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Via Electronic Email

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*San Diego Police Department*  
Joel Tien, jtien@pd.sandiego.gov

Cc: *Real News Public Relations: Jeffcrilley@realnewspr.com, Lauramartin@realnewspr.com*

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**Re: Illegal acquisition and operation of cannabis businesses in the City and County of San Diego in violation of California Business & Professions Code §§ 26038 and 26057, the Unfair Competition Law, and the Cartwright Act; judicial misconduct; California Department of Cannabis Control Complaint No. 4686.**

All:

My name is Andrew Flores. I am an attorney, a solo practitioner based in San Diego, California. This email communication is a legal complaint and a legal demand. Further, plainly stated, a request for help to the government agencies that can or must take action to cease the criminal activity described herein and to the non-government agencies receiving this email that can hopefully bring public attention to

ongoing criminal activity that represents an issue of grave public concern.

I am writing on behalf of Amy Sherlock, her minor children, T.S. and S.S. (the “Sherlock Family”), Darryl Cotton, Jacob Austin, Joe Hurtado, myself and, as further explained below, numerous other similarly situated individuals who have been damaged by criminal activity. The specific criminal activity is the illegal acquisition and operation of cannabis businesses by wealthy parties in the City and County of San Diego (the “City”). This constitutes criminal activity because the acquisition of the necessary local permits and state licenses to engage in commercial cannabis activity are applied for and acquired via the legal services of attorney Gina Austin and her law firm, the Austin Legal Group, APC (ALG) which specifically conspired with their clients to withhold disclosure of the actual owners of the applications. ALG has a business practice of applying for and acquiring local cannabis permits and state licenses for its clients (principals) in the name of its clients’ partners or strawmen who do not disclose their principals and their ownership interests (the “Strawman Practice”).

First and foremost, the Strawman Practice is an illegal business practice because the permits and licenses are acquired via fraudulent applications submitted to state and local cannabis licensing agencies, under penalty of perjury, that purposefully fail to disclose the true owners.<sup>1</sup> Second, the Strawman Practice is illegal, and the reason why ALG undertakes the Strawman Practice in the first place, because ALG’s clients have had judgments entered against them and have been fined for operating illegal dispensaries. Consequently, they are barred by California Business & Professions Code (BPC) § 26057, former § 19323, from owning cannabis businesses for three years from the date of their last sanction for engaging in “unauthorized commercial cannabis activities.”

To state this very plainly, ALG’s clients got caught operating illegal dispensaries and they can’t own a legal cannabis business for three years from the date of their last sanction. To break the law, they engaged ALG so they can acquire illegal, undisclosed ownership of cannabis businesses via the Strawman Practice. The motive for ALG’s clients and ALG’s services is easy to understand, greed. The cannabis market is highly lucrative.

“California law requires a state license for commercial cannabis activity.”<sup>2</sup> As noted, a party is prohibited from owning a state license if they have been sanctioned in the preceding three years pursuant to BPC § 20657. “Commercial cannabis activity is unlawful without a state license and (where required)

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<sup>1</sup> The submission of applications for cannabis permits and licenses with state and local licensing agencies by agents/strawmen that falsely state the agents/strawmen have disclosed all owners and omit their principals and their ownership interests violates, among numerous other civil and criminal statutes, California Penal Code §115 (perjury) and § 118 (false documents liability). Furthermore, the Strawman Practice also necessarily constitutes tax fraud and tax evasion because there is no lawful manner for the principals to report income from their secret, undisclosed ownership of cannabis businesses without making deceitful or fraudulent statements in tax returns. (*See, e.g., Kawashima v. Holder*, 565 U.S. 478, 492-93 (2012) (“The elements of tax evasion are the existence of a tax deficiency, willfulness, and an affirmative act constituting an evasion or attempted evasion of the tax. As this Court’s decisions indicate, the evasion of taxes involves deceit or fraud upon the Government, achieved by concealing a tax liability or misleading the Government as to the extent of the liability. Accordingly, courts have determined that tax evasion is a crime of moral turpitude, because it necessarily involves fraud.”) (cleaned up).) The Strawman Practice also violates the Unfair Competition Law (UCL) and the Cartwright Act.

