegations of conspiracy and illegal activity. "Bare allegations of aiding and abetting or conspiracy do not suffice to remove these acts from the protection" of the anti-SLAPP statute. (*Contreras*, *supra*, at p. 399.)

5. Appellants Have Not Presented Evidence Of Criminal Activity Under Business and Professions Code Section 26057

Relying on another statute that does not address criminal activity, Appellants argue that Respondents' activities in obtaining CUPs are illegal because of the language in Business and Professions Code section 26057, the statute that lists the reasons to deny an application. Specifically, Appellants argue that because the statute provides that the Department of Cannabis Control "shall deny" an application to an applicant who has been sanctioned for unauthorized commercial activities, Respondents' petitioning activity is "illegal." (AOB 23-24.) Appellants' argument fails for many reasons.

First, Appellants misread and misrepresent the statute. Subsection (a) provides that "[t]he 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." Subsection (b) provides that "[t]he department may deny the application for licensure or renewal of a state license if any of the following conditions apply." The statute lists nine conditions, including subsection (7),

> [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.

(Bus. & Prof. Code, § 26057.)

Appellants conflate sections (a) and (b). They take the "shall" language from subsection (a) and ignore the permissive language from subsection (b)(7), which applies the statute to those who have been sanctioned for unauthorized activity. They completely ignore the permissive language, "may" in subdivision (b).

Moreover, the statute Appellants rely on does not address illegal activity. It is a statute that addresses the denial of an application. Appellants' argument is perhaps that because Appellants' clients were prohibited under the statute from obtaining a CUP based on their previous sanctions, it is "illegal" for them to pursue a CUP. However, as noted, there is not a complete prohibition on those who have been previously sanctioned from obtaining an application, as subsection (b) provides that the department "may" deny the application if someone has been sanctioned. (Bus & Prof. Code, § 26057, subd. (b)(7).) The *Flately* rule that the that activity is not protected if it is illegal as a matter of law "only applies to criminal conduct, not to conduct that is illegal" because it violates other statutes or common law. (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 806-810; *Collier v. Harris* (2015) 240 Cal.App.4th 41, 55.) Thus, Appellants have not pointed to any

criminal conduct regarding this statute. If their claim is that Respondents' conduct was illegal for presenting false documents in their applications, as noted above, they have not shown the conduct violated statutes for perjury or presenting a false document.

Even if Appellants' argument and allegations that the plain language of the statute that says, "shall deny" proves that Respondents' activity is illegal (AOB 23-24), it is not sufficient, as they have not presented any *evidence* of such illegality. Respondents did not concede there was illegal activity. (See *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1367, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5 [defendants conceded the illegal nature of their election campaign finance activities].) Nor is the illegality conclusively shown by the evidence. (*Flatley*, *supra*, at p. 316.) Appellants have presented no evidence—they did not present any declarations, affidavits, or requests for judicial notice. (See CT 158.) Appellants' general allegations of conspiracy and illegality are not sufficient to show illegality. (*Contreras*, *supra*, at p. 413.)

In support of their argument, Appellants cite *Wheeler v. Appellate Division of Superior Court* (2021) 72 Cal.App.5th 824, 833, for the proposition that engaging in unlicensed commercial cannabis activity is a crime. (AOB 24.)[8] In *Wheeler*, the court

[8] Appellants overstate the holding, to add that the "secret, undisclosed ownership of cannabis businesses by sanctioned parties is 'engaging in unlicensed commercial cannabis activity [and] is a crime.'" (AOB 24, citing *Wheeler*, *supra*, at p. 833, emphasis omitted.) The court did not address "secret" or

cites to Business and Professions Code section 26038, regarding the penalties for unlicensed commercial cannabis activity. (*Wheeler*, *supra*, at p. 833.) However, there is no evidence, or even allegations, that Respondents were engaging in unlicensed commercial cannabis activity. Thus, Appellants' argument fails.

6. Appellants Have Not Presented Any Evidence to Demonstrate a Probability of Success on the Merits for the Second Prong of the Anti-SLAPP Statute Inquiry

Once it is established that the challenged claims involve protected activity under the anti-SLAPP statute, the burden shifts to the plaintiff to demonstrate by "competent, admissible evidence" a prima facie showing of facts that, if proved at trial, would support a judgment. (*San Diegans for Open Government v. San Diego State University Research Foundation* (2017) 13 Cal.App.5th 76, 94-95.) It has been described as a "summary-judgment-like procedure." (*Id*. at 94.) The court looks to whether the plaintiff has stated and substantiated a legally sufficient claim. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 63.) If the plaintiff fails to meet this burden, the claims must be stricken. (Code Civ. Proc., § 425.16.) "[T]he plaintiff may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence." (*San Diegans for Open Government*, at p. 95.)

Here, Appellants did not present any competent, admissible evidence. As the trial court explained, "Plaintiffs have not

---

"undisclosed" ownership of cannabis businesses. It addressed the conviction of an 80 year-old landlord, who unknowingly rented a building to illegal cannabis dealers. (*Wheeler*, *supra*, at p. 828.)

submitted any evidence, affidavits, declarations, or requests for judicial notice in support of this motion." (CT 158.) Therefore, Appellants did not met their burden of proof that there was a probability they would succeed at trial. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 654-655, disapproved on other grounds in *Equilon*, *supra*, 29 Cal.4th at p. 68, fn. 5.)

Appellants advance three arguments regarding the second prong of the anti-SLAPP statute inquiry. They argue that (1) the trial court should have considered its pleadings in the FAC and Respondents' anti-SLAPP motion, which they claim "did not dispute and admitted that ALG undertakes the Strawman Practice"; (2) the petitioning activity is illegal as a matter of law so the trial court should have denied the motion in the first step of the analysis; and (3) the trial court had an independent duty "to ascertain the true facts" of an illegal contract. (AOB 24-26.) Appellants alternatively argue, without analysis or authority, that the documents that were not presented to the trial court, but are the subject of their request for judicial notice, show that Austin knowingly aided her clients in engaging in unlicensed commercial cannabis activity, which is a crime. (AOB 26.) And lastly, Appellants ask this Court for relief for any of counsel's error,[9] "at least" to allow the Sherlock family to acquire alternative counsel to vindicate their rights. (AOB 26-27.) As will be shown, none of these arguments have merit.

[9] Flores is counsel and also one of the Appellants.

a. *Appellants' Failure to Submit Admissible Evidence Cannot Be Overcome*

Appellants argue that the trial court should have relied on the FAC and Respondents' moving papers, and that they "did not need to argue or provide evidence in support of a fact raised in the FAC," which was admitted to or conceded in Respondents' Motion. (AOB 25.) Appellants argument is legally and factually faulty.

The court must consider the "pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based" (Code Civ. Proc., § 425.16, subd. (b)), "but does not weigh the credibility or comparative probative strength of [the] competing evidence." (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1289.) The prima facie showing of merit for the second prong of the anti-SLAPP statute analysis "must be made with evidence that is admissible at trial. [Citation.] Unverified allegations in the pleadings or averments made on information and belief cannot make the showing." (*Ibid*, citations omitted.) Thus, Appellants "may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence." (*Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 109; *San Diegans for Open Government*, *supra*, at p. 95)

It is not clear what Appellants believe Respondents "admitted to and conceded" in their anti-SLAPP motion. (AOB 25.) Without citation to the record, argument, or authority, Appellants say Respondents "admitted that ALG undertakes the Strawman Practice." (AOB 25.) Respondents' motion clearly laid

out the factual and legal arguments that demonstrated Appellants' claims should be stricken pursuant to the anti-SLAPP statute, as the lawsuit, as it related to Respondents, was based on their acting within the scope of providing services for their clients and petitioning for CUPs. (CT 5-30.) Austin's declaration, provided in support of the motion, confirmed that she was not involved in many of the CUPs that were the subject of the lawsuit, and where she was, it was in the course of representing clients to assist with CUP applications. (CT 24.)

Appellants' argument should be summarily rejected, as they have provided no legal or factual support for their assertions. (*Meridian, supra,* 67 Cal.App.5th at 684; *Hill v. Affirmed Housing Group* (2014) 226 Cal.App.4th 1192, 1200 [claims presented with no factual or legal support are abandoned]; Cal. Rules of Court, rule 8.240(a)(1)(C) [briefs must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears."].) "In other words, review is limited to issues which have been adequately raised and briefed." (*Meridian Financial*, *supra*, at p. 684, quotations omitted.)

b. *The Illegality of Activity Is Not Related to the Second Prong of the anti-SLAPP Analysis*

Appellants reiterate their argument in their analysis of the second prong of the anti-SLAPP discussion that Respondents' practice is illegal as a matter of law. (AOB 25.) Appellants do not advance any additional arguments. The question of whether the illegality of protected speech or petitioning activity is decided

in the first prong of the analysis. (*Flatley*, *supra*, at p. 320 ["the question of whether the defendant's underlying conduct was illegal as a matter of law is preliminary, and unrelated to the second prong question of whether the plaintiff has demonstrated a probability of prevailing, and the showing required to establish conduct illegal as a matter of law . . . is not the same showing as the plaintiff's second prong showing of probability of prevailing"].) As explained in section IV(B)(1)(b), Appellants have not shown Respondents' petitioning activity is illegal.

c. *The Trial Court Did Not Have an Independent Duty to "Ascertain the True Facts"*

Appellants cite a contract case between two contractors, where, on appeal, the plaintiff argued that the trial court should have been bound by issues raised in the pleadings. (AOB 25-26, citing *Lewis & Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 147-148.) There is no allegation in the current case that there was an illegal contract, nor is it a breach of contract case, so the cited authority is not pertinent. Appellants cannot overcome their failure to provide evidence for the second prong of the analysis by stating the trial court, on its own, should have conducted further inquiry. There is simply no support for such an assertion, and is contrary to the well established procedure for determining the merits of claim when evaluating an anti-SLAPP motion. (See *Jarrow Formulas, Inc.*, *supra*, at p. 741, fn. 10 [procedure for making the second prong determination].)

d. *Appellants' Requests for This Court to Review Evidence Not Presented to the Trial Court or to Allow Them to Substitute Counsel at this Stage Should Be Denied*

Without citing any authority, Appellants argue that if they erred in failing to present credible evidence, then this Court should consider the items they submitted in their Request for Judicial Notice, that were not submitted to the trial court, to "establish that Austin did undertake the Strawman Practice for Geraci and Malan and that she knowingly did so to aid her clients to engage in unlicensed commercial cannabis activity, which is a crime." (AOB 26.) "It is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court." (*Hunter v. CBS Broadcasting Inc.* (2013) 221 Cal.App.4th 1510, 1526, quotation marks and citation omitted [declining to decide a new theory under the anti-SLAPP statute that was not raised in the trial court].)

In reviewing the "trial court's order denying the [anti-SLAPP] motion," this Court must "consider all the evidence presented by the parties." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291, fn. 17.) An appellate court's role is not "to resolve factual issues and exercise discretion in the first instance." (*People v. Asghedom* (2015) 243 Cal.App.4th 718, 728.) Even though the standard of review is de novo, the appellate court does "not transform into a trial court." (*Meridian, supra,* at 684.) Moreover, "the parties to an appeal may not refer to matters outside the record on appeal." (*Ibid*., citing Cal. Rules of

Court, rule 8.204(a)(2)(C).) Thus, there is no support or authority for this Court to review evidence that was not submitted to the trial court.

Next, Appellants ask this court to allow the Sherlock family to acquire new counsel "to aid them in seeking to prove their claims and vindicate their rights." (AOB 26-27.) Again, they cite no authority for their proposition that this Court has the authority to, or should do so. It is not this court's role. Code of Civil Procedure section 904.1 provides that an appeal may be taken from an order granting or denying an anti-SLAPP motion under Section 425.16. (Code Civ. Proc., § 904.1, subd. (13).) There is nothing preventing any party from seeking the advice of new counsel. Appellants did not raise an issue in the trial court about their counsel, therefore, it is not appropriately raised on appeal. If a trial court has not reached an issue, it is not the appellate court's role to issue an advisory opinion. (*Safai v. Safai* (2008) 164 Cal.App.4th 233, 243.)

///

///

///

///

///

///

///

///

///

///

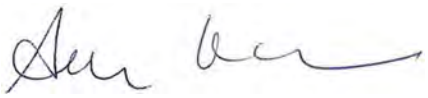
V.

CONCLUSION

For the foregoing reasons, Respondents respectfully request this Court to affirm the trial court's order granting Appellants' Special Motion to Strike Pursuant to Code of Civil Procedure section 425.16.

Respectfully submitted,

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC



Dated: February 14, 2023 By: _____

Douglas R. Pettit, Esq.
Kayla R. Sealey, Esq.
Annie F. Fraser, Esq.
Attorneys for Respondents
Gina M. Austin and Austin Legal Group

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 7,356 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: February 14, 2023 By: _____

Douglas R. Pettit, Esq.
Kayla R. Sealey, Esq.
Annie F. Fraser, Esq.
Attorneys for Respondents
Gina M. Austin and Austin Legal Group

PROOF OF SERVICE
Sherlock, et al. v. Austin, et al.
Court Of Appeal Case Number: D081109
San Diego County Superior Court Case No.: 37-2021-00050889-CU-AT-CTL

I, the undersigned, declare as follows:

At the time of service, I was at least eighteen (18) years of age and not a party to this legal action. I am employed in the County of San Diego, California, where the within-mentioned service occurred, and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

On February 14, 2023, I served the following document:

RESPONDENTS' BRIEF

[X] BY ELECTRONIC SERVICE (California Rule of Court 2.251): By submitting an electronic version of the document(s) via file transfer protocol (FTP) to TrueFiling through the upload feature at tf3.truefiling.com.

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 *Propria Persona* and Attorney for Plaintiffs Amy Sherlock, Minors T.S. and S.S.	James D. Crosby, Esq. Attorney at Law 550 West C Street, Suite 620 San Diego, CA 92101 Tel: (619) 450-4149 Email: crosby@crosbyattorney.com Attorney for Defendants LARRY GERACI and REBECCA BERRY

Scott H. Toothacre, Esq. Michael R. Weinstein, Esq. FERRIS & BRITTON 501 West Broadway, Suite 1450 San Diego, CA 92101 Tel: (619) 233-3131 Email: stoothacre@ferrisbritton.com mweinstein@ferrisbritton.com dbarker@ferrisbritton.com Attorney for Defendants LARRY GERACI and REBECCA BERRY	Steven W. Blake, Esq. Andrew E. Hall, Esq. BLAKE LAW FIRM 533 2nd Street, Suite 250 Encinitas, CA 92024 Tel: (858) 232-1290 Email: steve@blakelawca.com andrew@blakelawca.com eservice@blakelawca.com Attorney for Defendant STEPHEN LAKE
Natalie T. Nguyen, Esq. NGUYEN LAW CORPORATION 2260 Avenida de la Playa La Jolla, CA 92037 Tel: (858) 757-8577 Email: natalie@nguyenlawcorp.com Defendant NATALIE TRANG- MY NGUYEN *PRO SE*	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@wmfllp.com lstewart@wmfllp.com mdavis@wmfllp.com Defendant JESSICA MCELFRESH
George R. Najjar, Esq. THE NAJJAR LAW FIRM 1901 First Avenue, First Floor San Diego, CA 92101 Tel: (619) 233-3445 Email: gnajjar1@san.rr.com Defendant ABHAY SCHWEITZER dba TECHNE	Douglas Jaffe, Esq. 501 West Broadway, Suite 800 San Diego, CA 92101 Tel: (619) 400-4945 Email: Dougjaffelaw@gmail.com Defendant SALAM RAZUK

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 14, 2023, at San Diego, California.

/s/ Mona C. Jones
Mona C. Jones

STATE OF CALIFORNIA California Court of Appeal, Fourth Appellate District Division 1	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Fourth Appellate District Division 1

Case Name: **Sherlock et al. v. Austin et al.**
Case Number: **D081109**
Lower Court Case Number: **37-2021-00050889-CU-AT-CTL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **afraser@pettitkohn.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF - RESPONDENTS BRIEF (WITH ONE TIME RESPONSIVE FEE)	Respondents Brief - pdf

Service Recipients:

Person Served	Email Address	Type	Date / Time
Matthew Smith Pettit Kohn Ingrassia Lutz & Dolin 208650	msmith@pettitkohn.com	e-Serve	2/14/2023 7:06:27 PM
Kayla Sealey Pettit Kohn Ingrassia Lutz & Dolin	ksealey@pettitkohn.com	e-Serve	2/14/2023 7:06:27 PM
Douglas Pettit Pettit Kohn Ingrassia Lutz & Dolin PC 160371	dpettit@pettitkohn.com	e-Serve	2/14/2023 7:06:27 PM
Andrew Flores Law Offices of Andrew Flores	andrew@floreslegal.pro	e-Serve	2/14/2023 7:06:27 PM
Annie Fraser Pettit Kohn Ingrassia Lutz & Dolin PC 144662	afraser@pettitkohn.com	e-Serve	2/14/2023 7:06:27 PM
Andrew Flores Law Offices of Andrew Flores 272958	afloreslaw@gmail.com	e-Serve	2/14/2023 7:06:27 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/14/2023

Date

/s/Annie Fraser

Signature

Fraser, Annie (144662)

Last Name, First Name (PNum)

Pettit Kohn Ingrassia Lutz & Dolin PC

Law Firm

Exhibit 42

Steven W. Blake, Esq., SBN 235502
Daniel Watts, Esq. SBN 277861
GALUPPO & BLAKE
A Professional Law Corporation
2792 Gateway Road, Suite 102
Carlsbad, California 92009
Phone: (760) 431-4575
Fax: (760) 431-4579

Attorneys for Cross-Complainants Ninus Malan, American Lending and Holdings, LLC

Gina M. Austin (SBN 246833)
Tamara M. Leetham (SBN 234419)
AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110
Phone: (619) 924-9600
Facsimile: (619) 881-0045

Attorneys for Cross-complainants California Cannabis Group, Devilish Delights, Inc., Balboa Ave Cooperative; Monarch Management Consulting, Inc., Flip Management, LLC, San Diego United Holdings Group, LLC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

vs.

NINUS MALAN, an individual; CHRIS HAKIM, an individual; MONARCH MANAGEMENT CONSULTING, INC. a California corporation; SAN DIEGO UNITED HOLDING GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; MIRA ESTE PROPERTIES, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC., a California nonprofit mutual benefit corporation; and DOES 1-100, inclusive.

Defendants.

Case No.: 37-2018-00034229-CU-BC-CTL

Assigned: Hon. Judge Sturgeon
Dept.: C-67

Verified Cross-Complaint

Date filed: July 10, 2018
Trial: None set

NINUS MALAN; an individual ; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC., a California nonprofit mutual benefit corporation; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; AMERICAN LENDING AND HOLDINGS, LLC, a limited liability company; MONARCH MANAGEMENT CONSULTING, INC., a California corporation; FLIP MANAGEMENT, LLC, a limited liability company; SAN DIEGO UNITED HOLDINGS GROUP, LLC, a limited liability company

Cross-complainants

vs.

SALAM RAZUKI, an individual; RAZUKI INVESTMENTS, LLC, a limited liability company; MARVIN RAZUKI, an individual; SARAH RAZUKI, an individual; MATTHEW RAZUKI, an individual; SH WESTPOINT GROUP, LLC, a limited liability company; EL CAJON INVESTMENTS GROUP, LLC, a California limited liability company; SAN DIEGO PRIVATE INVESTMENTS, LLC, a California limited liability company; STONECREST PLAZA, LLC, a California limited liability company; SUNRISE PROPERTY INVESTMENTS, LLC, a California limited liability company; LEMON GROVE PLAZA, LP, a California limited partnership; SOCAL BUILDING VENTURES, LLC, a Delaware limited liability company; RM PROPERTY HOLDINGS, LLC, a limited liability company; MELROSE PLACE, INC. a Delaware corporation; ALL PERSONS UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY

DESCRIBED IN THE COMPLAINT ADVERSE TO CROSS-COMPLAINANTS' TITLE, OR ANY CLOUD ON CROSS-COMPLAINANTS' TITLE THERETO, and ROES 1 through 50, Inclusive,

Cross-defendants.

Summary

Plaintiff Salam Razuki filed this lawsuit to try to steal companies he does not own, to convert money to which he has no right, and to destroy the livelihood of his former business associate, Defendant and Cross-Complainant Ninus Malan. Razuki's complaint accuses Malan of reneging on a deal to turn over marijuana dispensaries to a holding company from which Razuki would derive profits. But that "deal" is not real. Razuki does not own or have any rights in any of the companies in this lawsuit.

In reality, Malan is the majority owner of the companies sued by Razuki. Some of the companies run an active marijuana dispensary and others merely manage it and other commercial real property. Earlier this year, Malan hired a management company, Plaintiff-in-intervention SoCal Building Ventures, LLC ("SoCal"), to operate the active dispensary. SoCal was bad at their job. Its employees ate the marijuana, drank alcohol on the job, and "misplaced" half the inventory. Malan fired them.

Behind the scenes, Razuki had been trying to convince SoCal to breach their contract with Malan and turn over the companies to Razuki. Razuki falsely told SoCal that Razuki owned Malan's companies. Using Razuki's fake ownership as an excuse, SoCal stopped making payments to Malan. Then Razuki filed this lawsuit. SoCal joined a few days later.

Razuki and SoCal have damaged Malan and his companies. It's not just damage to his profits, but also damage to the companies' reputations with their customers and government regulators. Cross-complainants are entitled to compensation and a declaration that what Razuki and SoCal have done is illegal, and their "contracts" with Cross-complainants are void.

112. SoCal failed to produce employment/independent contractor agreements, failed to produce copies of tax returns and EDD filings, failed to produce financial statements for the Balboa Dispensary, and failed to keep detailed check registers and accounting journals chronicling Balboa Dispensary's financial transactions.

113. SoCal disclosed confidential information about the Mira Este Facility, Roselle Facility, and Balboa Dispensary to Razuki, a man who was prosecuted and convicted for violating laws governing the conduct of landlords of real property, and who was under a court order not to engage in any unlicensed marijuana businesses in San Diego. SoCal knew or should have known that disclosing confidential information to such a person would harm cross-complainant and his companies by exposing them to significant liability.

114. On information and belief, SoCal promised Razuki they would intentionally withhold payments due under the Mira Este Management Agreement, which would cause Mira Este Properties, LLC to default on a loan. They withheld payments on the Mira Este loan for at least two months, accumulating an overdue balance of approximately $317,848.

115. SoCal employee Dan Spillane told employees at the Mira Este Facility that he and Socal were conspiring with Razuki to hijack the companies and businesses operating at the Mira Este Facility, Roselle Facility, and Balboa Dispensary. They would accomplish this, Spillane said, by filing this very lawsuit, in which they would falsely claim that Razuki owned the businesses.

116. On information and belief, SoCal intended to use Razuki's false claims of ownership as an excuse to stop making payments to the businesses' true owners, including Malan, Hakim, and the defendants in this lawsuit. Malan learned of this scheme from SoCal's own employees on July 2nd and 3rd, 2018.

117. The City of San Diego began conducting an audit of the Balboa Dispensary using a company called MGO. MGO demanded documents that SoCal has failed to provide despite

Exhibit 43

ANDREW FLORES (State Bar Number 272958)
Law Office of Andrew Flores
945 4th Avenue, Suite 412
San Diego, CA 92101
Telephone: 619.256.1556
Facsimile: 619.274.8253
Andrew@FloresLegal.Pro

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

SUPRIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., CHRISTOPHER WILLIAMS, an individual, ANDREW FLORES, an individual,

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, and individual, and DOES 1 through 50, inclusive,

Defendants.

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

Related Cases:
37-2018-00034229-CU-BC-CTL
37-2017-00020661-CU-CO-CTL

COMPLAINT FOR:

1. CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (Bus. & Prof. Code § §§ 16720 *et seq*.);
2. CONVERSION;
3. CIVIL CONSPIRACY;
4. FRAUD AND DECEIT;
5. UNFAIR COMPETITION AND UNLAWFUL BUSINESS PRACTICES (Bus. & Prof. Code § 17200 *et seq*.); AND
6. DECLARATORY RELIEF.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Amy Sherlock, Minors T.S. and S.S., Christopher Williams, and Andrew Flores, upon information and belief, allege as follows:

INTRODUCTION

1. This case arises from the concerted effort of a small group of wealthy individuals and their agents (the "Enterprise") that have conspired to create an unlawful monopoly in the cannabis market (the "Antitrust Conspiracy") in the City and County of San Diego.

2. The Enterprise includes attorneys from multiple law firms that are used to create the appearance of competition and legitimacy, while in reality the attorneys conspire against some of their own non-Enterprise clients to ensure the acquisition of the limited number of cannabis conditional use permits ("CUPs")[1] available in the City and County go to principals of the Enterprise.

3. At least some of the principals of the Enterprise have a history of being sanctioned for unlicensed commercial cannabis operations (i.e., illegal black-market dispensaries). Consequently, as a matter of law, they cannot own a cannabis CUP for a period of three years from the date of their last sanction. However, these individuals are wealthy and are able to the hire attorneys, political lobbyists, and other professionals to navigate the heavily regulated cannabis licensing process and acquire CUPs illegally.

