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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

8 Plaintiff *in Propria Persona*
9 and Attorney for Plaintiffs
10 Amy Sherlock, Minors T.S.
11 and S.S.

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

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

17 Plaintiffs,

18 vs.

19 GINA M. AUSTIN, an individual;)
20 AUSTIN LEGAL GROUP APC, a California)
21 Corporation; GERACI, an individual;;)
22 REBECCA BERRY, an individual; JESSICA)
23 MCELFRESH, an individual; SALAM)
24 RAZUKI, an individual;)
25 NINUS MALAN, an individual;)
26 FINCH, THORTON, and BAIRD, a Limited)
27 Liability Partnership, JAMES D. CROSBY, an)
28 individual; ABHAY SCHWEITZER, an)
individual and dba TECHNE; JAMES (AKA)
JIM) BARTELL, a California Corporation;)
NATALIE TRANG-MY NGUYEN, an)
individual, AARON MAGAGNA, an individual;)
BRADFORD HARCOURT, an individual;)
EULENTIAS DUANE ALEXANDER, an)
individual; ALLIED SPECTRUM, INC, a)
California corporation, PRDIGIOUS)
COLLECTIVES, LLC a California Limited)
Liability Company; and DOES 1 through 50,)
inclusive,)

Defendants.)

Case No.: 37-2021-00050889-CU-AT-CTL

PLAINTIFFS' OPPOSITION TO
DEFENDANT GINA AUSTIN AND
AUSTIN LEGAL GROUPS
REQUEST FOR ATTORNYES FEES

Date: January 6, 2023
Time: 9:00 a.m.
Dept: C-75
Judge: Hon. James A Mangione
Filed December 3, 2021
Trial: Not Set.

1
2 **I. INTRODUCTION**

3 Plaintiffs – attorney Andrew Flores, Amy Sherlock, and her two minor children, T.S. and S.S.
4 (the “Sherlock Family”) – seek the Court deny defendant attorney Gina Austin’s motion for attorneys’
5 fees and costs pursuant to Code of Civil Procedure section 425.16 (the “anti-SLAPP” statute) on two
6 grounds.

7 First, the Court erred granting Austin’s anti-SLAPP motion holding that her petitioning activity
8 is not illegal as a matter of law. Austin’s petitioning activity - applying for cannabis conditional use
9 permits (CUP) and State of California cannabis licenses for her clients in the name of their agents who
10 falsely state they are the true and sole owners of the CUPs/licenses applied for - is illegal as a matter of
11 law (the “Strawman Practice”). The Court’s order is therefore void as an act in excess of this Court’s
12 jurisdiction as it is contradiction of numerous civil and penal statutes and any rulings or judgments based
13 on same are void as well.

14 Second, because Plaintiffs appealed this Court’s order granting Austin’s anti-SLAPP motion, this
15 case was automatically stayed pursuant to the anti-SLAPP statute. This Court is currently without
16 jurisdiction to proceed with any matter that is related or affected by the legality of the Strawman Practice
17 that was the subject of Austin’s anti-SLAPP motion.

18 Plaintiffs respectfully request the Court vacate its void orders that give effect and ratify the illegal
19 Strawman Practice pursuant to its inherent authority to vacate void orders and judgments.

20 **II. Material Factual and Procedural Background.**

21 **A. *California’s cannabis licensing statutes and regulations and applicable penal statutes.***

22 The California Legislature set forth in California Business & Professions Code (BPC) §
23 26055(a), former § 19320(a), that the Department of Cannabis Control (DCC) “may issue state licenses
24 only to qualified applicants.” The Legislature mandated that the DCC “*shall deny* an application if the
25 applicant has been sanctioned by a city for unauthorized commercial cannabis activities in the three years
26 immediately preceding the date the application is filed with the [DCC].” The California Legislature also
27 passed BPC § 26053, former § 19320(a), that states: “All commercial cannabis activity shall be
28 conducted between licensees.”

1 **B. *Austin’s anti-SLAPP motion.***

2 Attached hereto as Exhibit 1 are pages 17-18 of Austin’s anti-SLAPP motion that the Court
3 granted. Materially, it argues that:

4 Plaintiffs allege that Austin’s “[Strawman] Practice is illegal and violates numerous State
5 and City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq.” (FAC, ¶ 314.)
6 Business and Professions Code section 26057, formerly section 19323, states the licensing
7 authority “shall deny an application if either the applicant, or the premises for which a state
8 license is applied, do not qualify for licensure under this division.” (Bus. & Prof. Code, §
9 26057.) The statute goes on to list specific conditions that may constitute grounds for denial
10 of licensure or renewal. (Ibid, emphasis added.)

