

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION ONE

AMY SHERLOCK, an individual, Minors  
T.S. and S.S., Andrew Flores, an  
individual,

Plaintiffs and Appellants,

v.

ABHAY SCHWEITZER, an individual,  
JESSICA MCELFRISH, an individual,  
REBECCA BERRY, an individual,  
LARRY GERACI, and individual

Defendants and Respondents.

Court of Appeal Case No.:  
D081839

San Diego County Superior Court  
Case No.:  
37-2021-0050889-CU-AT-CTL

Appeal from the Order by the Honorable James A. Mangione,  
Judge of the Superior Court of California, County of San Diego,  
Entered on December 12,, 2022, Granting Defendant's/  
Respondent's Demurrer/Motion to Strike.

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**APPELLANT'S CONSOLIDATED REPLY BRIEF**

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Amy Sherlock, and Minors T.S. and S.S



## CONSOLIDATED REPLY

Plaintiffs/appellants Amy Sherlock, minors T.S. and S.S. (the “Sherlock Family”), and attorney Andrew Flores hereby file this consolidated reply to respondents Lawrence Geraci, Rebecca Berry, attorney Jessica McElfresh and Abhay Schweitzer’s responses to their Appeal.

- I. **Neither Lawrence Geraci, Rebecca Berry, Jessica McElfresh nor Abhay Schweitzer dispute the material facts establishing that the Strawman Practice is criminally illegal and that their actions furthered a criminal antitrust conspiracy.**

Neither Geraci, Berry, Schweitzer, nor McElfresh dispute the material facts:

(1) Geraci admitted he operated dispensaries in violation of the SDMC in the Geraci Judgments with the last judgment being entered on June 17, 2015. (Opening Brief (Op. Br.) at 3-4; *see, gen.*, Jessica McElfresh Respondent’s Brief (McElfresh Br.); Lawrence Geraci and Rebecca Berry Respondents’ Brief (Geraci & Berry Br.); Abhay Schweitzer Respondent’s Brief (Schweitzer Br.).)

(2) California Business & Professions Code § 19323 went into effect on January 1, 2016 and materially provides that: “A licensing authority *shall* deny an application if ... [t]he applicant, or any of its officers, directors, or owners, has been sanctioned by a city... for unlicensed commercial medical cannabis activities ... in the three years immediately preceding the date the application is filed with the licensing authority.” (Op. Br. at 6; *see, gen.*, McElfresh Br.; Geraci & Berry Br.; Schweitzer Br. (emphasis in original).)

(3) on October 31, 2016 Berry submitted the Berry Application with the City of San Diego that falsely stated that Berry was the owner of the CUP being applied for at the Federal Property when in reality it was Geraci. (Op. Br. at 4-5; *see, gen.*, McElfresh Br.; Geraci & Berry Br.; Schweitzer Br. (emphasis in original).)

(4) that Schweitzer was engaged by Geraci and prepared and submitted the Berry Application falsely stating that Berry was the applicant when in fact it was Geraci. (Op. Br. at 5; *see, gen.*, McElfresh Br.; Geraci & Berry Br.; Schweitzer Br. (emphasis in original).)

(5) that McElfresh represented Geraci before the City of San Diego advocating for its approval and thus Geraci's ownership in the name of Berry via the Strawman Practice. (Op. Br. at 5-6; *see, gen.*, McElfresh Br.; Geraci & Berry Br.; Schweitzer Br. (emphasis in original).)

Geraci sold cannabis without lawful authority. He got caught. BPC § 19323 barred his ownership of a dispensary. BPC § 19323 was the *motive* for Geraci to undertake the Strawman Practice. To effectuate his illegal ownership of a dispensary in the name of Berry, he hired attorney Gina M. Austin, Schweitzer, and McElfresh to prepare, apply and petition for his illegal ownership of a dispensary in the name of Berry.