4. The defining illegal act of the Enterprise is the acquisition of CUPs for its principals through the use of proxies - who do not disclose the principals as the true owners of the CUP applied for and acquired - in order to avoid disclosure laws that would mandate their applications be denied because of the principals' prior sanctions (the "Proxy Practice").

5. The unlawful acts taken by the Enterprise in furtherance of the Antitrust Conspiracy include "sham" litigation[2] and acts and threats of violence against potential competitors and witnesses.

6. Plaintiffs had or would have had interests in CUPs issued in the City and County of San Diego but-for the illegal acts of the Enterprise that were taken in furtherance of the Antitrust Conspiracy.

---

[1] "[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." *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1006.

[2] "Sham" litigation is defined as an action that is objectively baseless and brought not to accomplish the purported object of the litigation but to harass or impede a competitor. *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus.* (1993) 508 U.S. 49, 61.

7. This action focuses on the Enterprise's unlawful acts in acquiring four CUPs: (i) the Ramona CUP,[3] (ii) the Balboa CUP,[4] (iii) the Federal CUP,[5] and (iv) the Lemon Grove CUP.[6]

JURISDICTION AND VENUE

8. Defendants are subject to the jurisdiction of this Court by virtue of their business dealings and transactions in California and by having caused injuries within the City and County of San Diego.

9. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10. Plaintiff's claims for violations of Business & Professions Code § 16720 *et seq*., arise exclusively under the laws of the State of California, do not arise under federal law, are not preempted by federal law, and do not challenge conduct within any federal agency's exclusive domain.

10. Venue is proper in this county because the acts taken by defendants were taken within the County of San Diego and the CUPs at issue in this action were issued at real property within the County of San Diego.

PARTIES

11. Plaintiff AMY SHERLOCK, an individual, at all material times herein was residing and working in the County of San Diego, California.

12. Plaintiffs MINORS T.S. and S.S., progeny of Amy and Michael "Biker" Sherlock, are individuals, were, and at all material times herein, living and attending school in the County of San Diego, California.

13. Plaintiff CHRISTOPHER WILLIAMS, an individual, at all material times herein was residing and working in the County of San Diego, California.

14. Plaintiff ANDREW FLORES, an individual, at all material times herein was residing and working in the County of San Diego, California.

15. Defendant GINA M. AUSTIN, an individual, at all material times herein was residing

[3] The "Ramona CUP" was issued at 1210 Olive Street, Ramona, CA 92065 (the "Ramona Property").
[4] The "Balboa CUP" was issued at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the "Balboa Property").
[5] The "Federal CUP" was issued at 6220 Federal Blvd., San Diego, CA 92114 (the "Federal Property").
[6] The "Lemon Grove CUP" was issued at 6859 Federal Blvd., Lemon Grove, CA 91945 (the "Lemon Grove Property").

and working in the County of San Diego, State of California.

16. Defendant AUSTIN LEGAL GROUP, A Professional Corporation, was at all material times mentioned herein a Corporation under the laws of the State of California operating and conducting business in the County of San Diego, State of California.

17. Defendant LARRY GERACI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

18. Defendant REBECCA BERRY an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

19. Defendant FINCH, THORTON, and BAIRD, a limited liability partnership, at all material times herein operated and conducted business in the County of San Diego, State of California.

20. Defendant ABHAY SCHWEITZER, an individual and dba TECHNE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

21. Defendant JIM BARTELL an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

22. Defendant NATALIE TRANG-MY NGUYEN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

23. Defendant AARON MAGAGNA an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

24. Defendant JESSICA MCELFRESH an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

25. Defendant SALAM RAZUKI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

26. Defendant NINUS MALAN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

27. Defendant BRADFORD HARCOURT an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

28. Defendant LOGAN STELLMACHER an individual, was at all material times mentioned

herein residing and working in the County of San Diego, State of California.

29. Defendant EULENTHIAS DUANE ALEXANDER, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

30. Defendant STEPHEN LAKE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

31. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants Does 1 through 50, inclusive, are unknown to Plaintiffs who therefore sue said defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges that each of said fictitious Doe defendants is in some manner responsible for the acts and occurrences hereinafter set forth. Plaintiff will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious defendant is responsible for the damages sustained by Plaintiffs.

32. At all relevant times, each defendant was and is the agent of each of the remaining defendants and, in doing the acts alleged herein, was acting within the course and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of each of the defendants.

33. Defendants, and each of them, are individually sued as participants and as aiders and abettors in the unlawful acts, plans, schemes, and transactions alleged in this Complaint. Defendants, and each of them, have participated as members of the conspiracy alleged herein, acted in furtherance of it, aided and assisted in carrying out its purposes, performed acts and made statements in furtherance of the conspiracy, and/or ratified the acts taken in furtherance of the conspiracy.

GENERAL ALLEGATIONS

I. MATERIAL STATE AND CITY LAWS REGARDING CANNABIS APPLICATION REQUIREMENTS.

34. At all material times related to this action, 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.

35. At all material times related to this action, either California Bus. & Prof. Code ("BPC") § 19323 *et seq*. or BPC § 26057 *et seq*. has mandated the denial of an 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; failed to provide required information in an application (including disclosure of all individuals with a direct ownership interest in the license being applied for); or failed to comply with local government requirements for the issuance of a permit, CUP or license for cannabis activities.

36. At all material times related to this action, in the City of San Diego, California, an application for a CUP has required the disclosure of all parties with an interest in the proposed property or CUP in the application.

II. THE PRINCIPALS AND AGENTS OF THE ENTERPRISE.

37. The known principals of the Enterprise are Geraci, Razuki, and Malan.

38. Lake and Harcourt, as further explained below, have numerous connections and relationships with principals and agents of the Enterprise. At this point, it is unclear if they are principals of the Enterprise or individual actors that have worked in concert with and/or ratified the Enterprise's acts in furtherance of their own goal of seeking to profit through unlawful actions in the cannabis industry.

39. Individuals that have acquired interests in CUPs and are members of the Enterprise, worked in concert with the Enterprise or ratified the Enterprise's unlawful actions include Harcourt, Razuki, Malan, Magagna, Alexander, and Schweitzer.

40. Individuals who are non-attorney agents of the Enterprise that have taken acts in furtherance of the Antitrust Conspiracy or who have ratified the acts of the Enterprise include Berry, Bartell, Alexander, Stellmacher, Miller and Schweitzer.

41. The law firms and attorneys that work for the Enterprise and that have taken acts in furtherance of the Antitrust Conspiracy include the Austin Legal Group; Ferris & Britton; Jessica McElfresh; Finch, Thornton & Baird; Matthew Shapiro; and Natalie Nguyen.

III. MATERIAL BACKGROUND

A. Geraci and Razuki have been sanctioned for unlicensed commercial cannabis activities.

42. Geraci has been sanctioned at least twice for unlicensed commercial cannabis activities.[7]

43. Geraci was last sanctioned on June 17, 2015 in the CCSquared Judgment.

44. As in effect on June 17, 2015, pursuant to BPC § 19323(a),(b)(7), Geraci could not lawfully own a cannabis license or CUP until at least June 18, 2018.

45. Razuki was sanctioned for unlicensed commercial cannabis activities on April 15, 2015.[8]

46. As in effect on Aril 15, 2015, pursuant to BPC § 19323(a),(b)(7), Razuki could not lawfully own a cannabis license or CUP until at least April 16, 2018.

B. Austin, Bartell and Schweitzer are experienced professionals in the cannabis industry who aid parties to prepare, apply and acquire CUPs.

47. Austin is an attorney who is "an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation."[9]

48. Austin has testified that she has worked on approximately twenty-five (25) cannabis CUP applications with the City, of which approximately twenty-three (23) were approved or successfully maintained.

49. Bartell, through his political lobbying firm, B&A, has testified that he has lobbied the City for approximately twenty (20) cannabis CUP applications of which nineteen (19) were approved.

50. Schweitzer has testified that he has worked on approximately thirty to forty (30-40) cannabis CUP applications with the City.

51. Collectively, Austin, Bartell and Schweitzer have worked on the majority of the CUPs issued by the City.

52. Austin, Bartell and/or Schweitzer aided Geraci, Razuki and Magagna apply, acquire and/or maintain ownership interests in CUPs without disclosing all parties with an ownership interest in the CUPs in violation of numerous State and City laws, including BPC §§ 19323, 26057, SDMC §

---

[7] In (i) *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") and (ii) *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 Judgement, the "Geraci Judgments").

[8] *City of San Diego v. Stonecrest Plaza*, *LLC*, Case No. 37-2014-00009664-CU-MC-CTL (the "Stonecrest Judgment").

[9] *Razuki v. Malan,* San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

11.0401(b) and Penal Code § 115.

C. Jessica McElfresh is a cannabis attorney who has been arrested for conspiring with her clients to commit crimes and obstructing justice.

53. In May 2017, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to conceal her client's alleged illegal manufacturing operations from government inspectors. (*People v. McElfresh*, San Diego Superior Court, No. CD272111.)

54. In July 2018, McElfresh entered into a Deferred Prosecution Agreement (the "DPA") 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."

55. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited from violating any other laws (except for minor infractions) until July 23, 2019, or face resumption of all charges filed against her.

56. On October 18, 2019, McElfresh was interviewed and quoted in a San Diego Union-Tribune article that stated: "McElfresh said she advised her clients to comply with city orders to shut down, partly because operating without local permission could affect their ability to obtain state marijuana licenses in the future."[10]

57. McElfresh has represented Geraci, Razuki and Malan in various legal matters.

D. Razuki's employee states Razuki openly discussed the plan to create a monopoly and use violence in furtherance of the Antitrust Conspiracy.

58. As further described below, when Flores became the equitable owner of the Federal Property, he began investigating Geraci and his agents and discovered the relationships between Geraci, Magagna, Razuki, Malan and Dave Gash via Austin who has represented all parties.

59. As further described below, Razuki was arrested by the FBI for attempting to have Malan kidnapped to Mexico and murdered as a result of ongoing litigation between them disputing ownership

[10] *See* David Garrick, Roughly Two Dozen San Diego Marijuana Cultivators Forced to Shut Down, SAN DIEGO UNION-TRIBUNE (October 18, 2019).

of approximately $40,000,000 in cannabis assets.

60. During the course of Flores' investigation, he spoke with an investigative reporter who had interviewed an employee of Razuki after Razuki had been arrested by the FBI (the "Employee"). The investigative reporter provided Flores a copy of the interview with the Employee.

61. The Employee stated that he was present when Austin provided confidential information from her non-Enterprise clients regarding real properties that qualified for CUPs so that Razuki and his associates could take action to prevent the acquisition of those CUPs by Austin's non-Enterprise clients in furtherance of creating a monopoly.

62. The Employee also stated that Razuki and his associates use Mexican gangs to commit violent acts on their behalf to further their goals when disputes arise in the operations of their dispensaries.

IV. THE SHERLOCK PROPERTY

63. Michael "Biker" Sherlock was a husband, father, professional athlete, and an entrepreneur with interests in the cannabis sector.

64. Lake is Mr. Sherlock's brother-in-law.

65. Mr. Sherlock partnered with Lake and Harcourt no later than in or around April 2013 for real estate and cannabis related investments (the "Sherlock Partnership").

66. On or about January 8, 2015, Lake purchased the Ramona Property.

67. On or about January 16, 2015, Mr. Sherlock was granted the Ramona CUP.

68. On or about April 24, 2015, as part of the Sherlock Partnership, Mr. Sherlock and Harcourt formed Leading Edge Real Estate, LLC ("LERE") to be their holding company for real properties. Mr. Sherlock was the CEO of LERE. Mr. Sherlock and Harcourt were both managing members.

69. On or about June 18, 2015, LERE acquired the Balboa Property.

70. On or about July 29, 2015, the City granted Mr. Sherlock's application for the Balboa CUP to his holding entity, United Patients Consumer Cooperative ("United Patients") (hereinafter, collectively, Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs, the "Sherlock Property").

71. The homeowners association of the Balboa Property initiated litigation to prevent the opening of the dispensary at the Balboa Property alleging the homeowners association rules prohibited marijuana operations (the "HOA Litigation"). The HOA Litigation was still ongoing in December 2017.

72. On December 3, 2015, Mr. Sherlock passed away, purportedly he committed suicide.

A. Lake and Harcourt defraud Mrs. Sherlock of her interest in the Sherlock Property.

73. In or around December 2015, after Mr. Sherlock passed away, Harcourt submitted documentation to the City to have the Balboa CUP transferred from Mr. Sherlock and his holding entity, United Holdings, to his holding entity, San Diego Patients Cooperative Corporation, Inc. ("SDPCC"), and himself.

74. The day after Mr. Sherlock's death, Lake spoke with investigative officers and stated that he had spent time with Mr. Sherlock the day prior to his passing and that they had discussed problems that Lake felt were "small issues."

75. Shortly after Mr. Sherlock's death, Lake told Mrs. Sherlock that Mr. Sherlock had never actually acquired interests in the Balboa or Ramona CUPs because of the HOA Litigation. Lake told Mrs. Sherlock that Lake, Harcourt and Mr. Sherlock had to "walk away" because it was too expensive to continue financing the HOA Litigation and the parties had decided to walk away from their investments.

76. On or about December 21, 2015, three weeks after Mr. Sherlock's death, LERE was dissolved via a submission to the Secretary of State purportedly executed by Mr. Sherlock (the "Dissolution Form").

77. Subsequent to Mr. Sherlock passing away, public records reveal that Harcourt, Lake, Alexander and Renny Bowden acquired interests in the Ramona CUP.

78. Bowden is Lake's longtime friend and business partner.

79. In or around April 2016, Harcourt on behalf of LERE, executed a grant deed for the Balboa Property in favor of High Sierra Equity, LLC ("High Sierra"), which is owned by Lake.

80. In or around September 2016, Lake on behalf of High Sierra executed a grant deed in favor of Razuki Investments, LLC ("Razuki Investments"), which is wholly owned by Razuki.

81. In or around March 2017, Razuki on behalf Razuki Investments executed a grant deed in favor of San Diego United Holdings Group, LLC ("SD United"), which is wholly owned by Malan.

82. In or around January 2020, during the course of Flores' investigations into the Enterprise, Flores discovered the Dissolution Form and that Mr. Sherlock had also been granted an interest in the Ramona CUP. Also, that subsequent to Mr. Sherlock passing away, Harcourt had acquired an interest in both the Balboa and Ramona CUPs.

83. On or about January 2020, Flores contacted Mrs. Sherlock regarding the Dissolution Form and forwarded it to her. Mrs. Sherlock did not recognize her husband's signature on the Dissolution Form.

84. On or about February 2020, Flores, on behalf of Mrs. Sherlock, contacted Harcourt's counsel, Allan Claybon of Messner Reeves LLP, to inquire as to how Harcourt had acquired Mr. Sherlock's interest in the Balboa and Ramona CUPs and Mrs. Sherlock's belief that Mr. Sherlock's signature was forged.

85. On that initial call, Claybon expressly stated to Flores that he appreciated Flores contacting him, that he understood the timing of the submission of the Dissolution Form was suspicious, and that he would contact Harcourt to provide an explanation.

86. Shortly thereafter, Lake contacted Mrs. Sherlock and requested that she not initiate litigation against Harcourt. Lake alleged that he saw Mr. Sherlock execute the Dissolution Form the day before his death.

87. Lake alleged that when Mr. Sherlock allegedly executed the Dissolution Form, that he was in an extremely emotional state, severely depressed because he had to "sign away" the Balboa and Ramona CUPs because of the allegedly expensive HOA Litigation, and that is why his signature on the Dissolution Form does not look like his normal signature.

88. Lake furthered alleged that Mr. Sherlock having to "sign away" the Ramona and Balboa CUPs was the reason why he allegedly committed suicide.

89. Mrs. Sherlock informed Flores, who in turn followed-up with Claybon regarding Harcourt's explanation as to how he acquired Mr. Sherlock's interest in the Balboa and Ramona CUPs, as well as the allegation made by Lake that he saw Mr. Sherlock execute the Dissolution Form.

90. However, after the initial call with Claybon, over the course of weeks, Flores and Claybon exchanged numerous phone calls and emails in which Claybon repeatedly refused to explain how Harcourt acquired Mr. Sherlock's interest in the Balboa and Ramona CUPs.

91. But Claybon did communicate that Harcourt also allegedly saw Mr. Sherlock execute the Dissolution Form the day before he passed away and also Harcourt's affirmative defenses in anticipation of litigation: (i) the statute of limitations bars any fraud-based causes of action that Mrs. Sherlock may have and (ii) the statute of limitations was not tolled because Mrs. Sherlock did not "exercise reasonable diligence" because she did not check the State's records after Mr. Sherlock passed away. Attached hereto as Exhibit 2 is the email chain between Flores and Claybon and fully incorporated herein by this reference.

92. On or around February 15, 2021, Flores commissioned a handwriting expert that determined that Mr. Sherlock's signature on the Dissolution Form was most likely forged, and he could conclusively establish so if he could review the original filed with the State.

93. In or around March 2020, Mrs. Sherlock met with Lake and told him that she knew that Mr. Sherlock's signature was forged as a result of the handwriting expert report and that she intended to initiate litigation against Harcourt. Further, that it was impossible for her husband to have transferred assets worth millions of dollars leaving nothing to her or his children.

94. After a heated discussion, Lake admitted to Mrs. Sherlock that he was responsible for transferring the Balboa and Ramona CUPs and forging Mr. Sherlock's signature on the Dissolution Form.

95. Lake alleged that he had purchased the Balboa Property as an investment at Mr. Sherlock's recommendation, but that Mr. Sherlock representations regarding the Balboa Property's ability to qualify for a CUP were false because of the HOA Litigation, which resulted in severe financial losses that he needed to recover.

96. Lake also alleged that he effectuated the transfers to prevent Mrs. Sherlock from having to deal with "tax" issues for her own benefit.

97. Mrs. Sherlock was shocked and outraged, but kept calm and asked if she would be getting any proceeds related to the Balboa and Ramona CUPs as a result of Mr. Sherlock's investment of time

and capital to acquire them.

98. Lake responded that Mr. Sherlock's contributions were "worthless," that Mrs. Sherlock and her children were not entitled to anything, that there was nothing she could do about it because she lacked the financial resources, and that she should be content with the proceeds from Mr. Sherlock's life insurance policy.

B. *Razuki I*: Razuki/Malan defraud Harcourt of his interest in the Balboa CUP.

99. On or around June 6, 2017, SDPCC and Harcourt filed a lawsuit against, *inter alia*, Razuki and Malan alleging they had successfully conspired to defraud them of the Balboa CUP ("*Razuki I*").[11] (References to Razuki and Malan include the entities through which they operate.)

100. The *Razuki I* complaint contains causes of action against Razuki and Malan for, *inter alia*, breach of an alleged oral joint venture agreement reached in or around August 2016.

101. Materially summarized, the *Razuki I* complaint alleges that: (i) Razuki/Malan and Harcourt reached an oral joint venture agreement for the operating of the dispensary that operates with the Balboa CUP; (ii) the Balboa CUP was valued at at least 6 million dollars; (iii) Razuki/Malan provided a $50,000 "good faith" payment while the parties were negotiating the joint venture agreement; (iv) Razuki/Malan then purchased the real property at which the Balboa CUP was issued; (v) Razuki/Malan then fraudulently represented themselves as the owner of the Balboa CUP to the City; (vi) the City transferred the Balboa CUP to entities owned by Razuki/Malan; and (vii) thereafter Razuki/Malan fraudulently represented that $800,000 was the value of the real property at which the Balboa CUP was issued, inclusive of the Balboa CUP.

C. *Razuki II*: Malan defrauds Razuki of his undisclosed interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP.

102. On or about July 10, 2018, Razuki initiated a lawsuit against, among others, Malan alleging he has ownership interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP held in Malan's name, from which Malan was unlawfully diverting money owed to him ("*Razuki II*").[12]

---

[11] *San Diego Patients Cooperative Corporation, Inc. v. Razuki Investments, LLC*, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL.

[12] *Razuki v. Malan,* San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL.

103. In *Razuki II*, both Razuki and Malan have admitted that they reached an oral agreement pursuant to which Razuki and Malan would be partners in cannabis related businesses. Their agreement provided for Razuki to provide the initial cash investment to purchase certain assets while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of the assets and Malan would be entitled to twenty-five percent (25%) of said profits & losses.

104. Razuki provided a sworn declaration stating his agreement with Malan provided for Malan to hold title to the cannabis assets without disclosing Razuki's ownership interest because he had been sanctioned in the Stonecrest Judgment for unlicensed commercial cannabis activities.[13]

105. But-for the legal disputes between Razuki and Malan over ownership of the $40,000,000 in cannabis assets, it would not be public knowledge that Razuki and Malan had an agreement for Razuki to hold title to said assets and not disclose Razuki's ownership interest therein because of the Stonecrest Judgment, in violation of applicable State and City laws.

D. *Razuki III* and *Razuki IV*: Razuki attempts to have Malan kidnapped to Mexico and murdered to acquire the $44,000,000 in cannabis assets, is arrested by the FBI, and Malan sues Razuki for trying to have him murdered.

106. On or around November 15-16, 2018, the FBI arrested Razuki, Sylvia Gonzalez and Elizabeth Juarez for conspiring to kidnap and murder Malan because of *Razuki II* ("*Razuki III*").[14]

107. Razuki did not know that one of the individuals that he attempted to hire to murder Malan was an informant for the FBI.

108. On or about August 7, 2019, Malan filed suit against, among others, Razuki, Gonzales, and Juarez for, *inter alia*, (i) interference with the exercise of his civil rights to engage in civil litigation (i.e., *Razuki III*) and (ii) intentional infliction of emotional distress related to their conspiracy to have him kidnapped and murdered ("*Razuki IV*").[15]

---

[13] *Razuki II*, ROA 79 (Razuki Declaration) at 6:1-8 ("Because of [the Stonecrest Judgment], I was concerned with having my name on any title associated with a marijuana operation. This is why Malan would put his name on title for the LLCs related to our marijuana operations. I always assumed he would honor the oral agreement and [a] [s]ettlement [a]greement that would entitle me to 75% ownership of all the [p]artnership [a]ssets.").

[14] *United States v. Salam Razuki*, No. 18MJ5915 (S.D. Cal. Nov. 19, 2018).

[15] *Malan v. Razuki, et. al.*, San Diego Superior Court, Case No. 37-2019-00041260-CU-PO-CTL.

E. Summary of *Razuki I-IV* and the transfers of ownership of the Balboa CUP.

109. Lake and Harcourt unlawfully converted Mr. Sherlock's interest in the Sherlock Property via at least one forged document. Harcourt has refused to explain how he lawfully acquired Mr. Sherlock's interests in the Balboa or Ramona CUPs. Harcourt was in turn allegedly defrauded of the Balboa CUP by Razuki and Malan and filed suit (i.e., *Razuki I*). Malan was then allegedly defrauding Razuki by not providing him his share of profits of his undisclosed interests in various cannabis assets, including the Balboa CUP, and Razuki filed suit (i.e., *Razuki II*). Razuki then tried to have Malan murdered by hiring a hitman who was an informant for the FBI and was arrested by the FBI (i.e., *Razuki III*). Malan then sued Razuki for causes of action arising from Razuki's attempt to have him murdered to prevent him from continuing with their litigation over the $40,000,000 in cannabis assets (i.e., *Razuki IV*).

V. THE FEDERAL CUP

A. Cotton and Geraci enter into an agreement to apply for a CUP at the Federal Property.

110. Cotton is the owner-of-record of the Federal Property at which he operates 151 Farms.

111. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center "T&F Center" since 2001. T&F Center provides sophisticated tax, financial and accounting services.

112. In mid-2016, Geraci identified the Federal Property and began negotiating with Cotton for the purchase of the Federal Property because he believed it would qualify for a CUP.

113. Austin, Bartell, and Schweitzer were hired by Geraci and responsible for preparing, submitting, and lobbying a CUP application with the City at the Federal Property that was submitted in the name of Geraci's assistant, Berry (the "Berry CUP Application").

114. On October 31, 2016, Geraci presented Cotton with an Ownership Disclosure Form, a required component of the City's CUP application.

115. Geraci told Cotton that he needed Cotton to execute the form to show to his agents that he had access to the Federal Property as part of his due diligence in determining whether the property qualified for a CUP.

116. Cotton executed the Ownership Disclosure Form. Attached hereto as Exhibit 3.

117. On October 31, 2016, Geraci had the Berry CUP Application filed with the City, which included the Ownership Disclosure Form and a Form DS-3032 General Application (the "General Application" and attached hereto as Exhibit 4.

118. The Ownership Disclosure Statement required a list that "***must*** include the names and addresses of all persons who have an interest in the property, ***recorded or otherwise***, and state the type of interest."

119. The Berry CUP Application falsely states that Berry is the owner of the CUP being applied for; Geraci is not disclosed anywhere in the Berry CUP Application.