11 Plaintiffs’ entire argument backing their “Proxy Practice” allegation rests on their asserted
12 fact that Geraci and Razuki were ineligible to own a cannabis license or CUP due to
13 previously being sanctioned for unlicensed commercial cannabis activities. What
14 Plaintiffs’ do not mention is that although this type of sanction could be grounds for denial,
15 section 26057 allows the licensing authority to decide based on all the circumstances. A
16 plain reading of the statute shows there is no one condition that constitutes an automatic,
17 outright denial. The statute gives the licensing authority complete discretion to weigh
18 factors and decide what may constitute grounds for denial.

19 Ex. 1 at 17:24-18:10.

20 **III. Argument**

21 The Court has the inherent power to reconsider and vacate its own orders and judgments if they
22 are void. (*Wiencke v. Bibby* (1910) 15 Cal.App. 50, 53, 113 P. 876 [“The power of a court to vacate a
23 judgment or order void upon its face is not extinguished by lapse of time, but may be exercised whenever
24 the matter is brought to the attention of the court. . . . The court has full power to vacate such action on
25 its own motion and without application on the part of anyone.”]; *State of California v. Superior Court*
26 (*Flynn*) (2016) 4 Cal.App.5th 94, 100, 208 Cal. Rptr. 3d 501 [“Even without a change of law, a trial
27 court has the inherent power to reconsider its prior rulings on its own motion at any time before entry of
28 judgment.”].)

29 **A. *The Strawman Practice is illegal pursuant to the plain language of BPC §§ 19323/26057 –***
30 ***“shall deny” cannot be interpreted as Austin argues as “may deny.”***

31 First, there is no statute, regulation, case law, or legal doctrine that has ever allowed any attorney
32 to file an application for any type of regulated license for a principal in the name of agent with knowing
33 false statements. California Penal Code § 115(a) provides: “Every person who knowingly procures or
34

1 offers any false or forged instrument to be filed, registered, or recorded in any public office within this
2 state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or
3 of the United States, is guilty of a felony.” It is a felony for Austin to submit applications with State of
4 California and City of San Diego cannabis licensing agencies for her clients/principals under the name
5 of her clients’ agents/strawmen and falsely certify that the agents/strawmen are the true and sole owners
6 of the CUPs/licenses applied for.

7 Second, leaving the realm of logic, assuming somehow Austin’s clients – specifically defendants
8 Lawrence Geraci and Salam Razuki – could own a regulated CUP/license in the name of a strawman
9 without disclosing them as the principals and owners; it would still be illegal. Geraci and Razuki are
10 barred from licensure for being sanctioned for unlicensed commercial cannabis activities. Austin’s
11 argument that BPC §§ 19323/26057 “gives the licensing authority complete discretion to weigh factors
12 and decide what may constitute grounds for denial” is contradicted by the plain language of “shall deny”
13 of BPC §§ 19323/26057.

14 “The fundamental task of statutory construction is to ascertain the intent of the lawmakers so as
15 to effectuate the purpose of the law.” (*People v. Cruz* (1996) 13 Cal.4th 764, 774-775 (*Cruz*) (quotation
16 omitted).) “When, as here, statutory language is clear and unambiguous there is no need for construction,
17 and courts should not indulge in it.” (*Cal. Fed. Sav. & Loan Ass'n v. City of L.A.*, 11 Cal. 4th 342, 349
18 (1995) (cleaned up).)

19 The Court should not believe Austin’s misrepresentation of the law – the Strawman Practice is
20 an illegal business practice by Austin to aid her clients in illegally acquiring lucrative cannabis
21 businesses. Cannabis businesses that they cannot own as a matter of law specifically because they have
22 been sanctioned for operating illegal dispensaries – unlicensed commercial cannabis activities.

23 Austin’s service agreements to petition State and City government agencies for cannabis permits
24 via fraudulent applications are illegal service agreements intended to violate the law. “No principle of
25 law is better settled than that a party to an illegal contract cannot come into a court of law and ask to
26 have his illegal objects carried out.” *Wong v. Tenneco* (1985) 39 Cal.3d 126, 135.¹

27 _____
28 ¹ Plaintiffs respectfully note a complaint and demand have been filed with the DCC that they intervene
in this matter to aid the Court in understanding Austin’s Strawman Practice is illegal. If action by the

1 **B. This case is stayed pending resolution of Plaintiffs’ appeal of this Court’s granting of**
2 **Austin’s anti-SLAPP motion.**

3 The anti-SLAPP statute provides that: “An order **granting** or denying a special motion to strike
4 shall be appealable under Section 904.1.” (Code of Civ. Proc. § 425.16(i) (emphasis added).) Code of
5 Civil Procedure section 916, subdivision (a) provides in pertinent part: “[T]he perfecting of an
6 appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters
7 embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court
8 may proceed upon any other matter embraced in the action and not affected by the judgment or order.”
9 (Code Civ. Proc., § 916(a).) “The purpose of the automatic stay provision of section 916, subdivision
10 (a) is to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided.
11 The automatic stay prevents the trial court from rendering an appeal futile by altering the appealed
12 judgment or order by conducting other proceedings that may affect it.” (*Varian Med. Sys., Inc. v. Delfino*,
13 35 Cal. 4th 180, 189 (2005) (cleaned up).)