To date, in multiple federal and state actions not once has any defendant ever explained how Geraci or other of Austin's clients can own a regulated license that

requires background check in the name of a third party. It defies all logic that over fourteen federal and state judges all rely on their previous judgments or the judgments of other judges and never address this point. The *weight* of the numerous judgments and orders, including numerous by this Court, have created the perception that Appellants are making frivolous claims and don't understand the law or the facts.

However, the San Diego Police Department, the federal Department of Justice, and the Federal Bureau of Investigation AGREE with Appellants. But, they have all stated they lack the “jurisdiction” to contradict the judgments of federal and state judges and, as to the SDPD, they lack the money to investigate a criminal conspiracy that spans years and has deceived multiple federal and state judges.

## II. Respondents' Arguments.

### A. Penal Code § 115

On September 9, 2023, this Court filed its decision affirming the granting of defendant attorney Gina M. Austin anti-SLAPP motion. (D081109 (the “Austin Decision”).) In the Austin Decision, Appellants set forth the same facts as those set forth here and argued that Strawman Practice violates Penal Code § 115, to which the Court responded: “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.).” (Austin Decision at \*17.)

Here, the Court has the Geraci Judgments, the Geraci Declaration, and the Responses to Appellants’ Opening Brief which do not deny that they all worked towards Geraci’s ownership of a dispensary via the Strawman Practice in violation of Penal Code § 115.

B. BPC § 19323

Appellants respectfully dispute this Court’s decisions finding that defendants/respondents interpretation of BPC § 19323 means the Department of Cannabis Control (DCC) means has discretion to approve an application by an applicant that does not disclose its principal. (Razuki Decision at 19 (“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.”).)

Respondents misrepresented the plain language of the statute to this Court and omit that subsection (b) of BPC § 19323 applies to APPLICATIONS, while subsection (a) applies to APPLICANTS. (BPC § 19323.) A dispositive and clear distinction.

As to the Court’s misunderstanding of Austin’s conduct not being criminal, the criminality is the purposeful aiding and abetting of the illegal sale of cannabis without lawful authority and through fraudulent documents that are files with state and local government agencies.

On this point, Appellants position is that no legal knowledge is necessary to understand that the DCC cannot grant a license to someone who does not apply and that such approval can be done to an alleged “agent” of a principal. Can a minor buy liquor if he sent an adult to buy it? No. Can a convict barred from gun ownership acquire ownership of a gun if he uses a strawman to complete the purchase? No. It defies belief that the federal and state courts have for years have directly and impliedly held that attorneys and agents can provide their services to commit a crime – the unlicensed sale of cannabis by parties that have no authority to do so via a licensed agent - and that such is not illegal.

C. Respondents’ Other Arguments.

All of Respondents’ arguments fail because the threshold issue is whether they can help Geraci petition to sell cannabis in the name of Berry? The answer is no.

First because as a matter of common sense and law there exists no such thing, and never has, of having a regulated license issued to A in the name of B – that is just straight up simple first year laws school fraud. Second, because Geraci was sanctioned in the Geraci Judgments for unlicensed commercial cannabis activity and BPC § 19323.

### CONCLUSION

The facts and law are clear. Appellants respectfully request that this Court please not be misled by the history of this case. The facts and law are clear. Nobody can secretly own and sell drugs in the name of a third party. No defendants or judge has ever explained how this can happen. Because it can't.

Appellants note that new evidence of the most serious nature has been discovered that evidences that the Sherlock Family's husband and father was murdered and that attorney Gina M. Austin's other clients for whom she admits she undertakes the Strawman Practice, include members of the Mexican Cartel. Appellants respectfully urge this Court to please not be distracted or miss the issue – you can't secretly own and sell cannabis, that is a crime.

Dated: December 5, 2023

Respectfully submitted,  
Law Office of Andrew Flores

By: /s/ Andrew Flores

Andrew Flores  
Attorney for  
Plaintiffs-Appellants

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed Appellants' Reply Brief and attached current Service List with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate

CM/ECF system on December 5,, 2023

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ Andrew Flores

Andrew Flores