120. The Berry CUP Application was filed without Cotton's knowledge or consent.

121. On November 2, 2016, Cotton and Geraci met at Geraci's office and entered into an oral joint venture agreement whereby Cotton would sell the Federal Property to Geraci (the "JVA").

122. The material terms of the JVA were that Cotton would receive (i) $800,000, (ii) a 10% equity stake in the CUP, (iii) the greater of $10,000 a month or 10% of the net profits of the contemplated dispensary; and (iv) a $50,000 non-refundable deposit in the event the CUP application at the Federal Property was not approved. Geraci also promised that his attorney, Austin, would promptly reduce the JVA to writing.

123. The JVA was subject to a single condition precedent, the approval of a CUP application with the City at the Federal Property by Geraci.

124. At their meeting at which the JVA was reached, Geraci had Cotton execute a three-sentence document to memorialize Cotton's receipt of $10,000 towards the total $50,000 non-refundable deposit (the "November Document") and attached hereto as Exhibit 5.

125. On November 2, 2016, after the parties reached the JVA and executed the November Document, the following email communications took place:

(i) At 3:11, Geraci emailed Cotton a copy of the November Document.

(ii) At 6:55 PM, Cotton replied as follows:

> Hi Larry, [¶] Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision

to sell the property, I'll be fine if you would simply acknowledge that here in a reply.

(the "Request for Confirmation.")

(iii) At 9:13 PM, Geraci replied: "No no problem at all" (the "Confirmation Email"). Attached hereto as Exhibit 6 are these three email exchanges between Cotton and Geraci.

126. On November 3, 2016, Geraci and Cotton spoke over the phone.

127. Subsequently, for months, Cotton and Geraci communicated via email and texts regarding the JVA and issues regarding the approval of a CUP at the Federal Property.

B. Cotton negotiates with Williams to sell the Federal Property.

128. In or around January 2017, after Geraci had failed to reduce the JVA to writing, Cotton began to seek new partners to apply for the Federal CUP at the Federal Property in the event Geraci failed to reduce the JVA to writing.

129. Cotton informed Williams about Geraci's failure to reduce the JVA to writing.

130. In or around February 2017, Williams and Cotton reached the material terms of an agreement for the sale of the Federal Property, subject to the JVA being terminated with Geraci.

131. The material terms of the agreement were for William's 50% purchase of the Federal Property and a 50% ownership interest in the Federal CUP if approved at the Federal Property for $2,500,000.

132. On or around March 6, 2017, Williams spoke to Austin, his attorney, about his intent to enter into an agreement with Cotton.

133. Austin told Williams that he could not enter into an agreement with Cotton because Geraci already had a final, written agreement for the purchase of the Federal Property.

134. Williams, relying on Austin's representation, believed that Cotton had executed a final written agreement with Geraci and was acting in bad-faith attempting to breach his agreement with Geraci to get better terms than those he had negotiated with Geraci and did not enter into an agreement with Cotton.

C. Cotton terminates the JVA with Geraci for his failure to reduce the JVA to writing.

135. On March 7, 2017, Geraci emailed Cotton a revised draft of a purchase agreement for the purchase of the Federal Property and in the cover email he states: "… the 10k a month might be difficult

to hit until the sixth month… can we do 5k, and on the seventh month start 10k?".

136. Geraci's request to lower the monthly payment of $10,000 to $5,000 reflects the parties had an existing agreement that included a term of monthly $10,000 payments to Cotton from which Geraci was requesting an amendment, in accordance with the JVA.

137. Also on or around March 7, 2017, Cotton discovered the Berry CUP Application was submitted on October 31, 2016, prior to his agreement with Geraci on November 2, 2016, and that the Berry CUP Application failed to disclose Geraci or Cotton and their respective ownership interests per the JVA.

138. Thereafter, Cotton continued to demand that Geraci reduce their JVA to writing as Geraci had promised, which Geraci never did.

139. Cotton did not know that Geraci had previously been sanctioned for unlicensed commercial cannabis activities and could therefore not lawfully own a CUP in his name.

140. On March 21, 2017, after several requests for assurance that the JVA would be honored were ignored by Geraci, Cotton emailed Geraci, terminating the JVA for anticipatory breach and informed him that he would be entering into an agreement with a third party for the sale of the Federal Property.

141. Thereafter, that same day, Cotton entered into a written joint venture agreement with Martin for the sale of the Federal Property.

D. Geraci files *Cotton I* to interfere with the sale of the Federal Property and the acquisition of the Federal CUP by a non-Enterprise party.

142. On March 22, 2017, Geraci's attorneys from the law firm of Ferris & Britton served Cotton with *Cotton I* alleging the November Document was executed with the intent of being a final written contract for Geraci's purchase of the Federal Property. Ferris & Britton also served Cotton with a copy of a recorded lis pendens on the Federal Property (the "F&B Lis Pendens").

143. As a matter of law, *Cotton I* was filed without factual or legal probable cause because the November Document cannot be a lawful contract for at least two reasons: it lacks mutual assent and a lawful object.

E. McElfresh and FTB represent Cotton against Geraci in *Cotton I*, neither of whom disclose they have shared clients with Geraci and Austin, and take actions to sabotage Cotton's case.

144. On or around May 12, 2017, Cotton filed *pro se* a cross-complaint in *Cotton I* against Geraci and Berry with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent misrepresentation, (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x) conspiracy, and (xi) declaratory and injunctive relief (the "*Cotton I XC*").

145. The basis of the *Cotton I XC* is that Cotton and Geraci reached the JVA and Geraci was seeking to prevent the sale to Martin by misrepresenting the November Document, a receipt, as a contract for the purchase of the Federal Property.

146. Cotton's cause of action for breach of oral contract materially stated as follows (emphasis added):

> ***The agreement reached on November 2nd, 2016 is a valid and binding oral agreement between Cotton and Geraci***.
>
> Geraci has breached the agreement by, among other actions described herein, alleging the written November [Document] is the final and entire agreement for the Property.

147. Cotton's cause of action against Geraci and Berry for conspiracy materially alleged as follows (emphasis added):

> Berry submitted the [Berry Application] in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. **These lawsuits would ruin Geraci's ability to obtain a CUP himself**.

148. Subsequent to filing the *Cotton I XC*, Cotton acquired a litigation investor, Hurtado.

149. In or around April 2017, Hurtado consulted with attorney McElfresh to represent Cotton and she agreed to represent Cotton.

150. As Hurtado was acting as an agent of Cotton, an attorney-client relationship was

established.[16]

151. On or around April 13, 2017, McElfresh emailed Hurtado that "upon further reflection" that she did "not have the bandwidth" to represent Cotton and referred Hurtado to Demian of FTB.

152. Demian, a partner, and Adam Witt, an associate, of FTB were engaged and represented Cotton in *Cotton I*.

153. In engaging FTB, FTB was provided the communications between Geraci and Cotton.

154. FTB represented they knew that Martin, Hurtado and others had interests in the Federal Property and the Federal CUP and were third-party beneficiaries of FTB's services provided to Cotton.

155. On or around June 30, 2017, Demian and Witt substituted in as counsel for Cotton and filed an amended cross-complaint in *Cotton I* (the "*Cotton I FAXC*").

156. The *Cotton I FAXC* removed Cotton's allegations that it is unlawful for Geraci to own a CUP because he had been sanctioned for unlicensed commercial cannabis operations.

157. The *Cotton I FAXC* reduced and revised Cotton's causes of action from 11 to 7 as follows: (i) breach of contract; (ii) intentional misrepresentation; (iii) negligent misrepresentation; (iv) false promise; (v) intentional interference with prospective economic relations; (vi) negligent interference with prospective economic relations; and (vii) declaratory relief.

158. FTB's amendments from Cotton's *Cotton I CX* to their *Cotton I FAXC* were without factual or legal justification given the facts known to them.

159. The unjustified amendments include:

(i) Removing Cotton's cause of action for breach of an oral contract;

(ii) Removing Cotton's cause of action for fraud;

(iii) Removing Cotton's cause of action for conspiracy against Geraci and Berry; and

(iv) Removing Berry from all causes of action except the seventh for declaratory relief.

160. Demian represented to Cotton the amendments were just and proper and in Cotton's best

[16] *See Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39-40 ("As our Supreme Court said in *Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 429 [62 P. 57]: 'When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established prima facie.' [….] In *Westinghouse Elec. Corp. v. Kerr-McGee Corp.* (7th Cir. 1978) 580 F.2d 1311, 1319, the court said: 'The fiduciary relationship existing between lawyer and client extends to preliminary consultation by a prospective client with a view to retention of the lawyer, although actual employment does not result.'").

interest.

161. Cotton relied on Demian's representations as Demian was his attorney who he believed was acting in his best interest.

162. Subsequent to FTB filing the *Cotton I XC*, FTB was informed that Martin is a high net worth individual who was prepared to hire independent counsel if he was named as a party in *Cotton I*.

163. On or about August 25, 2017, FTB filed a second amended cross-complaint for Cotton (the "*Cotton I SAXC*"). This time, FTB removed the causes of action for intentional and negligent interference with prospective economic relations for the sale to Martin.

164. Martin was an indispensable party to the action as the purchaser of the Federal Property and was required to be named in *Cotton I*.

165. On or about November 3, 2017, Judge Wohlfeil held a hearing on Geraci's demurrer to Cotton's *Cotton I SAXC* at which Demian argued that Cotton had not reached a final agreement with Geraci, but rather that Geraci and Cotton had reached "an agreement to agree."

166. Demian's argument on behalf of Cotton contradicts Cotton's factual allegations in his *Cotton I XC* that the "agreement reached on November 2, 2016 is a valid and binding oral agreement," and fails to state a cause of action against Geraci because "an agreement to agree" in the future is not a lawful, enforceable agreement.[17]

167. In or around November 2017, at a meeting at FTB's office, Witt, while waiting for Demian, told Cotton that he had just overheard Demian talking with another partner at FTB and that FTB had shared clients with Geraci or Geraci's T&F Center.

168. Demian had never disclosed that Geraci or his company had shared clients with FTB.

169. In December 2017, during the course of his representation, Demian attempted to have Cotton execute a supporting declaration to argue in an *ex parte* application before the *Cotton I* court that Geraci was acting as Cotton's agent when Geraci had Berry submit the Berry Application to the City in her name without disclosing Geraci or Cotton's ownership interest.

[17] "It is Hornbook law that an agreement to make an agreement is nugatory, and that this is true of material terms of any contract." *Roberts v. Adams* (1958) 164 Cal. App. 2d 312, 314. "[N]either law nor equity provides a remedy for a breach of an agreement to agree in the future." *Id*. at 316 (quotation omitted).

170. Specifically, Demian wanted Cotton to admit that: "Cotton and Plaintiff/Cross-defendant Geraci reached an agreement regarding the sale of the Property in or around November 2016 ('November Agreement') which included, among other things, an agreement for **Geraci to pursue the [Federal] CUP *on* Cotton's behalf.**"

171. FTB has no factual or legal justification to have Cotton make this argument.

172. FTB's argument was contradicted by the pleadings submitted by Cotton and every communication provided by Cotton to them.

173. Had Cotton executed the declaration and admitted that he, Cotton, and not Geraci, was the true applicant of the Berry CUP Application, Cotton's allegations of illegality against Geraci would fail to state a claim and Cotton would be the party strictly liable for violating State and City disclosure laws for using a proxy that failed to name him as the true and beneficial owner of the CUP applied for.[18]

174. On or around December 7, 2017, at a hearing before Judge Wohlfeil regarding the validity of the November Document being a contract, Demian failed to raise the Confirmation Email as evidence that the parties did not mutually assent to the November Document being a contract, or even raise the concept of mutual assent or illegality.

175. That same day, Cotton fired Demian or Demian quit because of Demian's failure to raise the issue of mutual assent before Judge Wohlfeil.

176. Later that day, when confronted by Cotton, Demian admitted he had failed to raise the issue of mutual assent or the Confirmation Email as evidence that Cotton and Geraci had not mutually assented to the November Document being a contract and stated it was because he had a "bad day."

177. At that point in time, Cotton did not know that McElfresh, who referred Hurtado to Demian, had shared clients with Austin and that she also worked for Razuki. Nor did Cotton understand the gravity of an attorney who fails to disclose conflicts of interests between clients.

F. Geraci and F&B collude to create and present fabricated evidence – the Disavowment Allegation - to the *Cotton I* court to overcome filing a lawsuit without probable cause because F&B relied on outdated case law.

178. From the filing of the *Cotton I* complaint in March 2017 until April 2018, Geraci's pleadings, motion practice and judicial and evidentiary admissions argued that the statute of frauds and

[18] SDMC § 121.0311 (violations of the SDMC are strict liability offenses).

the parol evidence rule barred admission of the Request for Confirmation, the Confirmation Email and other parol evidence as evidence that the parties did not mutually assent to the November Document being a purchase contract for the Federal Property.

179. For example, in Geraci's reply to his demurrer of the *Cotton I SACX*:

> Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties contains material terms and conditions in addition to those in the [November Document] as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the [November Document] that expressly conflicts with a term of the [November Document]. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum.

180. On April 4, 2018, Cotton, via a specially appearing attorney, filed a motion to expunge the F&B Lis Pendens (the "Lis Pendens Motion"). The Lis Pendens Motion argued for the first time in *Cotton I* that, pursuant to *Riverisland*,[19] Geraci could not use the parol evidence rule as a shield to bar parol evidence as proof that the parties executed the November Document as a receipt and that Geraci was fraudulently representing it as a contract.

181. The Lis Pendens Motion was a *de facto* motion for summary judgment as a finding that the November Document is not a contract as a matter of law for lacking mutual assent would have meant that the *Cotton I* complaint, premised on the allegation that the November Document is a contract, was filed without probable cause.

182. On April 9, 2018, Geraci executed a declaration in support of his opposition to the Lis Pendens Motion. Attached hereto as Exhibit 7 and fully incorporated herein by this reference.

183. In his declaration, Geraci alleged for the first time that (i) Geraci did not read the entire

---

[19] On January 14, 2013, the California Supreme Court overruled a longstanding precedent regarding the fraud exception to the parol evidence rule. In the 1935 case, *Bank of America Etc. Assn. v. Pendergrass* ("*Pendergrass*") 4 Cal.2d 258, the California Supreme Court declared inadmissible evidence of promissory fraud—a promise made without the intent to perform—made prior to and inconsistent with the subsequent written agreement. The court's unanimous decision in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, overruled *Pendergrass* and declared that the parol evidence rule does not bar evidence of promissory fraud that contradicts the terms of a writing. *Id.* at 1182 ("***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud***.") (quotation omitted, emphasis added); *see IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 ***("[U]nder Pendergrass, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud***.") (emphasis added).

Request for Confirmation before sending the Confirmation Email; (ii) Geraci called Cotton on November 3, 2016 and told him that he did not intend to send the Confirmation Email; (iii) Cotton orally agreed that the Request for Confirmation was sent as an attempt to acquire a 10% equity position in the CUP that the parties had not bargained-for and Cotton stated "well, you don't get what you don't ask for"; and (iv) Cotton orally agreed he was not entitled to a 10% equity interest in the CUP that is established by his Request for Confirmation and Geraci's Confirmation Email (the "Disavowment Allegation").

184. The sole evidence that Geraci provided of the Disavowment Allegation were his phone records reflecting that Geraci and Cotton spoke on November 3, 2016.

185. The *Cotton I* court denied the Lis Pendens Motion finding the November Document appeared to be a contract without addressing the parol evidence and the issue of mutual assent.

186. Subsequent to the hearing, Cotton emailed Weinstein accusing him of fabricating the Disavowment Allegation, to which Weinstein responded as follows:

> First, our view is that the statute of frauds bars the [Confirmation Email] because it is parol evidence that is being offered to explicitly contradict the terms of the [November Document]. Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was never an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the [Confirmation Email] is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is consistent with the [November Document] and not barred by the statute of frauds.

187. First, the statute of frauds does not apply to the JVA.[20]

188. Second, pursuant to *Riverisland*, parol evidence is not barred to prove fraud.

189. Third, under California law as explained in *Stewart v. Preston Pipeline Inc.*, even assuming that Geraci's allegation of mistakenly sending the Confirmation Email were true, Geraci may not avoid the legal impact of sending the Confirmation Email on the ground that he failed to read the

[20] *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 ("[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.").

Request for Confirmation before signing it.[21]

190. Thus, even setting aside the illegality of Geraci's sanctions, there is no factual or legal probable cause for the filing of *Cotton I*.

G. Austin attempts to avoid service of process to allege she is not aware of the Geraci Judgments.

191. On August 8, 2018, Cotton appealed from the order denying the Lis Pendens Motion seeking to expunge the F&B Lis Pendens, which referenced the Geraci Judgments and the illegality of Geraci's ownership of a CUP.

192. On August 27, 2018, Cotton's then counsel and paralegal served Austin personally and as counsel for Magagna. Attached hereto as Exhibit 8 are the proofs of service describing Austin's actions attempting to avoid service and fully incorporated by this reference.

193. During discovery, Geraci asserted the attorney-client privilege as to communications between him and Austin.

H. The *Cotton I* trial and the Motion for New Trial.

194. In the years leading up to the trial of *Cotton I*, Cotton took numerous actions to seek to prevent Geraci from being able to process the Berry CUP Application at the Federal Property.

195. Cotton's actions included preventing Geraci from accessing the Federal Property for actions required to process the Berry CUP Application.

196. Cotton took such actions because in order for Geraci to limit his liability for filing *Cotton I*, Geraci needed to make it impossible for Cotton or any other party to acquire a CUP at the Federal Property. Thus, Geraci's consequential damages once his illegal actions are exposed, would not include the value of a CUP issued at the Federal property and such would limit his liability by millions of dollars

[21] "It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it. [¶] Plaintiff has cited no California cases (and we are aware of none) that stand for the extreme proposition that a party who fails to read a contract but nonetheless objectively manifests his assent by signing it—absent fraud or knowledge by the other contracting party of the alleged mistake—may later rescind the agreement on the basis that he did not agree to its terms. To the contrary, California authorities demonstrate that a contracting party is not entitled to relief from his or her alleged unilateral mistake under such circumstances." *Stewart v. Preston Pipeline Inc.*, 134 Cal. App. 4th 1565, 1588-89 (citations and quotations omitted).

and also serve to prevent third parties from seeking to help Cotton finance his litigation against Geraci.

197. Austin, Berry, Bartell, and Schweizer testified on Geraci's behalf at the trial of *Cotton I*.

198. At the trial of *Cotton I*, Judge Wohlfeil found that the CUP application would have been approved at the Federal Property but-for what he believed to be Cotton's unlawful interference with the processing of the application with the City: "I think, that it's more probable than not that a CUP had been issued and the dispensary opened…"

199. At the *Cotton I* trial, Austin testified: (i) she was not aware of the Geraci Judgments; (ii) she does not know why, or cannot remember why, Geraci used Berry as an agent for the Berry CUP Application; and (iii) when presented with the Ownership Disclosure Statement, Austin was asked: "after reading that, why [did] it seem unnecessary to list Mr. Geraci?" Austin responded: "I don't know that it - - it was unnecessary or necessary. We just didn't do it."

200. At the trial of *Cotton I*, Berry's testimony alleged that while Geraci was not disclosed because he was an Enrolled Agent for the IRS, she was not aware that the City's CUP application forms required Geraci to be disclosed because she did not read them. Specifically, Berry testified: "I simply signed this. It was filled out by our team and I signed it. Trusting Mr. Geraci and the team."

201. During trial, Cotton moved for a directed verdict arguing BPC § 20657 *et seq.* bars Geraci's ownership of a CUP, which was summarily denied.

202. The *Cotton I* judgment found, *inter alia*, that Geraci "is not barred by law pursuant to California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego."

203. The $260,109.28 in damages awarded Geraci included legal fees for McElfresh's representation of Geraci in advancing the interests of the Berry CUP Application before the City.

204. After trial, Cotton filed a motion for new trial again arguing, *inter alia*, the illegality of the Proxy Practice, which Judge Wohlfeil denied finding the defense of illegality had been waived.

VI. THE MAGAGNA CUP APPLICATION WAS FILED TO PREVENT THE APPROVAL OF THE BERRY CUP APPLICATION AND LIMIT GERACI AND HIS COCONSPIRATORS LIABILITY ONCE THEIR UNLAWFUL ACTIONS WERE EXPOSED.

205. On or about March 14, 2018, Magagna submitted an application for a CUP at 6220

Federal Blvd. that is located within 1,000 feet of the Federal Property (the "Magagna CUP Application").

206. Prior to then, Williams had engaged Schweitzer on several CUP applications and was actively working with him on CUP applications at other real properties.

207. In or around November 2018, Schweitzer told Williams that the Magagna CUP Application would be approved and that he would have an ownership interest in the Federal CUP.

208. On or about October 18, 2018, the Magagna CUP Application was approved by the City.

209. Schweitzer is not listed as a party with an ownership interest in the Magagna CUP Application.

VII. DURING THE COURSE OF THE *COTTON I* LITIGATION, GERACI AND HIS AGENTS UNDERTOOK ACTS AND THREATS OF VIOLENCE AGAINST COTTON AND THIRD PARTIES SEEKING TO COERCE COTTON TO CEASE THE *COTTON I* LITIGATION.

A. Eulenthius Duane Alexander and Logan Stellmacher threaten Cotton on behalf of Geraci.

210. On or about February 3, 2018, Alexander and Stellmacher and a third-party went to the Federal Property purportedly to discuss business opportunities with Cotton.

211. However, when they arrived at the Federal Property, they only wanted to discuss the *Cotton I* litigation.

212. They made an offer to purchase the Federal Property stating they had reached an agreement with Geraci to take over the Berry CUP Application, offering to beat Martin's purchase price of $2,500,000, and promising Cotton a long-term job at the contemplated dispensary if Cotton could settle his litigation with Geraci.

213. Cotton declined, noting he was contractually unable to settle the litigation with Geraci in a manner that left Geraci the Federal Property because of his agreement with Martin.

214. Thereafter, Alexander and Stellmacher engaged in direct and indirect threats seeking to coerce Cotton to settle with Geraci.

215. Alexander made it a point to highlight that Geraci was a politically influential individual with the City and that the Berry CUP Application being approved was already a "done deal" for Geraci.

216. Stellmacher then directly threatened Cotton, stating that (i) Geraci's influence with the City extended to having the ability to have the San Diego Police Department raid the Federal Property

and have Cotton arrested on fabricated charges and planted drugs and (ii) Geraci could have dangerous individuals visit the Federal Property implying they would cause bodily harm to Cotton.

217. Cotton refused the offer.

218. Thereafter, on numerous occasions, Stellmacher harassed Cotton.

219. On or about February 8, 2019, Stellmacher became aware that Cotton intended to file a federal lawsuit and describe Stellmacher's threats, and he went to the Federal Property and pleaded with Cotton to not name him as he had been arrested in Texas and was out on bail for illegally transporting cannabis.

B. Magagna attempts to bribe and threatens Young to prevent her from providing testimony against Geraci and his agents.

220. On or around October 2, 2017, Young visited the Federal Property and took a tour of 151 Farms. Young went to the Federal Property because she had heard about the property qualifying for a CUP and was looking for an investment opportunity.

221. Young was informed about the *Cotton I* litigation and was given a proposal to invest in the litigation as a means of acquiring an ownership interest in the Federal CUP.

222. Young had or did engage Bartell who worked on another CUP application at a different property.

223. Young spoke to her cannabis attorney, Shapiro, about the potential investment who told her that she should speak to Bartell.

224. Bartell told her not to invest in the *Cotton I* litigation because he "owned" the Berry CUP Application and he was getting it denied with the City because "everyone hates Darryl" (the "Bartell Statement").

225. Young did not invest in the *Cotton I* litigation.

226. Young was not aware that at the same time the Bartell Statement was made, Geraci was arguing before Judge Wohlfeil in *Cotton I* that Geraci was using his best efforts to have the Berry CUP Application approved, including through the political lobbying efforts of Bartell.

227. On or around May 27, 2018, Young met with Cotton and others to discuss a secured loan instead of litigation financing.

228. At the meeting, Young was informed by Cotton that he believed that Magagna was a co-

conspirator of Geraci who was seeking to help Geraci mitigate his damages by having the Magagna CUP Application approved.

229. Young recognized Magagna and told Cotton that Shapiro was also Magagna's attorney and about the Bartell Statement.

230. However, Young stated her belief that Magagna was not a bad-faith actor and called him to speak about what was happening.

231. Young met with Magagna and explained Cotton's belief that he was a coconspirator of Geraci. To her surprise, Magagna did not deny the allegations, instead, he asked her to change her statements and offered her a bribe for doing so. Young refused.

232. Despite her refusal, Magagna repeatedly requested that Young communicate with Cotton and tell him that she had "dreamed" the Bartell Statement.

233. Young continued to refuse and Magagna became increasingly physically and vocally aggressive with his demands until they parted, demanding Young not say anything about their conversation and to "keep him out of it."

C. Nguyen, Young's attorney, promises and fails to provide Young's testimony.

234. Nguyen and Austin both attended law school together at Thomas Jefferson School of Law in San Diego, California, and were both admitted to the California Bar in December 2006.