14 “Under section 916, the trial court is divested of subject matter jurisdiction over any matter
15 embraced in or affected by the appeal during the pendency of that appeal. The effect of the appeal is to
16 remove the subject matter of the order from the jurisdiction of the lower court. **Thus, that court is**
17 **without power to proceed further as to any matter embraced therein until the appeal is determined.**
18 (*Id.* at 196-97 (cleaned up).)

19 The gravamen of this case and the anti-SLAPP motion is the legality of the Strawman Practice
20 which is the subject of the appeal. This Court is without jurisdiction to proceed in this matter on any
21 matter “embraced” by the appeal (i.e., the legality of the Strawman Practice), which includes the instant
22 motion for attorneys’ fees and costs. (*Id.*)

23 **C. The Court should vacate its orders giving effect to the Strawman Practice and those**
24 **issued since the perfecting of Plaintiffs’ appeal of the granting of Austin’s anti-SLAPP**
25 **motion.**

26 As set forth above, the Strawman Practice is illegal and this case has been stayed since the
27 perfecting of Plaintiffs’ appeal of the anti-SLAPP motion. Plaintiffs respectfully request that this Court
28 reconsider the legality of the Strawman Practice pursuant to its inherent authority. Alternatively, that it
DCC is not quickly forthcoming, a writ of mandate will be filed against the DCC to enjoin Austin and
the City of San Diego from continuing to apply and issue cannabis CUPs via the Strawman Practice.

1 vacate its orders since the perfecting of Plaintiffs' appeal of the order granting Austin's anti-SLAPP
2 motion and stay the action pending resolution of the appeal.

3 **IV. Conclusion**

4 For the reasons outlined above the court should deny Defendant's request for attorney's fees.

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6
7 DATED: December 21, 2022

Respectfully submitted,
LAW OFFICE OF ANDREW FLORES

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11 ANDREW FLORES,ESQ
12 Plaintiff *in Propria Persona*
13 and Attorney for Plaintiffs
14 Amy Sherlock, Minors T.S.
15 and S.S.
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Exhibit 1

- 1 • Unlawfully applying for or acquiring CUPs through the use of proxies: Paragraph 119 of
2 the FAC alleges that Austin, Bartell and Schweitzer were hired by Geraci to prepare and
3 submit a CUP application in the name of Geraci’s assistant, Berry (the “Berry CUP
4 Application”). Other than this conclusory allegation, Plaintiffs have provided no evidence
5 supporting it, as to Austin. (See FAC, Exh. 3, the Berry CUP Application [showing it was
6 signed and submitted by Schweitzer].)
- 7 • Unlawfully applying for or acquiring CUPs through forged documents: This allegation has
8 nothing to do with Austin as it relates to Plaintiff Sherlocks claims against defendants
9 Lake and Harcourt. (See FAC, ¶¶ 64-99 and 285-301.)
- 10 • Sham litigation: This allegation is in regards to the action filed by Geraci against Cotton
11 (Cotton I). (See FAC, ¶ 316.) Austin’s only role in it was testifying. (See FAC, ¶¶ 202,
12 204.)
- 13 • Acts and threats of violence: There are no allegations in the FAC of threats or violence
14 against Austin. (See FAC, ¶¶ 215-224 [alleging defendants Alexander and Stellmacher
15 threatened Cotton]; FAC, ¶¶ 225-238 [alleging defendant Magagna threatens Young].)
16 Thus, Plaintiffs’ conspiracy to monopolize in violation of the Cartwright Act claim should
17 be stricken.

18 **4. The Unfair Competition and Unlawful Business Practices Claims Fails**

19 The Unfair Business Practices Act shall include “any unlawful, unfair, or fraudulent
20 business act or practice.” (Bus. & Prof. Code, § 17200.) A plaintiff alleging unfair business
21 practices under these statutes must state with reasonable particularity the facts supporting the
22 statutory elements of the violation. (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th
23 612, 619.)