235. On January 1, 2019, Cotton subpoenaed Young to be deposed on January 18, 2019.

236. On January 16, 2019, Nguyen, representing Young, unilaterally cancelled the deposition of Young.

237. On January 21, 2019, Nguyen promised to provide Young's sworn testimony confirming, *inter alia*, the Bartell Statement and Magagna's attempts at bribing and threatening her.

238. On June 12, 2019, after having been put off for months by Nguyen, counsel for Cotton emailed Nguyen demanding she provide Young's promised testimony, to which Nguyen never responded.

239. On June 30, 2019, the day before the start of trial in *Cotton I*, Flores spoke with Young who said she had moved out of the City, could not be served, would not testify, and did not want anything to do with Cotton or *Cotton I*.

240. In January 2020, Flores spoke with Young and informed her that by failing to provide her promised testimony that he believed she was a coconspirator of Geraci and he intended to file suit against her.

241. Young broke down and said she had done nothing illegal and that it was Nguyen who had unilaterally decided not to provide her testimony after Young had already agreed to provide it.

242. Young stated that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro paid Young's legal fees to Nguyen, (iii) Nguyen – in an email – told her that it was OK to "ignore" their obligation to provide Young's testimony because "it was too late for Cotton to do anything about it."

243. Thereafter, Young, having learned that Cotton intended to sue her for her failure to provide her promised testimony, emailed Cotton the email from Nguyen stating it was "too late" for Cotton to do anything about subpoenaing her for trial at *Cotton I*. Attached hereto at Exhibit 10 is a true and correct copy of that email.

D. Gash offers Young a job in Palm Springs, CA that prevents Cotton from subpoenaing Young for trial.

244. The job that Young received that was the catalyst for her moving out of the City, and being unable to be located to be served again for trial, was as a manager at a dispensary called Southern California Organic Treatment (SCOT) in Palm Springs, CA.

245. Public records reveal that Austin has or is counsel for SCOT.

246. Dave Gash and James Yamashita are, respectively, the CEO and CFO of SCOT.

247. Public records reveal that Gash (i) was sanctioned for unlicensed cannabis activities along with Ramistella and Yamashita; and (ii) was the property manager at the Balboa Property at which the Balboa CUP was issued.

248. Ramistella was a co-defendant and sanctioned with Geraci in the TreeClub Judgement for unlicensed commercial cannabis activities.

249. Based on the relationships between the parties, Plaintiffs believe and allege that the job offer to Young by Gash was made and intended to prevent Cotton from being able to locate and subpoena Young to testify at the trial of *Cotton I.*

E. Shawn Miller threatens Hurtado to coerce him to have Cotton settle the *Cotton I* litigation.

250. "Following a jury trial, defendant Shawn Joseph Miller was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C.§ 1343, two counts of money laundering, in violation of 18 U.S.C.§ 1957, and one count of witness tampering, in violation of 18 U.S.C.§ 1512(b)(3)." *U.S. v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).

251. At a pretrial hearing, Miller's own attorney, fearing for his safety, requested that he be relieved as counsel for Miller due to his violent nature.[22]

252. Subsequent to being released, Miller began working as a contract paralegal in the City.

253. In or around January 2018, Hurtado attempted to hire Miller as a contract paralegal for Cotton and his then counsel.

254. When Hurtado met Miller, he explained the *Cotton I* litigation and that Geraci was a "mafia like figure." Further that he was not a party to and did not want to be involved in the litigation because of the evidence of violence by Geraci and that he was concerned for the safety of his family and he needed to do what was in their "best interest."

255. Thereafter, Miller stated that he knew Geraci.

256. Hurtado told him it would be a conflict of interest to hire Miller and requested Miller not inform Geraci about him. Miller agreed.

257. That same night, at approximately 10:00 p.m., Miller called Hurtado requesting that Hurtado use his influence with Cotton to persuade him to settle with Geraci because Geraci is really "not a bad guy" and that it would be in Hurtado's "best interest," which was a direct reference to their earlier conversation and Hurtado's concerns for the safety of his family.

258. The parties argued during which Hurtado accused Miller of threatening him on behalf of Geraci and hung up on Miller.

259. Thereafter, Miller repeatedly called, texted and harassed Hurtado under the guise of seeking to collect payment for work that he alleges he performed at Hurtado's request.

260. In *Cotton I,* Geraci responded to a special interrogatory as follows:

[22] *Miller*, 531 F.3d 343 (Miller's attorney: "The Defendant and I just had a meeting, which deteriorated to a very violent nature…. I was hoping while he sat in jail he would come to his senses but obviously has not. He is hostile to me. I cannot under the ethical situation even sit at the same trial table with him. So I have all the evidence here that he needs. I can give it to him and let him represent himself.").

SPECIAL INTERROGATORY NO. 35:

Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe Hurtado regarding any matter related to this litigation?

RESPONSE TO SPECIAL INTERROGATORY NO. 35

Not that I am aware. Moreover, I have never requested or authorized any person to do so.

261. Geraci's response allows for the possibility that if phone records and other evidence prove that Miller threatened and harassed Hurtado under the pretext of seeking to collect a debt, that Miller did so on behalf of Geraci but without Geraci's knowledge or consent.

VIII. THE LEMON GROVE CUP: AUSTIN INTERFERES WITH WILLIAMS ACQUISITION OF THE LEMON GROVE PROPERTY.

262. Williams first retained Austin to be his attorney for cannabis related matters in or around February 2017.

263. In or around March 2017, Williams discussed with Austin his intent to purchase the Lemon Grove Property.

264. Austin represented to Williams that the Lemon Grove Property did not qualify for a CUP and that he should not purchase the Lemon Grove Property.

265. Subsequently, the Lemon Grove CUP was issued at the Lemon Grove Property.

266. The parties who acquired the Lemon Grove CUP at the Lemon Grove Property were represented by McElfresh.

267. Austin's representation to Williams that the Lemon Grove Property did not qualify for a CUP was false.

ADDITIONAL FACTUAL ALLEGATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION – CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (BUS. & PROF. CODE § 16700 *et seq.*)

(Plaintiffs v. Defendants)

268. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

269. "The purpose of the Cartwright Act is to protect and foster competition by preventing combinations and conspiracies which unreasonably restrain trade." *Morrison v. Viacom, Inc.*, 52 Cal. App. 4th 1514, 1524 (1997). The Cartwright Act prohibits trusts, which it defines as "combination[s] of

capital, skill, or acts by two or more persons" for certain enumerated purposes, including "[t]o create or carry out restrictions in trade or commerce." BPC § 16720(a). A conspiracy to monopolize is within the Cartwright Act's definition of a trust as "a combination of capital, skill, or acts by two or more persons" to restrain trade. BPC § 16720. The California Supreme Court has emphasized that "agreements to establish or maintain a monopoly are restraints of trade made unlawful by the Cartwright Act." *In re Cipro Cases I & II*, 61 Cal. 4th 116, 148 (2015).

270. Defendants designed, implemented and/or ratified a combination and conspiracy with the specific intent to prevent competition and/or create a monopoly in the cannabis market in the City and County of San Diego in violation of the Cartwright Act.

271. Defendants committed overt acts and engaged in concerted action in furtherance of their combination and conspiracy to restrain trade and monopolize, as described above, including but not limited to unlawfully applying for or acquiring CUPs through the use of proxies and/or forged documents, sham litigation,[23] and acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions in furtherance of the conspiracy.

272. As a direct and legal result of the unlawful actions of defendants, and each of them, Plaintiffs were injured in their business and/or property, all of which injuries have caused and continue to cause Plaintiffs' damage. Pursuant to BPC §16750(a), Plaintiffs are entitled to recover three (3) times the damages sustained by them, according to proof.

SECOND CAUSE OF ACTION– CONVERSION

(Mrs. Sherlock, T.S., and S.S. v. Lake and Harcourt)

273. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

274. The Sherlock Family had ownership interests in the Sherlock Property upon the death of Mr. Sherlock as his heirs.

275. After the death of Mr. Sherlock, Lake and Harcourt converted the Sherlock Property

[23] The *Noerr-Pennington* doctrine and sham exception apply to the Cartwright Act. *See Blank v. Kirwan* (1985) 39 Cal. 3d 311, 320–322 (defendants' actions aimed at influencing city were protected from Cartwright Act claim by *Noerr-Pennington* doctrine); *Hi-Top Steel Corp. v. Lehrer*, 24 Cal. App. 4th 570, 579 (1994) ("we hold the sham exception to the *Noerr-Pennington* doctrine is applicable in California.").

through documents that contained Mr. Sherlock's forged signature, including the Dissolution Form.

276. The Sherlock Family has been damaged in an amount to be proven at trial according to proof.

THIRD CAUSE OF ACTION – CIVIL CONSPIRACY

(Mrs. Sherlock, T.S., and S.S. v. Lake and Harcourt)

277. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

278. Lake and Harcourt conspired to convert the Sherlock Family's interest in the Sherlock Property after the death of Mr. Sherlock through forged documents, including the Dissolution Form, as well as to conceal from them their causes of action to seek judicial redress for same.[24]

279. Shortly after Mr. Sherlock passed away, Lake knowingly and falsely represented to Mrs. Sherlock that Mr. Sherlock never acquired interests in the Balboa or Ramona CUPs.

280. Mrs. Sherlock trusted and relied on Lake's representations as he is her brother-in-law and was Mr. Sherlock's business partner.

281. Lake also falsely stated that he was the purchaser of the Balboa Property.

282. Mr. Sherlock's interest in the Balboa Property via his interest in LERE was converted by Harcourt when he transferred Balboa Property from LERE to Lake.

283. In or around March 2020, when Mrs. Sherlock confronted Lake with a handwriting expert report concluding that Mr. Sherlock's signature was forged on the Dissolution Form, Lake admitted to Mrs. Sherlock that he had converted the Mr. Sherlock's interest in the Balboa and Ramona CUPs after Mr. Sherlock's death.

284. As detailed above, Lake's reasoning for depriving the Sherlock Family of their interests in the Ramona and Balboa CUPs included that Mr. Sherlock's contributions were "worthless," the Sherlock Family was not entitled to any compensation, and there was nothing Mrs. Sherlock could do about it because she lacked the financial resources to vindicate her rights.

285. Lake's statements to Mrs. Sherlock in or around February 2020, alleging Mr. Sherlock was in an extremely emotional state and executed the Dissolution Form, contradict his statements to

[24] *See Ramey v. General Petroleum Corp.* (1959) 173 Cal. App. 2d 386, 403 (conspiracy to conceal and defeat plaintiff's common law action for damages).

investigative officers after the death of Mr. Sherlock in December 2015, were fabricated, and intended to cover-up his unlawful role in the sale of the Sherlock Property.

286. Harcourt's repeated refusal to explain how he purchased Mr. Sherlock's interests in the CUPs, but his communication of affirmative defenses in anticipation of litigation, evidence his knowing unlawful role in purchasing Mr. Sherlock's interests in the Balboa and Ramona CUPs.

287. In doing the things herein alleged, Lake and Harcourt acted purposefully with malice and oppression to deprive the Sherlock Family their rights to the Sherlock Property and prevent them from seeking judicial redress for same. Lake and Harcourt's actions thereby warrant an assessment of punitive damages in an amount appropriate to punish them and deter others from engaging in similar misconduct pursuant to Civ. Code § 3294(c).

FOURTH CAUSE OF ACTION – DECEIT AND FRAUD

(Williams v. Austin)

288. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

289. As detailed above, in or around February 2017, Williams reached the material terms of an agreement with Cotton to enter into a joint venture to apply for a CUP at the Federal Property and operate a cannabis dispensary; subject to Geraci failing to reduce the JVA to writing.

290. On or around March 6, 2017, Williams spoke to Austin about the agreement reached with Cotton.

291. Austin told Williams that he could not enter into an agreement with Cotton because Geraci already had a final, written lawful agreement for the purchase of the Federal Property.

292. Austin knew the November Document was not executed with the intent it be a contract and that the agreement between Cotton and Geraci was illegal, therefore her statement was false.

293. Austin knowing the statement was false intended for Williams to rely on her representation.

294. Williams relied on Austin's representations because she was his attorney and he believed her fiduciary duty to him would prevent her from making false representations.

295. As a result Williams did not enter into an agreement with Cotton.

296. But-for Austin's misrepresentation, Williams would have entered into an agreement with Cotton and applied for a CUP at the Federal Property no later than March 2017, when Cotton terminated the JVA with Geraci for Geraci's failure to reduce the JVA to writing.

297. The Magagna CUP Application was filed on or around March 14, 2018 and approved on or around on October 18, 2018.

298. Judge Wohlfeil found that the Berry CUP Application would have been approved at the Federal Property but-for what he believed to be Cotton's unjustified interference with the permitting process.

299. Had Williams submitted a CUP application a year earlier than the Magagna CUP Application at the Federal Property, it would have been approved.

300. As detailed above, Austin falsely represented to Williams that the Lemon Grove Property did not qualify for a CUP.

301. Williams relied on Austin's representation and did not seek to purchase the Lemon Grove Property.

302. Subsequently, the Lemon Grove CUP was issued at the Lemon Grove Property.

303. Williams has been damaged in an amount to be proven at trial according to proof.

FIFTH CAUSE OF ACTION – UNFAIR COMPETITION LAW
(Cal. Bus. & Prof. Code § 17200 *ET SEQ.*)
(Plaintiffs v. Defendants)

304. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

305. The above-described acts and practices of Defendants and Does 1-100 in furtherance of the constitute unfair competition in that they are unlawful,[25] unfair,[26] and/or fraudulent business practices in violation of California's Unfair Competition Law ("UCL") codified at BPC § 17200 *et seq*.

[25] "The 'unlawful' practices prohibited by … section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made. … As [the] Supreme Court put it, section 17200 'borrows' violations of other laws and treats them as unlawful practices independently actionable under section 17200 *et seq*." *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880–881 (cleaned up).

[26] The definition of "unfair" includes "[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*, 53 Cal. App. 5th 21, 40 (2020).

306. As detailed above, the wrongful conduct of Defendants and Does 1 through 100, and each of them, as herein above alleged, seeking to prevent competition and ratification of acts seeking to prevent competition, in the cannabis market in the City and County of San Diego violate the Cartwright Act.

307. The filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115.

308. ALG's Proxy Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 *et seq.* and 26057 *et. seq.*

309. The preparation, filing, and lobbying of CUP applications with the City by Malan, Berry, and Magagna, failing to disclose the ownership interests of, respectively, Razuki, Geraci, and Schweizer, violate BPC § 19323 *et seq*. and/or § 26057 *et seq*. and Penal Code § 115.

310. The filing and maintaining of the sham *Cotton I* action by Geraci and F&B constitutes predatory and anticompetitive conduct that is unlawful and fraudulent.

311. Geraci and F&B's collusion to fabricate, present and testify as to the Disavowment Allegation, in response to *Riverisland* being raised in the Lis Pendens Motion, constitutes perjury (Pen. Code § 118) and subordination of perjury (Pen. Code § 127).

312. McElfresh's representation of Geraci in furtherance of the Berry CUP Application before the City violated her fiduciary duties to Cotton as her former client,[27] the terms of her DPA as she knew Geraci could not lawfully own a CUP via the Berry CUP Application pursuant to BPC § 19323 *et seq*., and Penal Code § 115.

313. Nguyen's failure to provide Young's testimony violates her professional responsibilities as an officer of the court as well as Cal. Pen. Code § 136 (preventing a witness from testifying).

314. The threats of violence by Alexander and Stellmacher against Cotton as agents of Geraci seeking to prevent him from continuing with litigation against Geraci constitute obstruction of justice pursuant to Pen. Code § 182(a)(5).

[27] "Few precepts are more firmly entrenched than that the fiduciary relationship between attorney and client is of the very highest character and, even though terminated, forbids (1) any act which will injure the former client in matters involving such former representation or (2) use against the former client of any information acquired during such relationship." *Yorn v. Superior Court*, 90 Cal. App. 3d 669, 675 (1979) (citations omitted).

315. The threats of violence and harassment by Miller against Hurtado as an agent of Geraci seeking to have him cease his support of Cotton's litigation against Geraci constitutes obstruction of justice pursuant to Pen. Code § 182(a)(5).

316. The attempted bribery and threats by Magagna against Young violate Cal. Pen. Code § 136.1(d) and § 182(a)(5).

317. Plaintiffs are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits, such other monetary relief as the court deems just in light of the ill-gotten gains obtained by Defendants as a result of such business acts or practices, and an injunction prohibiting Defendants from engaging in the practices described herein.

SIXTH CAUSE OF ACTION – DECLARATORY RELIEF

(Flores and Williams v. Geraci)

318. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

319. Flores and Williams seek to have the *Cotton I* judgment declared void.

320. The Courts have "define[d] a judgment that is void for excess of jurisdiction to include a judgment that grants relief which the law declares ***shall*** not be granted."[28]

321. Geraci was sanctioned by the City in the CCSquared Judgment on June 17, 2015.

322. As in effect in October and November 2016 when the Berry CUP Application was submitted and the November Document executed, BPC § 19323(a),(b)(7) provided that a "licensing authority ***shall deny*** an application if the applicant has been sanctioned by a city for unlicensed commercial cannabis activities in the three years immediately preceding the date the application is filed with the licensing authority." BPC § 19323(a),(b)(7) (cleaned up; emphasis added).

323. The *Cotton I* judgment is therefore void because it grants relief to Geraci that the law declares shall not be granted.

324. Flores and Williams' causes of action asserted herein relating to their interests in the Federal Property and the Federal CUP are based on their contention that the November Document is not a lawful contract because it lacks mutual assent and a lawful object.

[28] *311 S. Spring St. Co. v. Dep't of Gen. Servs.*, 178 Cal. App. 4th 1009, 1018 (2009).

325. An actual controversy has arisen and now exists between Flores/Williams and Geraci in that Geraci contends the *Cotton I* judgment is not a void judgment.

326. A declaration finding the *Cotton I* judgment is void is necessary and appropriate at this time so that the rights, duties and obligations of these parties may be ascertained without reliance upon a void judgment that has no legal effect and cannot give rise to any rights in this action.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court grant the following relief:

1. Pursuant to Government Code § 12261, that the Court order the reinstatement of LERE.

2. For compensatory, general, consequential, and incidental damages and prejudgment interest in an amount to be proven at trial, as permitted by law.

3. An award of statutory damages, as permitted by law.

4. An award of punitive and exemplary damages, as permitted by law.

5. Reasonable attorneys' fees and costs, as permitted by law.

6. A declaration that ALG's Proxy Practice is an unlawful business practice.

7. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining ALG from continuing with the Proxy Practice.

8. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining the transfer of the Sherlock Property.

9. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Magagna from selling and/or transferring interests in the Federal CUP pending resolution of this action.

10. Any other injunctive relief as required to effectuate the relief requested herein.

11. Any such other and further relief as the Court deems fair, equitable, and just.

Dated: December 3, 2021

Law Offices of Andrew Flores

By /s/ Andrew Flores

Plaintiff *In Propria Persona*, and
Attorney for Plaintiffs
AMY SHERLOCK, Minors T.S. and
S.S., and Christopher Williams

EXHIBIT 1

LLC-4/7	Certificate of Cancellation of a Limited Liability Company (LLC)

To cancel the Articles of Organization of a California LLC, or the Certificate of Registration of a registered foreign LLC, you can fill out this form, and submit for filing.

- There is no filing fee, however, a non-refundable **$15** service fee must be included, if you **drop off** the completed form.
- To file this form, the status of your LLC must be active on the records of the California Secretary of State. To check the status of the LLC, go to kepler.sos.ca.gov.

Important! California LLCs only: This form must be filed after or together with a Certificate of Dissolution (Form LLC-3). However, if the vote to dissolve was made by all of the members and that fact is noted in Item 4 below, Form LLC-3 is not required.

Note: *Before submitting the completed form*, you should consult with a private attorney for advice about your specific business needs. It is recommended for proof of submittal that if this form is mailed, it be sent by Certified Mail with Return Receipt Requested.

FILED ICW
Secretary of State
State of California
DEC 21 2015 8PO

Q1
C

ICC

This Space For Office Use Only

For questions about this form, go to *www.sos.ca.gov/business-programs/business-entities/filing-tips.*

① **LLC's Exact Name in CA** (on file with CA Secretary of State)
Leading Edge Real Estate, LLC

② **LLC File No.** (issued by CA Secretary of State)
201511910148

Tax Liability (The following statement should not be altered. For information about final tax returns, go to https://www.ftb.ca.gov or call the California Franchise Tax Board at (800) 852-5711 (from within the U.S.) or (916) 845-6500 (from outside the U.S.).)

③ All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

Dissolution (California LLCs ONLY: Check the box if the vote to dissolve was made by the vote of all the members.)

④ ☉ The dissolution was made by the vote of all of the members.

Additional Information (If any, list any other information the persons filing this form determine to include.)

⑤ _____

_____

Cancellation (The following statement should not be altered.)

⑥ Upon the effective date of this Certificate of Cancellation, this LLC's Articles of Organization (CA LLCs) or Certificate of Registration (registered foreign LLCs) will be cancelled and its powers, rights and privileges will cease in California.

Read and sign below: For California LLCs: This form must be signed by a majority of the managers, unless the LLC has had no members for 90 consecutive days, in which case the form must be signed by the person(s) authorized to wind up the LLC's affairs. For registered foreign LLCs: This form must be signed by a person authorized to so do under the laws of the foreign jurisdiction. If the signing person is a trust or another entity, go to www.sos.ca.gov/business-programs/business-entities/filing-tips for more information. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are part of this document.

Sign here	*Print your name here*	*Your business title*
▶ Mark Sherlock	Michael Sherlock	Manager
▶	Bradford Harcourt	Manager
Sign here	*Print your name here*	*Your business title*

Make check/money order payable to: **Secretary of State**

To get a copy of the filed document, include a separate request and payment for copy fees when the document is submitted. Copy fees are $1 for the first page and $.50 for each additional page. For certified copies, there is an additional $5 certification fee, per copy.

By Mail
Secretary of State
Business Entities, P.O. Box 944228
Sacramento, CA 94244-2280

Drop-Off
Secretary of State
1500 11th Street., 3rd Floor
Sacramento, CA 95814

EXHIBIT 2

From: Andrew flores
To: Evan P. Schube
Subject: FW: Sherlock -Harcourt Leading Edge Real Estate
Date: Tuesday, March 23, 2021 2:32:00 PM
Attachments: image001.png
image003.png

Hello Evan,

Please see the email chain between myself and Mr. Claybon, Harcourts attorney. I will be forwarding you some other materials shortly.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego, CA 92101
P. (619) 356-1556
F. (619) 274-8053
andrew@floreslegal. com

From: Allan Claybon <aclaybon@messner.com>
Sent: Monday, March 9, 2020 1:41 PM
To: Andrew flores <andrew@floreslegal.pro>
Cc: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

SETTLEMENT COMMUNICATION PURSUANT TO FRE 408; CAL. EVID. CODE § 1152:

Mr. Flores,

I have had further discussion with my client. Without admitting any to any of the concerns that you have raised, he is hopeful an exchange of information would lead to a greater understanding of the related occurrences and will attempt to provide some further information. Please be specific as to what information you are seeking so that we can try to minimize any further back and forth.

To that end, it would not be productive for either side of this dispute to continue to issue threats or to be dismissive of each other's position. Escalation over email or on the phone will not advance either sides' causes.

With respect to your citation to Stevens, the case does not support any means for Ms. Sherlock to assert a claim against me, my firm or Mr. Harcourt for a violation of the Civil Rights Act ("CRA"). As stated previously, my firm did not represent Mr. Harcourt during the time period in which the alleged acts which allegedly deprived Ms. Sherlock of any property interest occurred. Regardless, the plaintiffs in Stevens were able to assert violations of the CRA as they were recognized as a protected political class. A violation of the CRA requires proof of "class-based, invidiously discriminatory animus." Ms. Sherlock has not faced discrimination based upon membership in a protected class. Therefore, she cannot assert claim for a violation under the CRA or any conspiracy to commit a violation of the CRA.

My client is willing to discuss the information requested after taking time to gather evidence. We can discuss soon when and how this can take place. Please let me know if you have questions.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, March 4, 2020 7:14 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Mrs. Sherlock demanded to know Mr. Harcourt's explanation for how he ended up owning 100% of the Balboa CUP after evidence was discovered that Mrs. Sherlock was unlawfully deprived of her interest in the Balboa CUP as Mr. Sherlock's heir (as fully described below). That demand is not unreasonable. It takes no effort for Mr. Harcourt to respond with a simple statement as to whether he purchased Mr. Sherlock's interest or Mr. Harcourt disavowed his interest in the Balboa CUP for some reason. Your feigned ignorance of the simplicity of this issue is apparent and your refusal to provide an explanation is unreasonable.

I am writing to make two points. First, as I noted, I went to the City and the documents that Mr. Harcourt references in his complaint pursuant to which the City transferred him sole ownership of the Balboa CUP are not in the City's file. Thus, your allegation that you "believe" the documents are "publicly accessible" has no factual basis. I have exercised due diligence and have not come across any such documents, if you know where they are publicly available, please let me know.

Second, as noted, your description of Mrs. Sherlock's demand based on the facts and arguments set forth below as "unreasonable" lacks probable cause. Even if Mr. Harcourt is not responsible for forging Mr. Harcourt's signature or engaged in unlawful conduct, that does not explain why he is refusing to provide a simple explanation given the facts. In my professional opinion, you have crossed the line from zealous advocacy of your client to being a co-conspirator of Mr. Harcourt seeking to defraud Mrs. Sherlock. *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.") (citing *Buller v. Buechler*,706 F.2d 844, 852-853 (8th Cir. 1983).

Based on the language in *Stevens*, I will be forced to protect Mrs. Sherlock's rights by filing suit against your personally and your firm as co-conspirators of Mr. Harcourt. And we will let a Court determine which one of us is unreasonable in light of our positions described below. Please consider this notice of my intent to file suit and a TRO against, *inter alia*, Mr. Harcourt, you, and your firm for conspiring to defraud Mrs. Sherlock of her interest in the Balboa CUP.

If you have any case law that contradicts *Stevens* and which allows you to unilaterally ignore Mrs. Sherlock's demand, particularly as the core basis of this suit is the belief that Mr. Harcourt fabricated documents and your refusal is potentially allowing him time to fabricate additional evidence to legitimize the transfer, please provide it and I will reconsider my position in light of any such authority.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

THE LAW OFFICE OF
ANDREW FLORES

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, March 3, 2020 4:42 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

While I am disappointed in such a statement, I will be brief since you do not want to "engage in more phone calls or emails back and forth." I have been forthright and cordial in our communications hoping to find a resolution between the sides. A resolution should still be possible, but your emails are not pointing us in a productive direction.

On behalf of Mr. Harcourt, we are declining to produce documents based upon your demands. These requests are unreasonable for a number of reasons, not the least of which is a 24-hour deadline to produce evidence *to your satisfaction* regarding events occurring in or around 2015. Furthermore, many of the documents that we believe you are seeking are publicly accessible. There is no compulsion by law for Mr. Harcourt to produce documents to you on demand.

As you do not want to "more phone calls or emails back and forth" we also decline to go point-by-point regarding the significant misstatements of law and facts that appear throughout your latest emails. We are in disagreement with most of what you have said and each allegation contained therein. Without seeing any formalized complaint or other pleading, we are still unsure of your exact claims.

This email is sent based upon your 3/3/20 deadline. I am open to further discussion if you choose to reach out. Thank you.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Monday, March 2, 2020 4:26 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

I spoke with Mrs. Sherlock today who reviewed Mr. Harcourt's complaint. Also, relatedly, I personally went to DSD and requested to view the file for the Balboa CUP before I even initially contacted you.

Mr. Harcourt's complaint alleges: "After Sherlock passed away in or around December 2015 HARCOURT submitted documentation to the City of San Diego in order to remove, Sherlock as the MMCC's responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego und SDPCC." Nowhere in the City file for the Balboa CUP are there any documents that are described or that could be those referenced in Mr. Harcourt's complaint.

Please consider this a demand that you produce (i) the documents referenced in the Complaint and (ii) Mr. Harcourt's plain statement as to whether he is alleging he purchased Mr. Sherlock's interest or he is purporting that Mr. Sherlock disavowed any interest in the CUP for whatever reason (in anticipation of expensive litigation or otherwise).

Please note that Mrs. Sherlock never gave any authority to any party to negotiate on her behalf and any such alleged agency would have needed to be memorialized in writing to satisfy the statute of frauds. Please note that if you fail to produce those documents and/or Mr. Harcourt's explanation by 5:00 p.m. tomorrow, please consider this notice of our intent to file suit and an ex parte TRO seeking the court to order Mr. Harcourt to immediately set forth his purported reasons for how he ended up owning 100% of the Balboa CUP (before he is given more time to potentially fabricate additional evidence).

Lastly, so that there is no ambiguity between us, I have been cordial and civil in seeking to attempt to understand Mr. Harcourt's position. But, I find your description of my view of the facts as "speculation" and your description of me as being "jaded," for not taking Mr. Harcourt at his word, as unreasonable and personally offensive – we will let a judge determine whether the facts and positions taken by Mr. Harcourt below constitute probable cause. If you are correct, then feel free to bring a motion to dismiss and for Rule 11 sanctions for filing what you are de facto accusing me of – filing a frivolous lawsuit. As noted below, these communications are not privileged and will be used as an Exhibit in the complaint against Mr. Harcourt.

I stress the preceding because I do not have the time, or the desire, to engage in more phone calls or emails back and forth with you arguing over whether the facts below are speculation or probable cause. Please provide the requested facts by 5:00 tomorrow.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Friday, February 28, 2020 4:45 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

I am acknowledging receipt of your email. As it almost exclusively consists of your current allegations regarding this matter, I will just say that I disagree with your points but will await for your follow-up after consulting with Ms. Sherlock. Thank you and have a good weekend.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Thursday, February 27, 2020 7:36 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Thank you for your note. So that there is no confusion regarding our respective positions in our conversation today, please let me know if the following accurately summarizes our top three points of contention. Please respond if I have misunderstood or not accurately described our positions and I apologize ahead of time if I have. It was not purposeful.

First, setting other arguments aside, you believe that statute of limitations has tolled for a fraud cause of action. I rely on the following case language to argue that it has not: “It has long been established that the defendant's fraud in concealing a cause of action against him tolls the applicable statute of limitations, but only for that period during which the claim is

undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable diligence, should have discovered it. Like the discovery rule, the rule of fraudulent concealment is an equitable principle designed to effect substantial justice between the parties; its rationale is that the culpable defendant should be estopped from profiting by his own wrong to the extent that it hindered an `otherwise diligent' plaintiff in discovering his cause of action." *Bernson v. Browning-Ferris Industries*, 7 Cal.4th 926, 931 (Cal. 1994) (quotations omitted). Mrs. Sherlock was not made aware of the forged signature until this month.

Which segues into your next, second, position, that the testimony of Mr. Harcourt and Mrs. Sherlock's brother-in-law establishes as a "fact" that Mr. Sherlock's signature was not forged. Thus there is no fraud. However, my position is that their testimony - that they allegedly saw Mr. Sherlock execute the form dissolving the LLC (and other documents) the day before his death - does not conclusively establish as a matter of law that Mr. Sherlock did in fact execute those documents and there is no fraud. As noted, I believe this is a non sequitur because it presupposes that Mr. Harcourt and Mrs. Sherlock's brother-in-law did not engage in fraud when that is the allegation to be determined. I believe it is self-evident that, *if there was fraud*, both Mr. Harcourt and Mrs. Sherlock's brother-in-law are currently benefiting from the fraud, which makes their testimony at the very least suspect and does not establish their alleged testimony as "facts" as you argue. (I realize you believe my position to be, as you described it, "jaded," but I hope you can appreciate that fraudulent self-serving testimony is a staple of my primary criminal defense practice and have seen such ignored by juries on many occasions, even to my clients' detriment.)

Given the evidence in opposition, I believe whether there was fraudulent action is a triable issue of fact. Specifically, because in opposition there is, *inter alia*, (i) the testimony of Mrs. Sherlock that Mr. Sherlock would "never" have signed away his interests in any CUPs without consideration as he had used their family savings to finance the acquisition of same; (ii) Mrs. Sherlock's testimony that she does not believe that it is Mr. Sherlock's signature; (iii) at least as of our conversation today, which took place after you spoke with Mr. Harcourt, there is no allegation or evidence of any documentation regarding any transfer of Mr. Sherlock's interests in the CUPs for any consideration; (iv) the handwriting expert who with a high degree of certitude provided his report that in his professional opinion the signature was forged; and (v) that though Mr. Sherlock allegedly signed various forms the day before he committed suicide, they were submitted to the state at different points in time and show different time stamps.

Third, and last, setting aside other arguments, you raised the position that Mrs. Sherlock failed to exercise reasonable diligence by not checking the state's public records. My position on this is that while Mrs. Sherlock knew that Mr. Sherlock had used their family's savings to pay for the application and processing of the CUPs, she did not know that it had been issued to Mr. Sherlock and Mr. Harcourt or that Mr. Sherlock allegedly agreed to disavow or transfer his interest in the CUP to Mr. Harcourt. Further, being practical, Mrs. Sherlock was a stay-at-home mother of two children who was faced with a horrible situation and was, and is, deeply financially challenged in the aftermath of her husband's passing away. This is not litigation hyperbole. Frankly, I am attempting to see things from your perspective, but I can't think of any line of reasoning or legal principle that would lead to the conclusion that Mrs. Sherlock's failure to review the state's public records means she failed to exercise "reasonable diligence" and therefore she has waived a fraud claim that, if true, has subjected her to severe emotional and financial distress.

Materially, Mrs. Sherlock's brother-in-law noted there was a lawsuit seeking to null the CUP, and Mr. Sherlock had no funds to finance an opposition to that lawsuit, thus he "signed away" the CUP. However, with my understanding of the cannabis CUP market, this by itself is not reasonable. As Mr. Harcourt himself alleges in his complaint against Mr. Razuki, the CUP by itself is worth $1,500,000. Thus, Mr. Sherlock could have sold his interest in the CUP for some amount to recoup some of his investment up to that point.

Lastly, though admittedly circumstantial, Mrs. Sherlock said that her brother-in-law

was literally crying yesterday while he was apologizing for not ever, in the preceding four plus years, informing her that he had allegedly seen Mr. Sherlock execute the form the day before his death. He also emphatically requested that she not pursue any litigation. I personally find this militates against taking Mrs. Sherlock's brother-in-law at his word and provides probable cause to believe that he *may* have engaged in some fraudulent conduct. Obviously, Mrs. Sherlock does not desire to have a family feud and does not want her brother-in-law involved in litigation and he will not be named in *her* suit.

Again, as discussed, I sincerely hope that we can reach resolution with Mr. Harcourt and Mrs. Sherlock, because, even assuming the evidence could lead a jury to find that Mr. Harcourt more-likely-than-not engaged in unlawful behavior, I am not after Mr. Harcourt. I met Mrs. Sherlock via a third-party that was also defrauded by James Bartell and the group of individuals he works with to defraud other parties of their cannabis CUPs (this is in addition to me as the successor-in-interest to an individual who was defrauded by Mr. Bartell and his group).

Lastly, I want to be completely forthright, I respect Mrs. Sherlock and will fulfill my fiduciary duties regarding *her* representation. However, I had already focused on Mr. Harcourt as a *possible* bad-faith actor that *potentially* worked in concert with Mr. Bartell's criminal organization to defraud his own partner, Mr. Sherlock. This is how they operate and Mr. Harcourt's situation is not the second or even third instance in which Mr. Bartell's group have facilitated an intra-partner dispute and then subsequently ended up owning the disputed CUP. In regards to Mr. Harcourt, if such can be proven to be probably true, such is evidence of my allegation that Mr. Bartell works for a group of individuals who have conspired and taken steps to create a monopoly in the cannabis market in the City of San Diego in violation of antitrust laws.

I am being straightforward about this because even if, for example, Mrs. Sherlock's brother-in-law and sister convince her to forgo any litigation, that does not automatically mean that I will not file suit against Mr. Harcourt. I could do so on the theory that the alleged fraudulent actions he took against Mr. Sherlock were in furtherance of the antitrust conspiracy; and that is even if he only took one unlawful action and thereafter had a falling out with his co-conspirators. *Mox, Inc. v. Woods*, 202 Cal. 675, 678 (1927) ("The advantage gained in charging a conspiracy is that the act of one during the conspiracy is the act of all if done in furtherance thereof, and thus defendants may be held liable who in fact committed no overt act whatsoever and gained no benefit therefrom."); *De Vries v. Brumback*, 53 Cal. 2d 643, 650 (1960) ("In tort 'the major significance of the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity.'") (quoting *Mox Inc.,* 202 Cal. at 677); *Roth v. Rhodes*, 25 Cal. App. 4th 530, 544 (1994) (joint and several liability rule of conspiracy applies to antitrust claims brought under Cartwright Act).

Please let me know if our conversation as described above is not accurate and, also, what Mr. Harcourt's explanation is for the alleged disavowment/transfer of the CUP from Mr. Sherlock.

With all this said, I have placed a call to Mrs. Sherlock so we can discuss what terms would be acceptable if she would like to put to rest any dispute with Mr. Harcourt. As soon as I speak with Mrs. Sherlock I will follow up with you.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556

F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Thursday, February 27, 2020 3:04 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Thank you for speaking with me by phone today. Per our conversation, please let me know the information your client seeks from my client at this time. We can continue our conversation after we discuss more specific items.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, February 26, 2020 11:09 AM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I reached out to you in good faith with facts that provided probable cause to believe that your client may have been involved in illegal action. Materially, that Mr. Sherlock and Mr. Harcourt were granted a cannabis CUP via an LLC in mid-2015; Mr. Sherlock allegedly committed suicide on December 3, 2015; and then approximately three weeks later a form is submitted with the state dissolving the LLC that ultimately led to Mr. Harcourt being the sole owner of the CUP. However, Mrs. Sherlock is positive that Mr. Sherlock's signature was forged, a position supported by a

handwriting expert's analysis that I provided you. Those are facts. The inference that Mr. Harcourt may have taken unlawful action to deprive Mrs. Sherlock of her interest in the CUP is a reasonable one. During our phone call, you agreed that the circumstances are "certainly suspicious."

Had you touched base with your client and found out that there was a purchase agreement and proof of payment for a transfer of Mr. Sherlock's interest to Mr. Harcourt, that would have made sense and been credible. Instead, in your reply, your position changed and you describe the reasonable inferences as "speculation" and you allege that you do not see how they can support a claim. Your response evidences how you intend to manage this dispute; there is no need for a telephone call and we can let a court determine whether these facts constitute probable cause.

Please note that your reference to a phone call for "settlement" purposes does not make these emails privileged or confidential. I can and will use these emails to show that Mr. Harcourt was not able to provide any facts for how he ended up being the sole beneficiary of the cannabis CUP as a result of what appears to be a forged signature of Mr. Sherlock, as supported by the facts and evidence I have provided to you.

Please note that even if I do not file on behalf of Mrs. Sherlock., I may still file on my own behalf against Mr. Harcourt as a member of a conspiracy that has unlawfully deprived numerous individuals of cannabis CUPs, including through the use of unethical attorneys who file frivolous litigation. That Mr. Harcourt is now in litigation with Mr. Razuki/Mr. Malan is no different than the dispute between those two as well. Criminals fighting over ill-gotten gains.

Again, if you have any evidence other than self-serving oral testimony by individuals who benefit from the current status quo, please let me know by 5:00 p.m. tomorrow, Thursday, February 27, 2020.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, February 25, 2020 5:33 PM

To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Please let me know if we can schedule a telephone call tomorrow to discuss. Mr. Harcourt unequivocally denies each of the allegations against him. With all due respect, these theories and allegations are based upon speculation. I cannot see how any of them support an actionable claim against Mr. Harcourt. But I am willing to have a conversation to guide some understanding on these issues. Let me know of a time that you are available. Our conversation will be for settlement purposes only. Thank you.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Tuesday, February 25, 2020 1:38 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Apologies, pressed sent by accident, please see below for complete email.

Andrew Flores
Attorney at Law
7880 Broadway
Lemon Grove, CA 91945
P. (619) 356-1556
F.(619) 274-8053

From: Andrew flores

Sent: Tuesday, February 25, 2020 1:27 PM
To: aclaybon@messner.com
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I am following up on my message I just left seeking to touch base on your client's reasons, if any, regarding the below. I have discovered additional evidence of bad faith – Mr. Jim Bartell (an influential political lobbyist in San Diego) who is involved in other fraudulent acts related to cannabis CUPs was also part of the Sherlock/Harcourt CUP process. As it stands now, there is evidence to support the argument that your client was working with, among others, Mr. Bartell and Mr. Razuki to defraud Mr. Sherlock of the CUP.

To be blunt, as matters stand, it appears that Mr. Harcourt, as the beneficiary, forged Mr. Sherlock's signature to acquire the CUP. Then, he in turn was defrauded by Mr. Razuki/Mr. Malan. Thereafter, there was a falling out between Mr. Harcourt and Mr. Razuki/Mr. Malan, exactly as there was a subsequent falling out between Mr. Malan and Mr. Razuki, with everyone fighting over the CUP but not addressing the fact that the CUPs were acquired unlawfully. First by Mr. Harcourt and then by Mr. Malan who admits that he had Mr. Razuki acquire the CUP but not disclose him as the true owner of the CUP – in direct violation of City and State laws. See San Diego Municipal Code section 11.0402 and Cal. Bus. and Pro. Code section 26057 *et seq.*

Alternatively, if your client got in over his head, it is doubtful he is aware of the criminal acts taken by the organization Mr. Bartell is part of, then our side would be willing to reach an agreement with Mr. Harcourt. Please let us know if such is the case and an option and we can discuss.

I realize that a few days is not a lot of time, on the other hand, if there is a reasonable, credible and legal reason that can explain how Mr. Harcourt ended up with the CUP as a result of a forged signature, your client should be able to readily explain such. With that said, if I do not hear from you by 5:00 p.m. on Thursday, February 27, 2020, I will assume your client has no evidence to explain the situation. I will proceed accordingly in seeking to protect Mrs. Sherlock's rights.

Andrew Flores
Attorney at Law
945 4th Ave, Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Andrew flores
Sent: Friday, February 21, 2020 12:10 PM
To: aclaybon@messner.com
Subject: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

Per our conversation this morning please find attached the Certificate of LLC Cancellation in question. I have also included the preliminary report by a forensic document examiner.

Lastly, as a professional courtesy, I want to highlight that I intend to file a lawsuit against no less than ten attorneys for conspiring with their clients to take unlawful actions in marijuana related transactions. I refuse to believe that every attorney in the San Diego area focused on the marijuana industry is willing to take unlawful actions, but as matters stand, it appears to be endemic to the practice. At least in the San Diego market. I am taking the time to explain this because I hope you will convince your client to provide the original certificate with Mr. Sherlock's signature. While the expert has highlighted that the signature is more likely than not someone other than Mr. Sherlock, the actual document could help him reach the opposite conclusion. Alternatively, if your client decides to not produce the original document, and cannot explain why Mr. Sherlock would leave your client the CUP and leave his wife and kids destitute after using their college funds to finance the acquisition of the CUP at the Balboa location, such would be probable cause to file suit on behalf of Mrs. Sherlock against your client.

That is the worst case scenario and something I want to avoid. I already have a big fight ahead of me against Razuki, Malan and numerous other bad faith actors, including attorneys. Alternatively, I hope that your client has evidence and a credible explanation for what appears to be a forged signature that left him with a valuable CUP. If such is the case, I can assure you that I have evidence and witnesses that will help your cause against Razuki and Malan that are part of my case.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA, 92101
P. (619) 356-1556
F.(619) 274-8053

EXHIBIT 3

Court's Ex. [redacted]
Case # [redacted]
Rec'd
Dept. [redacted] Clk.

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

THE CITY OF SAN DIEGO

General Application

FORM DS-3032
AUGUST 2013

1. Approval Type: *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☑ Other: CUP

2. Project Address/Location: *Include Building or Suite No.*	**Project Title:**	**Project No.:** *For City Use Only*
6176 Federal Blvd.	Federal Blvd. MMCC	520606
Legal Description: *(Lot, Block, Subdivision Name & Map Number)* TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO		**Assessor's Parcel Number:** 543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Project Description:
The project consists of the construction of a new MMCC facility

3. Property Owner/Lessee Tenant Name: *Check one* ☐ Owner ☑ Lessee or Tenant — Telephone: — Fax:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

4. Permit Holder Name - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.

Name: — Telephone: — Fax:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

5. Licensed Design Professional (if required): (check one) ☑ Architect ☐ Engineer — License No.: C-19371
Name: — Telephone: — Fax:
Michael R Morton AIA

Address:	City:	State:	Zip Code:	E-mail Address:
3956 30th Street	San Diego	CA	92104	

6. Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -

a. Year constructed for all structures on project site: 1951
b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☑ Yes ☐ No
d. Does the project include any foundation repair, digging, trenching or other site work? ☑ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer — Signature: [signature] (agent) — Date: 10/28/2016

7. Notice of Violation - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. Applicant Name: *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other Person per M.C. Section 112.0102 — Telephone: — Fax:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Rebecca Berry — Date: Oct. 31 2016

Part I *(Must be completed for all permits/approvals)*

EXHIBIT 4

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 5

Gmail **Darryl Cotton <indagrodarryl@gmail.com>**

Agreement

Larry Geraci <Larry@tfcsd.net> Wed, Nov 2, 2016 at 3:11 PM
To: Darryl Cotton <darryl@inda-gro.com>

Court's Ex. [redacted]
Case # [redacted]
Rec'd
Dept. [redacted] Clk.

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended

recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

Cotton & Geraci Contract.pdf
71K

Exhibit B

(November 2nd Agreement)

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 6

Gmail Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcsd.net> Wed, Nov 2, 2016 at 9:13 PM
To: Darryl Cotton <darryl@inda-gro.com>

Court's Ex. [redacted]
Case [redacted]
Rec'd
Dept. [redacted] Clk.

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

> Hi Larry,
>
> Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.
>
> Regards.
>
> Darryl Cotton, President
>
> 
>
>
> darryl@inda-gro.com
> www.inda-gro.com
> Ph: 877.452.2244
> Cell: 619.954.4447
> Skype: dc.dalbercia
>
> 6176 Federal Blvd.
> San Diego, CA. 92114
> USA
>
> NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.
>
> [Quoted text hidden]

EXHIBIT 7

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

[IMAGED FILE]

Hearing Date: April 13, 2018
Hearing Time: 9:00 a.m.

Filed: March 21, 2017
Trial Date: May 11, 2018

I, Larry Geraci, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE. I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

3. The search to identify potential locations for the business took some time, as there are a number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities, or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a potential site for acquisition and development for use and operation as a MMCC. And in approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might meet the requirements for an MMCC site.

4. For several months after the initial contact, my consultant, Jim Bartell, investigated issues related to whether the location might meet the requirements for an MMCC site, including zoning issues and issues related to meeting the required distances from certain types of facilities and residential areas. For example, the City had plans for street widening in the area that potentially impacted the ability of the Property to meet the required distances. Although none of these issues were resolved to a certainty, I determined that I was still interested in acquiring the Property.

5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if I did not obtain CUP approval then I would not close the purchase and I would lose my

investment. I was willing to pay a price for the Property based on what I anticipated it might be worth if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical marijuana dispensary. We agreed on a down payment of $10,000.00 and a purchase price of $800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-Defendant, Larry Geraci's Notice of Lodgment in Support of Opposition to Motion to Expunge Lis Pendens (hereafter the "Geraci NOL"). I tendered the $10,000 deposit to Mr. Cotton as acknowledged in the Nov 2nd Written Agreement.

6. In paragraph 5 of his supporting declaration, Darryl Cotton states:

> "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the "November Agreement"). The November Agreement consisted of the following: If the CUP was approved, then Geraci would, inter alia, provide me: (i) a total purchase price of $800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of $10,000. If the CUP was denied, I would keep an agreed upon $50,000 non-refundable deposit ("NRD") and the transaction would not close. In other words, the issuance of a CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the $50,000 NRD."

Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written

agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement, Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

> **11/02/2016**
>
> **Agreement between Larry Geraci or assignee and Darryl Cotton:**
>
> **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd., CA for a sum of $800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary.)**
>
> **Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.**
>
> **__/s/_____ __/s/_____**
> **Larry Geraci Darryl Cotton**

I never agreed to pay Mr. Cotton a $50,000.00 non-refundable deposit. At the meeting, Mr. Cotton stated he would like a $50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a $10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement. After he signed the written agreement, I paid him the $10,000 cash as we had agreed. If I had agreed to pay Mr. Cotton a $50,000 deposit, it would have been a very simple thing to change "$10,000" to $50,000" in the agreement before we signed it.

I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never agreed to pay Mr. Cotton a minimum monthly equity distribution of $10,000. If I had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution of $10,000, then it would have also been a simple thing to add a sentence or two to the agreement to say so.

What I did agree to was to pay Mr. Cotton a total purchase price of $800,000, with the balance of $790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the Property and the $10,000. So that is how the agreement was written.

7. In paragraph 6 of his supporting declaration, Darryl Cotton states:

> "At the November 2, 2016, meeting we reached the November Agreement, Geraci: (i) provided me with $10,000 in cash towards the NRD of $50,000, for which I executed a document to record my receipt thereof (the "Receipt"); (ii)

promised to have his attorney, Gina Austin ("Austin"), ***promptly*** reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid me the balance of the NRD."

I did pay Mr. Cotton the $10,000 cash after we signed the Nov 2nd Written Agreement. As stated above, I never agreed to a $50,000 deposit and, if I had, it would have been a simple thing to state that in our written agreement.

Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a "Receipt." Calling the Agreement a "Receipt" was never discussed. There would have been no need for a written agreement before a notary simply to document my payment to him of $10,000. In addition, had the intention been merely to document a written "Receipt" for the $10,000 payment, then we could have identified on the document that it was a "Receipt" and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an "Agreement" because that is what we intended.