24 Plaintiffs allege that Austin’s “Proxy Practice is illegal and violates numerous State and
25 City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq.” (FAC, ¶ 314.) Business and
26 Professions Code section 26057, formerly section 19323, states the licensing authority “shall
27 deny an application if either the applicant, or the premises for which a state license is applied, do
28 not qualify for licensure under this division.” (Bus. & Prof. Code, § 26057.) The statute goes on

1 to list specific conditions that *may* constitute grounds for denial of licensure or renewal. (*Ibid*,
2 emphasis added.)

3 Plaintiffs' entire argument backing their "Proxy Practice" allegation rests on their asserted
4 fact that Geraci and Razuki were ineligible to own a cannabis license or CUP due to previously
5 being sanctioned for unlicensed commercial cannabis activities. What Plaintiffs' do not mention
6 is that although this type of sanction could be grounds for denial, section 26057 allows the
7 licensing authority to decide based on all the circumstances. A plain reading of the statute shows
8 there is no one condition that constitutes an automatic, outright denial. The statute gives the
9 licensing authority complete discretion to weigh factors and decide what *may* constitute grounds
10 for denial.

11 Further, it is unclear as to how Austin could be implicated for violation of this statute as it
12 does not apply to her. Section 26057 appears to be guidelines for a licensing authority to follow
13 when reviewing applications for cannabis licenses and CUPs. Austin takes no part in reviewing,
14 approving or denying such applications.

15 Consequently, Plaintiffs have not properly alleged a claim for unfair business practices,
16 which requires Plaintiffs to state with reasonable particularity the facts supporting the statutory
17 elements of the violation. (See *Khoury v. Maly's of California, Inc.*, *supra*, 14 Cal.App.4th at
18 619.) As it stands, Plaintiffs have not pled a statute, its elements, and any facts to support Austin's
19 violation of said statute. Thus, Plaintiffs unfair competition and unlawful business practices claim
20 should be stricken.

21 **5. Plaintiffs' Civil Conspiracy Claim is Legally Defective**

22 A complaint for civil conspiracy states a cause of action only when it alleges the
23 commission of a civil wrong that causes damage; although conspiracy may render additional
24 parties liable for the wrong or increase the damages for which any one conspirator is liable, the
25 conspiracy itself, no matter how atrocious, is not actionable without the wrong. (*Okun v. Superior*
26 *Court* (1981) 29 Cal.3d 442, 454.) The civil wrong must consist of acts that would give rise to a
27 cause of action independent of the conspiracy. (*Zumbrun v. Univ. of S. Cal.* (1972) 25 Cal.App.3d
28 1, 12; See also *Harrell v. 20th Century Ins. Co.* (9th Cir. 1991) 934 F.2d 203, 208 [civil

1 conspiracy claim failed because underlying cause of action for fraud was barred by the statute of
2 limitations].)

3 If a party is legally incapable of committing the underlying tort, that party cannot be liable
4 for conspiracy to commit the tort. (*1-800-Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568,
5 590 [party who owed no fiduciary duties to plaintiff found not liable for conspiracy to induce
6 breach of fiduciary duties owed by another]; See also *Chavers v. Gatke Corp.* (2003) Cal.App.4th
7 606, 614 [defendant not liable for conspiracy unless he owes plaintiff a duty that is independent
8 of conspiracy].) In addition, if the underlying tortious act was privileged, an allegation that the act
9 was committed as a part of a conspiracy will not revive an action that would otherwise be barred.
10 (*Nicholson v. McClatchy Newspaper* (1986) 177 Cal.App.3d 509, 521.)

11 First and foremost, Plaintiffs have not alleged facts sufficient to prove a conspiracy. There
12 are no facts proving that Austin created or was a participant in any common plan, scheme or
13 design. There are no facts proving that Austin agreed to be a part of a conspiracy or that her acts
14 were in furtherance of a conspiracy.

15 Additionally, even if Plaintiffs did properly plead a conspiracy (they did not), this claim
16 still fails. Plaintiffs cannot prevail on any of the underlying tort claims upon which the conspiracy
17 claim is based. Because a bare conspiracy is not actionable, Plaintiffs could only prevail on this
18 claim if they showed that they had a probability of prevailing on one or more of the torts upon
19 which the conspiracy claim is predicated. Their failure to show a probability of success on any of
20 the underlying tort claims therefore bars Plaintiffs' conspiracy claims as a matter of law.

21 Furthermore, as explained above, the litigation privilege applies. In other words, the acts
22 complained of by Plaintiffs were privileged. Therefore, Plaintiffs cannot try to revive an action
23 against Austin by alleging her acts were committed as part of a conspiracy. Thus, Plaintiffs civil
24 conspiracy claim fails.

25 V.

26 **CONCLUSION**

27 Plaintiffs' claims against Austin arise from her petitioning the local zoning authority, on
28 behalf of her clients. Because the claims all arise from protected petitioning activity, Defendants