I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the $800,000. At his request, I agreed to pay him for the property into two parts: $400,000 as payment for the property and $400,000 as payment for the relocation of his business. As this would benefit him for tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, I stated a willingness to later amend the agreement in that way.

I did not promise to delay submitting the CUP to the City until I paid the alleged $40,000 balance of the deposit. I agreed to pay a $10,000 deposit only. Also, we had previously discussed the long lead-time to obtain CUP approval and that we had already begun the application submittal process as discussed in paragraph 8 below.

8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as

the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

9. As noted above, I had already put together my team for the MMCC project. My design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has been submitted concurrently herewith and describes in greater detail the CUP Application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

10. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

> Hi Larry,
>
> Thank you for meeting today. Since we examined the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored

> element in my decision to sell the property. I'll be fine if you simply acknowledge that here in a reply.

I receive my emails on my phone. It was after 9:00 p.m. in the evening that I glanced at my phone and read the first sentence, "Thank you for meeting with me today." And I responded from my phone "No no problem at all." I was responding to his thanking me for the meeting.

The next day I read the entire email and I telephoned Mr. Cotton because the total purchase price I agreed to pay for the subject property was $800,000 and I had never agreed to provide him a 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the Call Detail from my firm's telephone provider showing those two telephone calls is attached as Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above the $800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." He was not upset and he commented further to the effect that things are "looking pretty good—we all should make some money here." And that was the end of the discussion.

11. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions related to his desire to be involved in the *operation* of the business (not related to the purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits) in exchange for his providing various services to the business—but we never reached an agreement as to those matters related to the operation of my future MMCC business. Those discussions were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

12. Beginning in or about mid-February 2017, and after the zoning issues had been resolved, Mr. Cotton began making increasing demands for compensation in connection with the sale. We were several months into the CUP application process which could potentially take many more months to

successfully complete (if it could be successfully completed and approval obtained) and I had already committed substantial resources to the project. I was very concerned that Mr. Cotton was going to interfere with the completion of that process to my detriment now that the zoning issues were resolved. I tried my best to discuss and work out with him some further compensation arrangement that was reasonable and avoid the risk he might try to "torpedo" the project and find another buyer. For example, on several successive occasions I had my attorney draft written agreements that contained terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as on minimum monthly distributions in amounts that I thought were unreasonable and to which I was unwilling to agree. Despite our back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and I responded to him that he kept trying to change the deal. As a result, no re-negotiated written agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to

Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as Exhibit 4 to the Geraci NOL.

15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5 to the Geraci NOL.

16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "… the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 6 to the Geraci NOL. Mr. Cotton's email was false as we had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement.

17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

18. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the Nov 2nd Written Agreement.

19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP application, we have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. We have not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The current status of the CUP Application is set forth in the

Declaration of Abhay Schweitzer.

20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m. email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be "entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

21. Although he entered into this alternate purchase agreement with Mr. Martin as early as March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or other agent has submitted a separate CUP Application to the City for processing. During that time, we continued to process our CUP Application at great effort and expense.

22. During approximately the last 17 months, I have incurred substantial expenses in excess of $150,000 in pursuing the MMCC project and the related CUP application.

23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the status of the CUP application and the problems we were encountering (e.g., an initial zoning issue) from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me on November 16, 2016, in which he asks me, "Did they accept the CUP application?" Mr. Cotton was well aware at that time that we had already submitted the CUP application and were awaiting the City's completion of its initial review of the completeness of the application. Until the City deems the CUP application complete it does not proceed to the next step—the review of the CUP application.

/ / /

/ / /

/ / /

/ / /

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of April, 2018.

LARRY GERACI

EXHIBIT 8

PROOF OF SERVICE (Court of Appeal)

☐ **Mail** ☒ **Personal Service**

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number: TBD

Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My ☐ residence ☒ business address is *(specify)*:
   1455 Frazee Road, Suite 500, San Diego, CA 92108

3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b):*
   Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief; Exhibits Volumes 1, 2 and 3, and Request for Judicial Notice in Support of Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief

   a. ☐ **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

         (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

         (b) ☐ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

      (2) Date mailed:

      (3) The envelope was or envelopes were addressed as follows:

         (a) Person served:
            (i) Name:
            (ii) Address:

         (b) Person served:
            (i) Name:
            (ii) Address:

         (c) Person served:
            (i) Name:
            (ii) Address:

         ☐ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

Form Approved for Optional Use
Judicial Council of California
APP-009 [Rev. January 1, 2017]

Case Name: Larry Geraci v. Darryl Cotton, et al.	Court of Appeal Case Number: TBD
	Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

3. b. [x] **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Gina M. Austin, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(2) Person served:

(a) Name: Austin Legal Group, APC, a California corporation

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(3) Person served:

(a) Name: Gina M. Austin/Austin Legal Group, APC Attorneys for Aaron Magagna, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

[ ] Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 27, 2018

Jacob P. Austin
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTACHMENT TO APP-009, ITEM 3b(3)

On Monday, August 27, 2018 at 4:37 p.m., I visited the office of attorney Gina Austin [SBN 246833] ("Mrs. Austin")/Austin Legal Group, APC to serve copies of the documents listed as ITEM 3 on page 1 on the individuals and entities listed in ITEM 3b(1)-(3).

When I arrived, the receptionist was not at the reception desk in the front office. Shortly thereafter, Mrs. Austin came from the back office to the reception desk to greet me. I told Mrs. Austin that I was there to serve documents – all of which were the correct copies of the Petition that had been personally served on her office the previous week.

Mrs. Austin responded that she wanted to look at copies of the Proofs of Service, and I told her that I was leaving copies for her and the Proofs of Service stated that I was serving her with three sets of the documents: one set on her as an individual, one set on her on behalf of her law firm Austin Legal Group, APC, and one set on her on behalf of her client Aaron Magagna.

Mrs. Austin then took two sets of the documents, told me she did not "want" the third set of documents, and then shoveled me out the door. After standing outside and thinking about the situation, I walked back into the office at 4:39 p.m. and told Mrs. Austin that, since I was there, I was going to leave the third set of documents with her anyway. She responded very emphatically, "I don't want this!" I shrugged and said that I was leaving the documents with her.

Mrs. Austin became very angry and approached me quickly as though she was going to physically shove me out the door and said, "You're not welcome here!" Barely restraining herself from physically shoving me, as she got within inches of me she forcefully opened the door into the hallway, she then snatched the third set of documents and threw them into the hallway repeating in a loud, angry tone, "I told you, I DO NOT WANT THIS!!!"

I did not argue or resist leaving, I left at that point. I was wildly surprised by the unexpected reaction, the anger exhibited towards me, and how my personal space was violated. As an attorney I was disappointed in her decorum and unprofessional demeanor.

EXHIBIT 9

Project 598124 - Federal Blvd Marijuana Outlet

Project Information

Scope	ENCANTO (Process 3) Conditional Use Permit to operate a Marijuana Outlet (MO) located at APN 543-020-0400 on Federal Boulevard with the removal and demolition of existing structures and construct a 1,682-square-foot building. The 0.11 acre lot, located on the north side of Federal Boulevard and east of Winnett Street, is in the CO-2-1 zone within the Encanto Neighborhoods. Community Plan area. Council District 4.
Administrative Hold	
DSD Contact	Cac, Cherlyn (619)236-6327 ccac@sandiego.gov
Application Expiration	03/11/2028
Deposit Account Number	24007747 Add a deposit in the amount of:

Customer Information

Customer	Firm	Role
Carlos A Gonzalez	Techne	Agent
Aaron Magagna	A-M Industries	Agent
Terry Strom	Strom Entitlement-Permitting	Agent
Aaron Magagna	A-M Industries	Applicant
Abhay Schweitzer	Techne	Concerned Citizen
Aaron Magagna		DA-DS 3242
Terry Strom	Strom Entitlement-Permitting	FORMER-Pt of Contact
John Ek		Owner
Aaron Magagna	A-M Industries	Point of Contact

Review Cycles

Project 598124 - Federal Blvd Marijuana Outlet

Project Information

Scope	ENCANTO (Process 3) Conditional Use Permit to operate a Marijuana Outlet (MO) located at APN 543-020-0400 on Federal Boulevard with the removal and demolition of existing structures and construct a 1,682-square-foot building. The 0.11 acre lot, located on the north side of Federal Boulevard and east of Winnett Street, is in the CO-2-1 zone within the Encanto Neighborhoods Community Plan area. Council District 4.
Administrative Hold	
DSD Contact	Cac, Cherlyn (619)236-6327 ccac@sandiego.gov
Application Expiration	03/11/2028
Deposit Account Number	24007747 Add a deposit in the amount of:

Customer Information

Review Cycles

[Cycle #9] - Opened

Review ID	Discipline	Status	Due Date	Completed Date	Lateness	Active
1716381	LDR-Planning Review	Assignment Pending				Yes
1716383	LDR-Engineering Review	Assignment Pending				Yes

[Cycle #14] - Opened

Jobs

6220 FEDERAL BL

Project 598124 - Federal Blvd Marijuana Outlet

Project Information

Scope	ENCANTO (Process 3) Conditional Use Permit to operate a Marijuana Outlet (MO) located at APN 543-020-0400 on Federal Boulevard with the removal and demolition of existing structures and construct a 1,682-square-foot building. The 0.11 acre lot, located on the north side of Federal Boulevard and east of Winnett Street, is in the CO-2-1 zone within the Encanto Neighborhoods Community Plan area. Council District 4.
Administrative Hold	
DSD Contact	Cac, Cherlyn (619)236-6327 ccac@sandiego.gov
Application Expiration	03/11/2028
Deposit Account Number	24007747 Add a deposit in the amount of:

Customer Information

Review Cycles

[Cycle #9] - Opened

[Cycle #14] - Opened

Review ID	Discipline	Status	Due Date	Completed Date	Lateness	Active
1716382	LDR-Environmental	Assignment Pending				Yes
1716384	LDR-Transportation Dev	Assignment Pending				Yes
1716385	Community Planning Group	Assignment Pending				Yes

Jobs

EXHIBIT 10

Gmail **Darryl Cotton <indagrodarryl@gmail.com>**

Testimony

Corina Young <corina.young@live.com> Wed, Oct 28, 2020 at 12:22 PM
To: Darryl Cotton <indagrodarryl@gmail.com>

Darryl,

I am not involved. Please do not include me in your lawsuit. Please do not post this email online.

A ached are emails from my a orney at the me.

Corina

2 attachments

Email #1.pdf
299K

Email 2.pdf
133K

Attachment Email 1

FW: Geraci v. Cotton [Deposition Subpoena - Corina Young]

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Tue 7/2/2019 12:01 PM

To: 'Corina Young' <corina.young@live.com>

1 attachments (10 KB)
190627.Tentative Rulings on Motions in Limine.pdf;

Good morning Corina,

I hope this email finds you well. I haven't heard back from you so I assume you are occupied with other importance.

As an update, below is the last email from Cotton's attorney. In light of the trial dates, I presumed he was bluffing so I just ignored him.

The court issued its ruling on the parties' Motions in Limine in the Geraci v. Cotton trial last week. If you are bored or curious, it is attached for your review. The Trial was supposed to start July 1 but it looks as if someone (likely Cotton's attorney) filed an appeal and so trial was taken off calendar. I'll keep you apprised of this but for the moment, there's nothing you really need to do.

Yours,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Wednesday, June 12, 2019 6:45 PM
To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Ms. Nguyen,

Trial on the Geraci v. Cotton case in which your client, Corina Young, is a material witness is immediately impending and you have yet to deliver on any of the items we had previously agreed upon.

At this point in time it is too late to rely on you to uphold your promises without a proper demand. I need you to provide a declaration by end of week or I will have to file a motion for sanctions against you personally, and re-issue a subpoena.

Let me know by the end of the day Friday if you will provide the declaration requested or not so I can proceed accordingly.

Jacob

Law Office of Jacob Austin
P.O. Box 231189
San Diego, CA 92193 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Tue, May 28, 2019 at 10:20 AM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
>
>
> On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Good morning Jake,
> >
> > Thanks for following up. Let me check and get back to you soon.
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, May 2, 2019 11:56 AM
> > **To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Please give me an update, this is important to my client's case.
> >
> > Jacob
> > **Law Office of Jacob Austin**
> > P.O. Box 231189
> > San Diego, CA 92193 USA
> > Phone: (619) 357-6850
> > Facsimile: (888) 357-8501
> >
> >

On Tue, Apr 16, 2019 at 6:15 PM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Hello Natalie,
>
> As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
> *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*
>
> On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Hi Jacob,
> >
> > Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.
> >
> > Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.
> >
> > Best regards,
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, February 28, 2019 2:05 PM
> > **To:** natalie@nguyenlawcorp.com
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Hello,
> >
> > I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?
> >
> > Jacob
> >
> > On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:
> >
> > > Hi Jacob,

I closely reviewed the Declaration of Joe Hurtado and the text message exchange attached thereto. I also discussed your proposal:

"Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

with Ms. Young and she's accepted the same. We will provide a sworn written testimony by Ms. Young as described above.

Best regards,

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Sent: Thursday, January 17, 2019 5:23 PM
To: 'Jake Austin' <jpa@jacobaustinesq.com>
Subject: RE: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hi Jacob,

Thank you for taking the time to lay it all out for me. My grasp of this case is limited to the online register of action, the minute order to continue trial, and the deposition subpoena. However, I'm only representing a third-party witness so I see no reason to be embroiled in the case. Perhaps it's best this way.

I quickly scanned the attachment you sent, mostly the text message exchange. I gather there's some complicated history between the parties. In any event, I don't see an issue with a providing a sworn statement.

I intend to review your email and attachment more closely tomorrow and discuss your proposal with Mr. Young. I will reach back out to you after that.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 11440 West Bernardo Court, Suite 210 | San Diego, CA 92127
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Thursday, January 17, 2019 4:55 PM
To: natalie@nguyenlawcorp.com
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello Natalie,

This is an awkward situation, so I will be direct. Your client has repeatedly communicated that she is hostile to my client and will not provide her deposition to material matters that are crucial to my client. Thus, your unilateral decision to cancel the deposition because I did not respond with an alternative to her deposition is procedural improper and, in light of her long history of seeking to avoid being deposed, is suspect.

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a "good" time in that context to be deposed.
I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.
To be specific, the facts which we hope to elicit from Ms.
Young have already been provided ***by*** her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

What should be clear is that Ms. Young has known the parties associated with Mr. Geraci significantly longer and has established professional relationships with them, as opposed to the limited number of times she has met Mr. Cotton and Mr. Hurtado with whom she only had a couple of interactions with (setting aside her communications related to not wanting to be involved in this litigation to Mr. Hurtado).

Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.
Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time

consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.
Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

Lastly, again, my apologies for this direct and confrontational email. However, given Ms. Young's repeated statements, the nearing MSJ deadline, and the actions by the attorneys for Mr. Geraci, which I have already gone on record of stating and believing to be tantamount to fraud, I hope you can appreciate that I am attempting to manage this situation for Ms. Young as best as possible. The bottom line is that Ms. Young's testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

I am open to alternatives and discussions, but Ms. Young's testimony is material and crucial. If you would like to discuss this issue further, I will make myself available to you.

Jacob

On Tue, Jan 15, 2019 at 1:05 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,
>
> I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?
>
> Best regards,
>
> Natalie
>
> Natalie T. Nguyen, Esq.
> **NGUYEN LAW CORPORATION**
> M: 2260 Avenida de la Playa | La Jolla, CA 92037
> T: 858-225-9208
> E: natalie@nguyenlawcorp.com

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Wed, Jan 16, 2019 at 3:39 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,

I did not receive a response from you. Please note that for the reasons set forth in my email below, Ms. Young is unable and will not attend the deposition you set for this Friday, January 18, 2019, at 10:00 am. Please kindly contact my office before setting another deposition date.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Sent: Tuesday, January 15, 2019 1:05 PM
To: JPA@jacobaustinesq.com
Subject: Geraci v. Cotton [Deposition Subpoena - Corina Young]
Importance: High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

--

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

Attachment Email 2

Geraci v Cotton

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Mon 7/22/2019 11:24 AM

To: 'Corina Young' <corina.young@live.com>

1 attachments (80 KB)
Invoice_656_491294_g8e.pdf;

Hi Corina,

I hope this email finds you very well.

I just wanted to let you know that the trial in Geraci v Cotton went forward and was completed. Therefore, you don't have to worry about providing any declaration or testimony on this case. Attached is your final invoice; no payment is due from you and we will close our file.

It was a pleasure working with you. Good luck on all your future endeavors!

PS. The jury found in favor of Geraci.

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

EXHIBIT 11

Engebretsen v. City of San Diego

Court of Appeal of California, Fourth Appellate District, Division One

November 30, 2016, Opinion Filed

D068438

Reporter
2016 Cal. App. Unpub. LEXIS 8548 *; 2016 WL 6996218

RICK ***ENGEBRETSEN***, Plaintiff and Respondent, v. CITY OF SAN DIEGO, Defendant; RADOSLAV KALLA et al., Real Parties in Interest and Appellants.

Prior History: [*1] APPEAL from a judgment of the Superior Court of San Diego County, No. 37-2015-00017734-CU-WM-CTL, Joel M. Pressman, Judge.

Disposition: Affirmed.

Core Terms

lease, equitable estoppel, ministerial duty, property owner, statement of decision, trial court, negotiations, parties, holder, conditional use permit, supporting evidence, mandamus relief, terminated, financial responsibility, substantial evidence, agency relationship, application process, writ of mandate, possessed, Tenant

Counsel: Sharif Faust Lawyers, Matthew J. Faust for Real Parties in Interest and Appellants.

Finch, Thornton and Baird, David S. Demian, for Plaintiff and Respondent.

No appearance by Defendant.

Judges: HALLER, Acting P. J.; AARON, J., IRION, J. concurred.

Opinion by: HALLER, Acting P. J.

Opinion

Plaintiff Rick ***Engebretsen*** sought a writ of mandate to compel the City of San Diego (City) to recognize him as the sole applicant for a conditional use permit (CUP) to operate a medical marijuana consumer cooperative (MMCC) on his property (the Property) and process the application accordingly. ***Engebretsen*** alleged he was the sole record owner and interest holder of the Property throughout the application process. Although real party in interest Radoslav Kalla was listed as the applicant for the CUP, ***Engebretsen*** alleged that Kalla was acting on ***Engebretsen***'s behalf as an agent, Kalla never had an independent legal right to use the Property, and ***Engebretsen*** had since revoked Kalla's agency. The City did not oppose ***Engebretsen***'s writ petition.

The trial court granted the writ, and in a statement of decision, **[*2]** discussed its basis for finding that (1) Kalla was acting as ***Engebretsen***'s agent in pursuing the CUP; (2) Kalla did not have any independent authority to pursue it or legal interest in the Property; (3) ***Engebretsen***, as the principal, terminated Kalla's agency and became the only proper applicant; and (4) the City had a ministerial duty to process the application in ***Engebretsen***'s name.

On appeal, Kalla and real party in interest Matthew Compton contend the trial court's principal-agent finding is not supported by sufficient evidence, mandamus was not a proper remedy, and the court did not address and consider their equitable estoppel defense in the statement of decision. We conclude substantial evidence supports the court's factual finding of an agency relationship, ***Engebretsen*** established a proper basis for a writ of mandate, and the court implicitly rejected Kalla and Compton's estoppel defense. Therefore, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Engebretsen*'s Property and the Initial Application for a CUP to Operate an MMCC*

Engebretsen's Property, on Carroll Road in San Diego, is located in a City district where up to four properties within the district may be used to **[*3]** operate medical marijuana consumer cooperatives. ***Engebretsen*** was the sole record owner of the Property in fee simple. In early 2014, ***Engebretsen*** retained Paul Britvar to submit an application on ***Engebretsen***'s behalf for a CUP to operate an MMCC and seek out prospective parties to lease or purchase the Property. The scope of ***Engebretsen*** and Britvar's principal-agent relationship is well documented and undisputed in this case.

The Land Development Code (LDC), within the San Diego Municipal Code (SDMC), governs the City's CUP application process and sets forth the individuals who are authorized to file an application. (SDMC, § 112.0102.) On an initial CUP application form, Britvar certified he was the "Authorized Agent of Property Owner." On a required ownership disclosure form, he listed ***Engebretsen*** as the sole owner and interest holder in the Property. Compton, as vice president of Bay Front LLC, signed a separate form naming the company as the financially responsible party to cover the City's costs in processing the application.

Engebretsen *Authorizes Kalla to Continue the CUP Application Process*

Up until August 2014, Kalla and Compton were dealing with Britvar over lease and/or purchase negotiations, **[*4]** but Kalla and Compton wished to negotiate directly with ***Engebretsen***. ***Engebretsen*** began communicating primarily with Kalla. Thereafter, ***Engebretsen*** terminated Britvar's agency and orally authorized Kalla as his agent to continue the CUP application process while they attempted to negotiate a lease or purchase agreement for the Property. In October 2014, unknown to ***Engebretsen***, Britvar assigned his "interest" in the CUP application to Kalla.

On October 23, 2014, Kalla filed a revised application form with the City for the CUP to operate an MMCC on the Property (the Application). As Britvar had done, Kalla marked himself as the "Authorized Agent of Property Owner" in the "Applicant" box on the Application; ***Engebretsen*** is listed on the same form as the "Property Owner." Kalla signed the Application and certified the correctness of the supplied information. Kalla did not indicate he was a property owner, tenant, or "other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application." With the Application, Kalla also filed an updated ownership disclosure form signed by ***Engebretsen***, again showing ***Engebretsen*** as the sole owner and **[*5]** interest holder in the Property.

Between November 2014 and February 2015, Kalla and ***Engebretsen*** negotiated directly with each other on possible terms for the lease or purchase of the Property. ***Engebretsen*** sent Kalla a letter of intent for the lease of the Property (First LOI). The First LOI provides: "Tenant agrees to pay for all costs and fees related to obtaining the CUP." Further, the First LOI states: "Lease Agreement shall be contingent upon Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use."[1] Kalla did not sign the First LOI.

In response to the First LOI, Kalla provided ***Engebretsen*** with a letter of intent for a lease and purchase option (Second LOI). Kalla's Second LOI states: "Lease Agreement shall be contingent upon Tenant on behalf of Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use." ***Engebretsen*** did not sign the Second LOI. The parties continued to exchange multiple letters **[*6]** of intent and proposed leases in good faith, but could not reach an agreement. In general, ***Engebretsen*** preferred to structure the deal as a lease while Kalla and Compton preferred an outright purchase/sale.

Engebretsen *Revokes Kalla's Agency, and the City Refuses to Process the Application in* ***Engebretsen****'s Name*

Because negotiations with Kalla reached an impasse, ***Engebretsen*** contacted the City in March 2015 to be recognized as the sole applicant on the Application. The City responded that it did not consider ***Engebretsen*** to be the applicant. ***Engebretsen*** next met with a City representative to discuss removing Kalla's name from the Application, but the City refused. Subsequently, ***Engebretsen*** repeatedly met or communicated with City

[1] Within the exchanged documents, the "Landlord" or "Seller" is defined as ***Engebretsen*** and the "Tenant" or "Buyer" is defined as Kalla, Compton, and/or a company under their control.

representatives, including through his counsel, to convey that he was the sole owner and interest holder in the Property, he had terminated Kalla's agency, Kalla had no independent legal right to pursue the Application, and ***Engebretsen*** would be the financially responsible party. The City continuously refused to follow ***Engebretsen***'s instructions.

In April 2015, the City informed ***Engebretsen*** that Compton had designated Kalla as the new financially responsible party **[*7]** for the Application, against ***Engebretsen***'s wishes. The City would not accept ***Engebretsen*** as the financially responsible party for the Application without Kalla's signature. Later that month, the City's hearing officer approved the Application for issuance of a CUP, with Kalla listed as the applicant and prospective permit holder. The Application was the fourth and last one approved by the City for a CUP to operate an MMCC in the district where the Property is located. A third party appealed the Application approval decision for unrelated reasons, and the hearing on that appeal was set to be heard by the City's Planning Commission on June 25, 2015.

Engebretsen*'s Petition for Writ of Mandate*

In May 2015, ***Engebretsen*** filed a verified petition for writ of mandate directing the City to: (1) recognize ***Engebretsen*** as the sole applicant on the Application and (2) process the Application with ***Engebretsen*** as the sole applicant. The court set the matter for trial on an expedited basis. The City filed a statement of nonopposition to ***Engebretsen***'s petition for writ of mandate.

On June 16, 2015, the court conducted a trial and heard testimony from Kalla and Compton. Kalla testified he and Compton "believed **[*8]** [they] had a lease contract on the property" based on Britvar's representations, but admitted that negotiations with ***Engebretsen*** "fell completely apart" and the parties never actually executed a lease agreement. Compton confirmed he and Kalla had no lease agreement on the Property and they agreed to be financially responsible for the Application because they thought they "were going to be able to lease" the Property. The City took no position at trial.

After closing argument, the court gave its tentative ruling from the bench, granting ***Engebretsen***'s petition for a writ of mandate. As part of the ruling, ***Engebretsen*** would have to pay the City the amounts Kalla and Compton had paid for the Application's processing, so the City could then reimburse Kalla and Compton. In making its ruling, the court noted the undisputed facts that ***Engebretsen*** was the record owner of the Property and Kalla and Compton did not enter into a lease or purchase agreement for the Property. The court commented that Kalla and Compton had not shown they had "any interest in [the] property whatsoever," and had "moved forward absent a legally binding agreement under any circumstances." Kalla and Compton requested a **[*9]** statement of decision on several disputed issues, and the court directed counsel for ***Engebretsen*** to draft a proposed statement. Following the trial, the court issued a minute order summarizing its ruling.

On June 23, 2015, Kalla and Compton filed a notice of appeal. The next day, the court ordered that the notice of appeal would not operate as a stay of execution on the judgment and writ to be issued.

On July 20, 2015, the court filed its statement of decision (SOD). Kalla and Compton did not object to the SOD, propose any revisions, or otherwise inform the trial court that the SOD failed to address an issue. On August 18, 2015, the court rendered its judgment, which attached and incorporated the SOD by reference, and issued the writ of mandate.[2]

DISCUSSION

I. *Standard of Review*

When an appellate court reviews a trial court's judgment on a petition for a writ of mandate, it applies the substantial evidence test to the trial court's findings of fact and independently reviews the trial court's **[*10]** conclusions on questions of law, which include the interpretation of a statute and its application to the facts. (*Klajic v. Castaic Lake Water Agency (2001) 90 Cal.App.4th 987, 995, 109 Cal. Rptr. 2d 454* (*Klajic*).) The substantial evidence test applies to both express and implied findings of fact. (*Rey Sanchez Investments v. Superior Court (2016) 244 Cal.App.4th 259, 262, 197 Cal. Rptr. 3d 575*.) "'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry (1996) 44 Cal.App.4th 634, 651, 51 Cal. Rptr. 2d 907*.) When reviewing the trial court's factual findings, we ask whether it was "reasonable for a trier of

[2] We denied Kalla and Compton's request for judicial notice dated February 19, 2016, of a separate lawsuit filed by ***Engebretsen*** against them. Accordingly, that matter is not part of the record on appeal.

fact to make the ruling in question in light of the whole record." (*Id. at p. 652*.)

II. *The Trial Court Properly Issued a Writ of Mandate*

Kalla and Compton contest the court's finding of an agency relationship, the propriety of mandamus relief, and the court's implied rejection of their equitable estoppel defense.

A. *The Court's Finding Regarding the Existence of an Agency Relationship Is Supported by Substantial Evidence*

Kalla and Compton argue insufficient evidence supported the trial court's factual finding that Kalla acted as ***Engebretsen***'s agent in pursuing a CUP application and the court placed undue weight on the application form submitted by Kalla to the City.

"An agent is one who represents another, called the principal, in dealings with third persons." **[*11]** (*Civ. Code, § 2295*.) "Any person may be authorized to act as an agent, including an adverse party to a transaction." (*Michelson v. Hamada (1994) 29 Cal.App.4th 1566, 1579, 36 Cal. Rptr. 2d 343*.) Agency may be implied from the circumstances and conduct of the parties. (*Ibid.*) Indicia of an agency relationship include the agent's power to alter legal relations between the principal and others and the principal's right to control the agent's conduct. (*Vallely Investments, L.P. v. BancAmerica Commercial Corp. (2001) 88 Cal.App.4th 816, 826, 106 Cal. Rptr. 2d 689*.) "The existence of an agency relationship is a factual question for the trier of fact whose determination must be affirmed on appeal if supported by substantial evidence." (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp. (2007) 148 Cal.App.4th 937, 965, 56 Cal. Rptr. 3d 177* (*Garlock*).)

Here, substantial evidence supports the court's finding that Kalla was acting as ***Engebretsen***'s agent in completing the Application. Kalla certified on the Application form that he was ***Engebretsen***'s authorized agent, thereby representing and binding ***Engebretsen*** in dealings with the City regarding the CUP application. Kalla had no other basis or authority to complete a CUP application for the Property—he was neither a property owner nor a legal interest holder. In addition, ***Engebretsen*** declared under penalty of perjury that he orally authorized Kalla as his agent to continue the application process initiated by agent Britvar. Other evidence suggests **[*12]** that Kalla understood the CUP was for ***Engebretsen***'s benefit as the Property owner until Kalla executed a lease or purchase agreement. Furthermore, ***Engebretsen*** consistently believed he was able to terminate Kalla's agency with respect to the Application at any time, as a principal is entitled to do. (See *Malloy v. Fong (1951) 37 Cal.2d 356, 370, 232 P.2d 241* ["The power of the principal to terminate the services of the agent gives him the means of controlling the agent's activities."].) Kalla and Compton essentially ask us on appeal to reweigh or draw alternative inferences from the evidence, which we may not do. (*Garlock, supra, 148 Cal.App.4th at p. 966*.) The court's agency finding was reasonable.

B. ***Engebretsen*** *Established a Proper Basis for Mandamus Relief*

Kalla and Compton contend that ***Engebretsen*** did not establish a basis for mandamus relief because the City did not have a ministerial duty to recognize ***Engebretsen*** as the applicant and ***Engebretsen*** possessed a plain, speedy, and adequate legal remedy.

1. *Writs of Mandate Generally*

Under *Code of Civil Procedure section 1085, subdivision (a)*, the trial court may issue a writ of mandate "to any . . . person . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use **[*13]** and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that . . . person."

"A traditional writ of mandate under *Code of Civil Procedure section 1085* is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to *Code of Civil Procedure section 1085* to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. [Citations.] 'Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld.'" (*Klajic, supra, 90 Cal.App.4th at p. 995*, fn. omitted; *California Public Records Research, Inc. v. County of Stanislaus (2016)*

246 Cal.App.4th 1432, 1443, 201 Cal. Rptr. 3d 745.)

2. *The City Had a Ministerial Duty*

Kalla and Compton argue the City did not have ministerial duty in this case because **[*14]** (1) there is no City procedure for amending a CUP application, (2) allowing amendments may allow "dangerous or untrustworthy" people to operate an MMCC, and (3) a writ of prohibition was the appropriate remedy to stop the City from processing the Application in Kalla's name. We reject these arguments.

To obtain mandamus relief, ***Engebretsen*** was required to demonstrate that the City had a "clear, present, ministerial duty" to perform the requested action. (*Alliance for a Better Downtown Millbrae v. Wade (2003) 108 Cal.App.4th 123, 129, 133 Cal. Rptr. 2d 249*.) "A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." (*Ibid.*) An act is not ministerial when it involves the exercise of discretion or judgment. (*County of San Diego v. State of California (2008) 164 Cal.App.4th 580, 596, 79 Cal. Rptr. 3d 489*.)

Courts have concluded that city and county employees are engaged in ministerial acts when ascertaining whether procedural requirements have been met. (E.g., *Billig v. Voges (1990) 223 Cal.App.3d 962, 968-969, 273 Cal. Rptr. 91* [clerk correctly rejected referendum petition because it did not comply with Elections Code]; *Palmer v. Fox (1953) 118 Cal.App.2d 453, 455-456, 258 P.2d 30* [compelling county engineer to process building permit application where plaintiffs submitted all required paperwork]; see also *Shell Oil Co. v. City and County of San Francisco (1983) 139 Cal.App.3d 917, 921, 189 Cal. Rptr. 276* (*Shell Oil*) [compelling city to process a lessee's application for a conditional use permit because lessee was **[*15]** an "owner" under the city's relevant ordinance].)

In this case, ***Engebretsen*** showed that the City must process and issue applications for conditional use permits consistent with relevant laws and procedures.[3] (SDMC, § 112.0102, subds. (a) & (b).) The City's ordinances provide that the persons "deemed to have the authority to file an application [are]: [¶] (1) The *record owner* of the real property that is the subject of the permit, map, or other matter; [¶] (2) The property owner's authorized agent; or [¶] (3) Any other person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application." (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining *applicant*].) The City's ordinances thus ensure that conditional use permits will only be granted to individuals having the right to use the property in the manner for which the permit is sought. (SDMC, §§ 112.0102, subd. (a), 113.0103; see *Shell Oil, supra, 139 Cal.App.3d at p. 921*; see generally 66A Cal.Jur.3d Zoning And Other Land Controls § 427 [summarizing California cases].) Any other interpretation would raise serious constitutional questions concerning property rights. (*Shell Oil, at p. 921*; see also *County of Imperial v. McDougal (1977) 19 Cal.3d 505, 510, 138 Cal. Rptr. 472, 564 P.2d 14* [holding that conditional use permits "run with the land"].)

Engebretsen demonstrated he was the only person who possessed the right to use the Property, Kalla never independently possessed such a right, Kalla was acting for ***Engebretsen***'s benefit in completing the Application (*Civ. Code, § 2330*), and ***Engebretsen*** had terminated Kalla's agency. Under the circumstances, the City had a ministerial duty to process the CUP application for ***Engebretsen***, the Property owner.

Regarding Kalla and Compton's remaining arguments, there is no evidence in the record that requiring the City to process the Application in ***Engebretsen***'s name would lead to dangerous MMCC operations.[4] Finally, Kalla and Compton have not cited any authority to support their position that a writ of prohibition was an available remedy. A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person *exercising judicial functions*, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." (*Code Civ. Proc., § 1102*, italics added.) A writ of prohibition may not restrain ministerial or nonjudicial **[*17]** acts, including an administrative decision to grant a permit. (*Whitten v. California State Board of Optometry (1937) 8 Cal.2d 444, 445, 65 P.2d 1296*; *F.E. Booth Co. v. Zellerbach (1929) 102 Cal.App. 686, 687, 283 P. 372*.) The trial court did not err in concluding the City had a

[3] "[A] conditional use permit grants an owner **[*16]** 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." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne (2007) 157 Cal.App.4th 997, 1006, 68 Cal. Rptr. 3d 882*.)

[4] As ***Engebretsen*** also points out, a different section of the SDMC requires background checks for people operating or working at an MMCC (SDMC, § 42.1507), which is unaffected by provisions of the LDC.

ministerial duty to process the Application in ***Engebretsen***'s name.

3. ***Engebretsen*** *Did Not Have an Adequate Legal Remedy*

Kalla and Compton next argue that ***Engebretsen*** possessed an adequate legal remedy of filing and/or pursuing a new CUP application, precluding mandamus relief.[5] This argument lacks merit.

A writ of mandate generally will not issue when the plaintiff possesses a "plain, speedy and adequate remedy in the ordinary course of law." (*Powers v. City of Richmond (1995) 10 Cal.4th 85, 114, 40 Cal. Rptr. 2d 839, 893 P.2d 1160*.) Here, ***Engebretsen*** showed he did not possess such a remedy. The City refused **[*18]** to process the Application in ***Engebretsen***'s name, and it approved the Application with Kalla named as the prospective permit holder. Also, the City would not be issuing any more conditional use permits to operate MMCC's within the same city district. (SDMC, § 141.0614.) If the CUP was granted to Kalla, ***Engebretsen*** had no other immediate means to obtain a CUP for his Property from the City. Moreover, ***Engebretsen*** showed that the parties needed a determination in time to respond to an unrelated appeal of the City's decision to approve the Application. The court did not err in granting mandamus relief.

C. *The Court Did Not Commit Reversible Error in Connection with Kalla and Compton's Equitable Estoppel Defense*

At trial, Kalla and Compton opposed the issuance of a writ of mandate under a theory of equitable estoppel. Specifically, their counsel argued that ***Engebretsen*** was estopped from obtaining the CUP in his name because Kalla and Compton relied on ***Engebretsen***'s promises to sign a lease. Under *Code of Civil Procedure section 632*, Kalla and Compton requested a statement of decision on the court's "finding and reasoning as to the application of equitable estoppel" in the case.

The SOD did not explicitly address equitable estoppel, but instead **[*19]** sets forth in significant detail the factual background supporting the court's implicit rejection of the theory. Kalla and Compton did not object to the SOD below or argue it was deficient for failing to address an issue. On appeal, they contend the trial court erred in not addressing their equitable estoppel defense in its SOD and that the evidence supports their defense. We conclude they waived the argument regarding a deficient SOD and substantial evidence supports the court's implied rejection of their defense.

1. *Kalla and Compton Waived or Forfeited Their Claim Regarding the Court's Failure to Address Equitable Estoppel in the Statement of Decision*

In a court trial, "first, a party must request a statement of decision as to specific issues to obtain an explanation of the trial court's tentative decision (*§ 632*); second, if the court issues such a statement, a party claiming deficiencies therein must bring such defects to the trial court's attention to avoid implied findings on appeal favorable to the judgment (*§ 634*)." (*In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1134, 275 Cal. Rptr. 797, 800 P.2d 1227* (*Arceneaux*).) *Code of Civil Procedure section 634* "clearly refers to a party's need to point out deficiencies in the trial court's statement of decision as a condition of avoiding such implied findings, rather **[*20]** than merely to request such a statement initially as provided in *section 632*." (*Arceneaux, at p. 1134*.) "[I]f a party does not bring such deficiencies to the trial court's attention, that party waives the right to claim on appeal that the statement was deficient in these regards, and hence the appellate court will imply findings to support the judgment." (*Id. at pp. 1133-1134*.)

Here, Kalla and Compton did not bring any alleged deficiencies in the SOD to the trial court's attention. If they had, the SOD could have been corrected and made part of the record on appeal. Accordingly, Kalla and Compton have waived or forfeited their argument relating to the court's alleged failure to address equitable estoppel, and we will imply all necessary findings to support the court's judgment. (*Agri-Systems, Inc. v. Foster Poultry Farms (2008) 168 Cal.App.4th 1128, 1135, 85 Cal. Rptr. 3d 917*.)

2. *The Court's Implied Rejection of Kalla and Compton's Equitable Estoppel Defense Is Supported by Substantial Evidence*

Substantial evidence supports the court's implied rejection of Kalla and Compton's equitable estoppel defense. (See *Acquire II, Ltd. v. Colton Real Estate Group (2013) 213 Cal.App.4th 959, 970, 153 Cal. Rptr.*

---

[5] Kalla and Compton also assign error to the trial court's omitting to address the issue of alternative legal remedies in its SOD. As we discuss, *infra*, they waived the argument by failing to object to the SOD or pointing out the alleged deficiency to the trial court. Regardless, any error was harmless because ***Engebretsen*** sufficiently stated a basis to obtain writ relief.

3d 135 ["the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence"].) "'Generally speaking, four elements must be present in order to apply the **[*21]** doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.'" (*Golden Gate Water Ski Club v. County of Contra Costa (2008) 165 Cal.App.4th 249, 257, 80 Cal. Rptr. 3d 876* (*Golden Gate*).) The defense does not apply when even one element is missing. (*Ibid.*)

Here, it was virtually undisputed that the parties engaged in arm's-length, good faith negotiations for several months, but they simply could not reach a suitable lease or purchase agreement. The record supports that Kalla and Compton pursued the Application despite knowing they had not yet signed any agreement with ***Engebretsen***, the Property owner. As a result, Kalla and Compton were not "ignorant of the true facts." (*Golden Gate, supra, 165 Cal.App.4th at p. 259*.) Similarly, ***Engebretsen*** only sought to be recognized as the sole applicant when he realized that the parties could not reach a mutually acceptable agreement. Consequently, Kalla and Compton failed to establish that equitable estoppel prevented the City from recognizing ***Engebretsen*** as the CUP applicant.

DISPOSITION

The judgment **[*22]** is affirmed. ***Engebretsen*** shall recover his costs on appeal.

HALLER, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.

End of Document

Exhibit 44

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/12/2022 TIME: 09:00:00 AM DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione
CLERK: Richard Day
REPORTER/ERM: Darla Kmety CSR# 12956
BAILIFF/COURT ATTENDANT: Dan Bumbar

CASE NO: **37-2021-00050889-CU-AT-CTL** CASE INIT.DATE: 12/03/2021
CASE TITLE: **Sherlock vs Austin [EFILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

---

EVENT TYPE: SLAPP / SLAPPback Motion Hearing

APPEARANCES
Andrew Flores, counsel, present for Plaintiff(s) via remote video conference.
Matthew Smith, counsel, present for Defendant(s) via remote video conference.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:Defendants Gina Austin and Austin Legal Group's Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 is granted.

Pursuant to CCP § 425.16, the court must first determine whether the moving party has made a threshold showing that the challenged cause of action is one arising from protected activity, i.e., the act underlying petitioner's cause of action fits one of the categories delineated in CCP §425.16(e). (CCP §425.16 (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) Defendants bear the initial burden of establishing a prima facie showing that the Plaintiffs' cause of action *arises* from the Defendants' petition activity. (*Equilon Enterprises, L.L.C. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) Here, Defendants allege that the conduct complained of by Plaintiffs falls within CCP § 425.16(e)(1), which protects "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law."

If the court finds that Defendants have satisfied the first prong, it must then determine whether the opposing party has demonstrated a probability of prevailing on the claim. (*Ibid*.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645.) "[A] plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 735.)

First Prong
Defendants have shown that the activities alleged in the FAC constitute petitioning "before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" under CCP §425.16(e)(1). Furthermore, Defendants' actions are not illegal as a matter of law. (*See Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1478 (illegality exception applies "only in '*rare cases* in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law.'").) Therefore, the first prong is satisfied.

Second prong
Plaintiffs have not submitted any evidence, affidavits, declarations, or requests for judicial notice in support of this motion. Therefore, they cannot show a probability of prevailing on the merits with "competent, admissible evidence." (*Hailstone*, 169 Cal.App.4th at 735.) The second prong of the analysis is not met.

The Court denies Plaintiffs' request to amend the FAC. (*See Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 676 ("There is no such thing as granting an anti-SLAPP motion with leave to amend.).)

If Defendants seek to recover attorney's fees, it must be filed as a separate motion.

The minute order is the order of the Court.

Defendants are directed to serve notice on all parties within five (5) court days.

James A. Mangione

Judge James A Mangione

Exhibit 45

Filed 9/18/23

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. GINA AUSTIN et al., Defendants and Respondents.	D081109 (Super. Ct. No. 37-2021-00050889-CU-AT-CTL)

APPEAL from 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.

Pettit Kohn Ingrassia Lutz & Dolin, Douglas A. Pettit, Kayla R. Sealey, and Annie F. Fraser for Defendants and Respondents.

Amy Sherlock, her minor children T.S. and S.S., and Andrew Flores (collectively, plaintiffs) brought a civil lawsuit against Gina Austin and her law firm, the Austin Legal Group (collectively, Austin), as well as a litany of

other individuals who are involved with operating and advising cannabis businesses in San Diego, alleging a wide-ranging conspiracy to monopolize the cannabis market. In response, Austin brought a special motion to strike under Code of Civil Procedure section 425.16[1], asserting the plaintiffs' claims against Austin arose from petitioning activity and that the plaintiffs could not show a probability of prevailing on the merits of those claims. The trial court agreed with Austin and granted the motion.

The plaintiffs appeal the judgment that was entered in favor of Austin shortly after the court's order granting her motion to strike. They argue Austin assisted her clients in filing false documents to obtain cannabis business licenses and helped them evade tax obligations, and that this illegal conduct is unprotected by the anti-SLAPP statute. In response, Austin asserts that the allegations in the complaint that are at issue relate solely to her role of assisting her clients in obtaining Conditional Use Permits (CUPs). She contends this conduct is petitioning activity that is protected and that the plaintiffs' assertions of illegal activity are based only on conclusory allegations that are unsupported by any facts in the record.

As we shall explain, we agree with Austin that the plaintiffs have not demonstrated the court erred by granting her anti-SLAPP motion and subsequently entering judgment in her favor. Accordingly, the judgment is affirmed.

---

1 Code of Civil Procedure section 425.16 is commonly referred to as the anti-SLAPP (strategic lawsuit against public participation) statute. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.) Subsequent undesignated statutory references are to the Code of Civil Procedure.

FACTUAL AND PROCEDURAL BACKROUND[2]

A. *Plaintiffs' Complaint*

Andrew Flores, who represents the plaintiffs in this action, filed the First Amended Complaint (FAC) in San Diego Superior Court on behalf of himself, Sherlock, and Sherlock's two minor children.[3] The FAC alleges a conspiracy to monopolize the marijuana market in San Diego in violation of the Cartwright Act (Bus. & Prof. Code, § 16720 et seq.), as well as claims for conversion, civil conspiracy, declaratory relief, and unfair competition and unlawful business practices (*id.*, § 17200 et seq.).

Three claims are asserted against Austin—violation of the Cartwright Act, unfair competition and unlawful business practices, and civil conspiracy. The FAC focuses on the acquisition of, and in one case application for 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) 6176 Federal Blvd., San Diego, CA 92114 (the Federal property), and (4) 6859 Federal Blvd., Lemon Grove, CA 91945

---

2 Because we are reviewing the record on the court's ruling on Austin's anti-SLAPP motion, we take the factual background from the allegations of the operative complaint, as well as from evidence presented to the court for purposes of the anti-SLAPP motion.

3 The FAC was not included in the appellate record. However, the plaintiffs ask this court to take judicial notice of the FAC, as well as three additional documents: this court's opinion in *Razuki v. Malan* (Feb. 24, 2021, D075028 [nonpub. opn.], arising from San Diego Superior Court Case No. 37-2018-00034229-CU-BC-CTL (*Razuki II*)); a declaration Austin submitted in the trial court in *Razuki II*; and a trial transcript from *Geraci v. Cotton*, San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL. On our own motion, the record is augmented to include the FAC. (Cal. Rules of Court, rule 8.155(a)(1).) We grant the request for judicial notice of Austin's declaration in *Razuki II* and otherwise deny the request.

(the Lemon Grove property). The thrust of the complaint, as it relates to Austin, is that she and the other defendants engaged in anticompetitive conduct by submitting CUP applications to regulators that failed to disclose the real owners of the marijuana dispensary operations, in violation of the law.

The FAC alleges that after the passing of Sherlock's husband Michael in 2016, Sherlock was defrauded by Michael's business partners, Stephen Lake and Bradford Harcourt, in their incipient medical marijuana business. According to the FAC, Michael was granted the CUPs for the Ramona and Balboa properties. The plaintiffs allege that after Michael's death, Lake and Harcourt falsely told Sherlock that her husband's estate had no interest in the business and forged Michael's signature on documents to dissolve a limited liability company, LERE, that Michael, Harcourt, and Lake had established to hold real property for the business.

According to the FAC, at some point after Michael's death, the CUP for the Ramona property was transferred to Harcourt, Lake, Eulenthias Duane Alexander, and Renny Bowden. Harcourt allegedly transferred the CUP for the Balboa property from Michael's holding entity to his own holding entity, San Diego Patients Cooperate Corporation, Inc. (SDPCC). The Balboa property itself, which had been owned by LERE, was transferred to a limited liability company (LLC) owned by Lake called High Sierra Equity, then to an LLC owned by Salam Razuki called Razuki Investments, and finally to an LLC owned by Ninus Malan called San Diego United Holdings Group.

Much of the FAC focuses on the conduct of Razuki and Malan, and Larry Geraci, who was represented by Austin in his efforts to obtain CUPs for marijuana operations. According to the FAC, Harcourt and Lake transferred the Balboa property to Razuki based on a proposed joint venture agreement

to operate a dispensary at the property. The plaintiffs allege that after this transfer, Razuki and Malan falsely represented to the City of San Diego that they were also owners of the CUP for the property. Harcourt and SDPCC sued Razuki alleging he had defrauded them of the CUP for the Balboa property (*San Diego Patients Cooperative Corporation, Inc. v. Razuki Investments, LLC*, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL (*Razuki I*)).

The FAC further alleges that Razuki sued Malan over their partnership, *Razuki II*, and that Razuki was later arrested for attempted murder after he hired an FBI informant to kill Malan. The FAC asserts that in *Razuki II*, Razuki admitted he and Malan agreed that Malan would hold title to cannabis assets without disclosing Razuki's ownership because his prior involvement in unlicensed commercial cannabis activities disqualified him from obtaining a CUP. According to the FAC, in *Razuki II*, the court appointed a receiver to manage the assets in dispute and approved the sale of the Balboa property and its CUP to an entity called Prodigious Collective. The plaintiffs allege Prodigious Collective then transferred ownership of those assets to Allied Spectrum, Inc.[4]

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 uncovered "the relationships between Geraci, Magagna, Razuki, Malan and Dave Gash via

---

4 The FAC also asserts that Flores obtained information from an investigative journalist who was told by an employee of Razuki that Austin obtained "confidential information" about real property that qualified for CUPs from her clients who were not members of the conspiracy. Austin then allegedly provided that information to Razuki in order to assist him in acquiring property.

Austin, who has represented all parties." The plaintiffs allege that in 2016, Geraci identified a property located at 6176 Federal Blvd. as a potential location for a medical marijuana dispensary and began negotiations with the property's owner, Darryl Cotton, to purchase it.

The FAC alleges that Geraci hired Austin, James Bartell (described in the FAC as a political lobbyist), and Abhay Schweitzer (other documents in the record reveal Schweitzer is an architect) to represent him in his application to obtain a CUP for the Federal property from the City of San Diego. The FAC alleges that, like Razuki, Geraci intentionally failed to use his own name in the application because prior unlicensed cannabis activity disqualified him from participating in the business. Specifically, the plaintiffs assert that Geraci, Austin, Bartell, and Schweitzer prepared the CUP application in the name of Geraci's assistant, Rebecca Berry, falsely representing that Berry would be the owner of the CUP, and obscuring Geraci's and Cotton's ownership.

The FAC alleges Cotton and Geraci reached an agreement on November 2, 2016 for the sale of Cotton's property and proposed marijuana operations, and that Austin was tasked with preparing a final written agreement for execution. However, because a final agreement was not prepared, Cotton entered into an alternate agreement to sell the property and his interest in the pending CUP application with a third party in the event that the deal with Geraci was not finalized.[5] This, in turn, prompted Geraci

---

[5] The FAC alleges that before this agreement, Cotton approached Christopher Williams as a partner for the CUP, but that Williams was told by Austin, who was his attorney, that Cotton already had a final agreement with Geraci for the Federal property, causing Williams to withdraw from the negotiations. The FAC states that Williams was a plaintiff in this action, but withdrew from the suit.

to file suit against Cotton seeking to enforce Cotton's oral agreement to enter into a joint venture agreement with Geraci for the sale of the property and the CUP, with Cotton to receive a portion of the proposed marijuana operations profit on a monthly basis. (*Geraci v. Cotton*, San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL.) Cotton then counter-sued, initially as a pro se litigant, alleging various causes of action, including that Geraci and Berry had conspired to hide Geraci's ownership interest because he had been sued by the City of San Diego for operating and managing unlicensed, unlawful, and illegal marijuana dispensaries that "would ruin Geraci's ability to obtain a CUP himself."

The plaintiffs allege that Cotton then obtained a litigation investor, "Hurtado," who initially retained Jessica McElfresh, who had previously "represented Geraci, Razuki, and Malan in various legal matters" related to cannabis operations. McElfresh then backed out of the representation, and Hurtado hired two attorneys with the law firm of Finch, Thorton, and Baird (FTB) to represent Cotton. The FAC alleges FTB, named as a defendant, then worked to sabotage Cotton's case. According to the plaintiffs, FTB filed an amended cross-complaint removing Cotton's allegation that Geraci was unable to obtain a CUP. Further, they allege FTB failed to vigorously defend Cotton against Geraci's demurrer to Cotton's cross claims and assert FTB was loyal to Geraci because it shared clients with Geraci's tax business. The FAC also alleges that FTB wanted Cotton to sign a declaration stating he, and not Geraci, was pursuing the CUP for the property. As a result of these tactics, Cotton fired FTB.

The FAC alleges that Austin testified at the bench trial in *Geraci v. Cotton* that she was not aware of two judgments that had previously been entered against Geraci for illegal marijuana operations, that she did not

remember why Geraci used Berry as the applicant for the CUP on Cotton's property, and that she did not know why he was not listed on the ownership disclosure statement for the application.[6] According to the FAC, the judge in *Geraci v. Cotton* ruled against Cotton, finding he had unlawfully interfered with the CUP application for the property and that Geraci was not barred by law from owning a CUP, and that the court also awarded Geraci damages.

The FAC alleges that in March 2018, Aaron Magagna submitted a CUP application for a property located at 6220 Federal Blvd., within 1000 feet of the Federal property. According to the FAC, that CUP was approved by the City of San Diego in October 2018. The plaintiffs assert this application was submitted to prevent the approval of the CUP for the Federal property that was submitted in Berry's name in order to limit Geraci's liability for the false information contained in that application.

The FAC alleges that prior to this CUP approval and the judgment in the litigation between Cotton and Geraci, Alexander and Logan Stellmacher visited Cotton and offered to purchase the Federal property. When Cotton refused the offer, they attempted to coerce him to settle the litigation with Geraci and then threatened they had the "ability to have the San Diego Police Department raid the Federal Property and have Cotton arrested on fabricated charges and planted drugs." They also threatened to "have dangerous individuals visit the Federal Property implying they would cause bodily harm to Cotton."

The FAC also alleges that another potential investor in the Federal property and in Cotton's suit against Geraci, "Young," was told by her lawyer

---

6 The FAC also alleges that Austin attempted to avoid service of process of a petition for writ of mandate filed by Cotton in his case against Geraci.

not to invest because the Berry CUP application would be denied.[7] Young was allegedly also told in a meeting with Cotton that he believed Magagna was a co-conspirator of Geraci who was working to have the competing CUP application approved. According to the FAC, Young asked Magagna if this was true and he did not deny the allegation. The FAC alleges when Cotton attempted to depose Young, her counsel prevented the deposition and then Young moved to Palm Springs after being offered a job at a dispensary there, whose owners were also clients of Austin.

Another set of allegations concern Shawn Joseph Miller, who the plaintiffs assert is another associate of Geraci. The FAC alleges Miller has a criminal background and threatened Hurtado to try to coerce Cotton to settle his litigation with Geraci. With respect to the Lemon Grove property, the FAC alleges that Williams retained Austin to be his attorney for "cannabis related matters," but that Austin dissuaded Williams from pursuing the property by falsely representing it would not qualify for a CUP. According to the FAC, a CUP was awarded for the property thereafter.

B. *Motion to Strike*

In response to the complaint, Austin filed an anti-SLAPP motion. Therein, she asserted that the three claims against her in the FAC were premised entirely on the protected conduct of petitioning the local land use authority for CUPs on behalf of her clients. Further, the motion asserted that the plaintiffs could not show a probability of prevailing on the claims because they are barred by Civil Code section 1714.10 and the litigation privilege. In addition, the motion asserted the Cartwright Act violation was

---

7 The FAC asserts that Young and Austin went to law school together and were admitted to the bar the same year.

not viable because the plaintiffs failed to plead facts showing the defendants had agreed to restrain trade.

With respect to the claims under Business and Professions Code section 17200 et seq., Austin asserted the plaintiffs could not show a probability of prevailing as to her because the claims were premised on an alleged violation of Business and Professions Code section 26057. That provision sets forth criteria for cannabis licensing agencies to consider, but does not require those authorities to deny a license based on any particular category, including if the applicant had been previously sanctioned for unlicensed commercial cannabis activity. Finally, Austin asserted the plaintiffs could not prevail on their civil conspiracy claim against her because they had not pleaded any facts showing her agreement to join or acts in furtherance of the conspiracy.

In their opposition to the motion, the plaintiffs argued that their claims were viable because Business and Professions Code section 26057 precluded Razuki and Geraci from owning a cannabis business. According to the plaintiffs' interpretation of that statute, the provision required the regulator to deny Geraci and Razuki's CUP applications because they were previously sanctioned for unlicensed medical marijuana operations. The plaintiffs also asserted that the anti-SLAPP statute did not apply to their claims because Austin's petitioning activity, specifically failing to disclose the actual owners of the cannabis operations, is illegal under Penal Code section 115 and likewise exempted from the first amendment protection afforded by the *Noerr-Pennington* doctrine because the petitioning activity was a sham designed to monopolize the industry.

The plaintiffs also argued Austin's conduct was not subject to the pre-filing requirements of Civil Code section 1714.10 because her efforts to secure

CUPs for her clients are not an "attempt to contest or compromise a claim or dispute" as required by that statute and because the alleged conduct is illegal. Similarly, the plaintiffs contended the litigation privilege could not be used as a shield for Austin's illegal conduct. Finally, they argued the alleged conduct violated the UCL and the Cartwright Act because it was anti-competitive and unlawful. The plaintiffs did not submit any evidence to support their opposition, instead relying solely on their legal arguments.

In reply, Austin asserted there was no dispute that the alleged conduct was petitioning activity protected under the anti-SLAPP statute. Further, she argued the plaintiffs had failed to meet their burden to show a likelihood of prevailing on their claims because they presented no evidence in support of their assertion that Austin's actions were illegal and failed to otherwise establish how they could satisfy the elements of each cause of action.

At the conclusion of a short hearing on the motion, the court confirmed its tentative ruling finding that the allegations against Austin all involved protected petitioning activity and that the plaintiffs had failed to meet their burden to show a probability of prevailing on the claims. Shortly after, the court entered judgment in favor of Austin.

DISCUSSION

The plaintiffs argue on appeal, as they did in the trial court, that Austin's conduct, which they describe as "filing applications with State and City cannabis licensing agencies with false and fraudulent information," is illegal as a matter of law and thus not subject to the protections afforded by section 425.16. In addition, the plaintiffs argue that even if the conduct is protected petitioning activity, the trial court erred by finding that evidence was required to meet their burden of showing a probability of prevailing

under the anti-SLAPP statute. As we shall explain, these arguments do not support reversal of the judgment in favor of Austin.

I

Legal Standards

Section 425.16 sets 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.' " (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 197.) Under section 425.16, the "trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation." (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) Section 425.16 provides in pertinent part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

Resolution of an anti-SLAPP motion "thus 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.)

"A defendant satisfies the first step of the analysis by demonstrating that the 'conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e) [of section 425.16]' (*Equilon* [*Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53,] 66), and that the plaintiff's claims in fact *arise* from that conduct (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1063)." (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 620.) Subdivision (e) provides that an " 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

"A defendant's burden on the first prong is not an onerous one. A defendant need only make a prima facie showing that plaintiff's claims arise from the defendant's constitutionally protected free speech or petition rights. (See *Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 456.) ' "The Legislature did not intend that in order to

invoke the special motion to strike the defendant must first establish [his or] her actions are constitutionally protected under the First Amendment as a matter of law." [Citation.] "Instead, under the statutory scheme, a court must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis, and then permit the parties to address the issue in the second step of the analysis, if necessary. [Citation.] Otherwise, the second step would become superfluous in almost every case, resulting in an improper shifting of the burdens." ' " (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 112, italics omitted.) 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*).)

For purposes of both prongs of an anti-SLAPP motion, "[t]he court considers the pleadings and evidence submitted by both sides, but does not weigh credibility or compare the weight of the evidence. Rather, the court's responsibility is to accept as true the evidence favorable to the plaintiff …." (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) With respect to the second prong, "in order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the plaintiff need only have ' "stated and substantiated a legally sufficient claim." ' [Citations.] 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88–89.)

"Review of an order granting or denying a motion to strike under section 425.16 is de novo. [Citation.] [Like the trial court, we] consider 'the pleadings, and supporting and opposing affidavits ... upon which the liability or defense is based.' (§ 425.16, subd. (b)(2).)" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) Our de novo review "includes whether the anti-SLAPP statute applies to the challenged claim." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645.) "[W]e apply our independent judgment to determine whether" the claim arises from acts done in furtherance of the defendants' "right of petition or free speech in connection with a public issue." (*Ibid.*) "Assuming these two conditions are satisfied, we must then independently determine, from our review of the record as a whole, whether [the plaintiffs have] established a reasonable probability that [they will] prevail on [their] claims." (*Ibid.*)

II

Analysis

A

First Prong of the Anti-SLAPP Analysis

The plaintiffs do not challenge the trial court's finding that their allegations against Austin concern protected petitioning activity. Rather, they argue that the anti-SLAPP statute does not apply to Austin's conduct because the activity, which they describe as "filing applications with State and City cannabis licensing agencies with false and fraudulent information," is illegal as a matter of law. They make their argument in three parts.

First, they assert that the alleged conduct is illegal because the CUP applications prepared by Austin contained false information, in violation of Penal Code sections 115 and 118. Next, the plaintiffs contend, without making any connection to Austin, that Razuki and Malan's cannabis

operations are illegal as a matter of law because those defendants evaded their tax obligations. Finally, the plaintiffs assert that Austin's conduct was illegal because Business and Professions Code section 26057 strictly precludes regulators from granting CUPs to applicants who have been sanctioned in the prior three years for engaging in "unauthorized commercial cannabis activities." (Bus. & Prof. Code, § 26057, subd. (a).) None of these arguments support reversal of the judgment entered in favor of Austin.

As an initial matter, as Austin points out in her brief, the plaintiffs make two new arguments that were not presented in the trial court. They assert for the first time on appeal that Austin's conduct was not protected by the anti-SLAPP statute because it violated Penal Code section 118 and because Razuki and Malan evaded their tax obligations. "Failure to raise specific challenges in the trial court forfeits the claim[s] on appeal. ' " '[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court.' Thus, 'we ignore arguments, authority, and facts not presented and litigated in the trial court. ... "Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider." ' " (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.) Because these arguments were not presented in the trial court, we decline to consider them for the first time here.

The plaintiffs have also not established that the trial court erred by finding that Austin's conduct was unprotected by the anti-SLAPP statute because it was illegal, as a matter of law, under either Penal Code section 115 or Business and Professions Code section 26057. Penal Code section 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." 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. (See *Flatley, supra*, 39 Cal.4th at p. 320.)

However, no such concession or conclusive evidence exists in this case. In her unrebutted declaration in support of the anti-SLAPP motion, Austin states that she was not involved in the CUP applications for the Ramona or the Lemon Grove properties and that the application she prepared for the Federal property was abandoned when the CUP for the neighboring property was granted. Further, she states that her involvement in the CUP application for the Balboa Property was limited to helping Michael Sherlock's attorney with the initial application.

In response to this evidence, the plaintiffs point to one statement by Austin in a declaration submitted in *Razuki II*, which was not submitted in the trial court in this case. In the declaration, Austin states that "[t]he Bureau of Cannabis Control ("BCC") requires all owners[, as the term is defined by regulation,] to submit detailed information to the BCC as part of the licensing process." The plaintiffs contend this statement shows Austin knew that she was required to disclose Geraci's and Razuki's ownership interests, and that she knowingly failed to do so.

Even if this evidence had been before the trial court, it does not show Austin knowingly filed a false CUP application for the Federal property (or

any other property); indeed, the plaintiffs do not describe Austin's role in the applications at all, instead making only a bare accusation that she submitted false information. Austin's declaration in the *Razuki II* case establishes only that Austin was aware of regulatory disclosure requirements. It does not show that her involvement in the various CUP applications constituted unlawful conduct that falls outside of anti-SLAPP protection. (See *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 399 ["Bare allegations of aiding and abetting or conspiracy do not suffice to remove these acts from the protection of the statute."] (*Contreras*).) Further, the plaintiffs provided no evidentiary support to counter Austin's statement that she had no involvement in the CUP applications for the Ramona property or the Lemon Grove property and that her only involvement in the Balboa property CUP application was to assist Michael Sherlock. In sum, the plaintiffs have not shown any conduct that was illegal as a matter of law under Penal Code section 115.

Plaintiffs' argument that the alleged conduct is illegal as a matter of law because it violates Business and Professions Code section 26057 is also not persuasive. They contend the statute flatly precludes regulators from issuing a license to someone who has previously engaged in unlawful commercial cannabis activity, and that Razuki and Geraci have both run afoul of this rule. The statute, however, gives the regulator discretion to deny licensure. It does not mandate denial. The provision, which was initially adopted by the electorate in 2016 under Proposition 64, is part of "a comprehensive regulatory structure in which every marijuana business is overseen by a specialized agency with relevant expertise." (Control, Regulate and Tax Adult Use of Marijuana Act, 2016 Cal. Legis. Serv. Prop. 64.)

The law requires state licensure of all marijuana businesses by the State's Department of Cannabis Control. To this end, subdivision (a) of

Business and Professions Code 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." Subdivision (b), in turn, states that "[t]he department may deny the application for licensure or renewal of a state license if any of the following conditions apply," and lists ten conditions that can 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."

The plaintiffs argue that subdivision (a) of Business and Professions Code section 26057 mandates the denial of a license if one of the conditions set forth in subdivision (b) of the statute exists. However, the plain language of the statutes does not support this interpretation. Rather, the provision the conditions are found in, subdivision (b), states clearly that the existence of one of the listed conditions "may" support denial of an application for licensure. Thus, denial is permissive, not mandatory. Further, even if the statute required the state agency to deny licensure, the plaintiffs have not explained how this would make *Austin's conduct* (i.e. assisting with a CUP application that was never granted) illegal as a matter of law.

Accordingly, these arguments do not support reversal of the trial court's finding that Austin's conduct falls within the protection afforded by the anti-SLAPP statute.

B

Second Prong of the Anti-SLAPP Analysis

The plaintiffs also argue that the trial court erred by "finding that [they] presented no evidence" that Austin and her firm filed CUP applications without disclosing the actual owners of the property, conduct they call the "Strawman Practice." Specifically, they assert that "Austin did not dispute and admitted that ALG undertakes the Strawman Practice" and therefore no evidence was required to support this fact. In addition, they repeat their argument that Austin's alleged conduct was illegal as a matter of law and, quoting *Lewis & Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141 (*Lewis*), assert the trial court had a " 'duty to ascertain the true facts' " regardless of their evidentiary submissions.

The plaintiffs' contention that Austin admitted she acted illegally is not supported by the record before this court. As Austin points out in her briefing, the plaintiffs do not provide any citation to the record to support their assertion that she conceded any illegal conduct. It is the plaintiff's burden to show a probability of prevailing on the merits of their claims once the defendant has shown the alleged conduct is protected by the anti-SLAPP statute. Because the plaintiffs have provided no support for their assertion that Austin conceded the illegality of her conduct, we have no basis to reverse the trial court's judgment on this ground. (See *Hill v. Affirmed Housing Group* (2014) 226 Cal.App.4th 1192, 1200 [argument on appeal deemed abandoned by failure to present relevant factual analysis and legal authority].)

The plaintiffs additional arguments related to the second prong of the anti-SLAPP analysis also do not provide a basis for reversal. As discussed in the preceding section, the plaintiffs have not shown Austin's alleged conduct

is illegal as a matter of law. And their argument that the trial court had an independent duty to ascertain the truth of the allege conduct misstates the law. The anti-SLAPP statute places the burden on the plaintiffs to show a probability of prevailing on the merits of their claims. (See *Contreras, supra*, 5 Cal.App.5th at p. 405 [" ' "[T]he plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " ' "].) This procedure is not akin to the analysis at issue in *Lewis*, which involved a plaintiff subcontractor attempting to enforce an illegal contract it made with the defendant. (*Lewis, supra*, 48 Cal.2d at pp. 147–148.)

In *Lewis*, the California Supreme Court rejected the plaintiff's argument that the defendant's admission in its answer that plaintiff had furnished certain equipment under the contract prevented the trial court from reaching the issue of the contract's illegality. (*Lewis, supra*, 48 Cal.2d at pp. 147–148.) In its holding, the court stated, "[w]hatever the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court has both the power and duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids." (*Ibid.*) Contrary to the plaintiffs' argument, this statement concerning the illegality of a contract has no bearing on whether

the plaintiffs here met their burden on the second step of the anti-SLAPP analysis.[8]

The plaintiffs have failed to show the trial court erred in finding they had not met their burden to show a probability of prevailing on their claims against Austin.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs of appeal.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

CASTILLO, 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.

09/18/2023

BRANDON L. HENSON, CLERK

By A. Galvez Deputy Clerk

---

8 The plaintiffs' reply brief contains several new arguments, including an assertion that Austin's contracts with her clients are illegal and unenforceable under *Lewis* and similar cases. This argument, and the plaintiffs' other new contentions, are not tethered to the anti-SLAPP analysis at issue and consist of unsupported assertions of wrongdoing. These arguments are forfeited and our discussion of the issues is limited accordingly. (See *High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102, 111, fn. 2 ["New arguments may not be raised for the first time in an appellant's reply brief."].)

Exhibit 46

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings

JULY 9, 2019

Reported By:
Margaret A. Smith
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057775

APPEARANCES
FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
CROSS-DEFENDANT REBECCA BERRY:
FERRIS & BRITTON
BY: MICHAEL R. WEINSTEIN, ESQUIRE
BY: SCOTT H. TOOTHACRE, ESQUIRE
BY: ELYSSA K. KULAS, ESQUIRE
501 West Broadway, Suite 1450
San Diego, California 92101
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
ATTORNEY AT LAW
BY: JACOB P. AUSTIN, ESQUIRE
1455 Frazee Road, Suite 500
San Diego, California 92108
619.357.6850
jpa@jacobaustinesq.com

FOR FIROUZEH TIRANDAZI:
OFFICE OF THE SAN DIEGO CITY ATTORNEY
BY: M. TRAVIS PHELPS
1200 Third Avenue, Suite 100
San Diego, California 92101
619.533.5800
mphelps@sandiego.gov

MR. TOOTHACRE: She.
THE COURT: I'm sorry. Is she right outside?
MR. TOOTHACRE: I believe so.
THE COURT: Madam Deputy, may I ask you to get the next witness.
THE BAILIFF: Your Honor, this witness is being accompanied by her attorney.
THE COURT: Thank you very much. Counsel, you can make yourself comfortable in the audience section.
Ma'am, if you could follow the directions of my clerk, please.

Firouzeh Tirandazi,
being called on behalf of the plaintiff/cross-defendant, having been first duly sworn, testified as follows:

THE CLERK: Please state your full name and spell your first and last name for the record.
THE WITNESS: My name is Firouzeh Tirandazi. F-i-r-o-u-z-e-h. Last name Tirandazi, T-i-r-a-n-d-a-z-i.
THE COURT: All right. Counsel, whenever you're ready.
MR. TOOTHACRE: Thank you, your Honor.
(Direct examination of Firouzeh Tirandazi)
BY MR. TOOTHACRE:
Q Good morning, Ms. Tirandazi.
A Good morning.

sounds -- it sounds like everyone needs to be listed, when you say even an LLC will include attachments with all names of all people.

A I guess I don't understand what you mean by "everyone." This is information that is provided to the City by the applicant. So by submitting this and signing it, they're letting the City know that these are the people of -- the property owner and the permittee.

Q Thank you.

So I assume you're very familiar with San Diego Municipal Code and ordinances. Correct?

A To some extent, I'm familiar.

Q To some extent.

Well, as they relate to marijuana law and processing of CUPs specifically.

A I do. But I still do refer to the Municipal Code.

Q Yes. I mean, they are very lengthy. So that only makes sense.

Are you familiar with a change to the City -- the San Diego City Ordinance 20990 -- or 200797? It was passed in -- it was amended and passed in February 22nd, 2017.

A Is that the -- what -- do you have a title for that ordinance? Is the one that established the marijuana outlet use?

Q That's precisely what it is.

A Okay.

Q Yes. That's where the ordinance changed from -- changed CUP applications for marijuana consumer cooperatives to the broader term of marijuana outlets. Are you familiar with that?

A Yes.

Q So within that ordinance, it does specifically say that any dispensary or retail licensing requirements are going to be pursuant to the California Business and Professions Code. Correct?

A The state requirements.

Q Yes. So, basically, all the ordinances will be -- they'll refer to the California Business and Professions Code when it comes to licensing. Correct?

A I don't handle the state licensing requirements. So --

Q But it does refer you to the Business and Professions Code of California. Correct?

A If that's what it says in the ordinance, then yes.

Q Is it your understanding that Mr. Geraci, who is sitting before you, was in fact attempting to acquire this CUP on 6176 for himself?

MR. TOOTHACRE: Calls for speculation, your Honor.

THE COURT: Overruled.

THE WITNESS: I don't -- I don't have an answer for that question.

BY MR. AUSTIN:

Q Is that because his name does not appear anywhere in any of the applications for the 6176 property?

A That -- that is correct.

Q Did you ever have any email communications directly with Mr. Geraci?

A I don't recall.

Q Do you recall any phone conversations with Mr. Geraci or sit-down meetings?

A I don't -- I don't recall phone conversations or sit-down meetings.

Q Looking at Mr. Geraci now, do you -- do you believe you've ever met this man?

A I don't believe so.

Q If he were attempting to acquire a CUP using his secretary as a proxy without ever disclosing his name, does that seem like it would be a violation of San Diego law and California state law?

MR. TOOTHACRE: Argumentative, your Honor.

THE COURT: Sustained.

BY MR. AUSTIN:

Q Essentially, anyone with an ownership or financial interest in a marijuana outlet is supposed to be disclosed to the City. Correct?

A You know, looking at the ownership disclosure statement, it's the property owner and then also a tenant/lessee would have to be identified.

Q Right. And that is like an introductory application form.

But are you familiar with the California Business and Professions Code?

A No.

Q Okay. Do you know of any situation where someone with previous sanctions against them for illegal cannabis principals would be barred from acquiring a marijuana outlet CUP?

MR. TOOTHACRE: Vague and ambiguous and assumes facts, your Honor.

THE COURT: Overruled.

BY MR. AUSTIN:

Q That means you can -- you can answer.

A Could you -- I'm sorry. Could you repeat the question?

Q Yeah. Absolutely.

Is it your understanding that if someone had been sanctioned for illegal cannabis dispensary activity, is it your understanding that they would be barred from acquiring a CUP in San Diego?

A I'd have to refer to the Municipal Code. I believe there may be a section in there once you have a conditional use permit, you'd have to go through a background check process.

Q Okay. Do you know what that background check process entails?

A It's a LiveScan and also specific forms that