<sup>2</sup> *Lang v. Petaluma Hills Farm*, No. A156614, 2020 Cal. App. Unpub. LEXIS 7702, at \*1 (Nov. 20, 2020) (Citing Bus. & Prof. Code, §§ 26038 [civil penalties for engaging in commercial cannabis activity without a license]; 26053 [license required for all commercial cannabis activity].)

a local permit.”<sup>3</sup> Therefore, ALG’s Strawman Practice of aiding and abetting her clients in “*engaging in unlicensed commercial cannabis activity is a crime*”<sup>4</sup> in violation of BPC § 26038 and numerous other state and federal civil and criminal statutes.

On December 5, 2022, the Court awarded more than \$128,000,000 in civil penalties against “against businesses and individuals that were engaged in unlicensed commercial cannabis activity” in violation of BPC § 26038 in *Cal. Dep’t of Pub. Health v. Vertical Bliss (Vertical)*.<sup>5</sup> In *Vertical*, defendants acquired a license to manufacture cannabis products, then they secretly opened up a second manufacturing facility and operated that second manufacturing facility without a license. Notably, defendants in *Vertical* admitted that they engaged in unlicensed commercial cannabis activity and they were fined for each day they operated without a license.

Here, legally identically, ALG’s clients are acquiring a license to engage in lawful commercial cannabis activity, but there are undisclosed owners of these businesses that are engaging in commercial cannabis activity without a license. Just as in *Vertical*, this is engaging in unlicensed commercial cannabis activity as is a crime. The simplicity of this cannot be overstated.

### **Judicial cases raising the issue of illegality of the Strawman Practice.**

As incredible and as hard to believe as this sounds, and the catalyst for this email, ALG and its wealthy clients, and their respective numerous high-profile attorneys, have been successful in arguing that the Strawman Practice is not illegal before the state and federal courts. The Strawman Practice has given rise to numerous state and federal lawsuits by various parties (the “Strawman Cases”).

The argument that the Strawman Practice is illegal and in violation of California’s cannabis licensing laws has been made by numerous attorneys and law firms. I was the only one was naïve enough to believe in the “law” and that state and federal judges would eventually admit they had made an error in finding directly or indirectly the Strawman Practice is lawful and I have continued to seek to achieve justice and vindicate the rights of my clients and myself.<sup>6</sup>

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<sup>3</sup> *Id.* at \*2 (citing Bus. & Prof. Code, §§ 26032, subd. (a)(1)-(2), 26038, 26055, subd. (d).)

<sup>4</sup> *Wheeler v. Appellate Div. of Superior Court*, 72 Cal. App. 5th 824, 833 (2021) (citing Bus. & Prof. Code, § 26038, subd. (c)) (cleaned up, emphasis added).

<sup>5</sup> The DCC released a press release regarding *Vertical* and the \$128,000,000 win that can be found online at: <https://cannabis.ca.gov/2022/12/dcc-wins-court-judgement-against-illegal-cannabis-market/>

<sup>6</sup> To be blunt, I attempted to extricate myself from this mess. However, I solicited the Sherlock Family to bring forth suit alleging the Strawman Practice is illegal. I contacted the California Bar Ethics Hotline as well as consulted with various Professional Responsibility attorneys and I am legally and ethically obligated to continue to seek to vindicate the rights of my clients even in the face of adverse rulings if those rulings are void. And even if I believe the presiding judges are biased and will hold me in civil contempt and jail me. Further, if the Strawman Practice is not declared illegal, the Sherlock Family will believe that I fraudulently induced them to file suit against numerous parties alleging the Strawman Practice is illegal. In short, the Strawman Practice is illegal, any judgments and orders condoning, ratifying or enforcing the Strawman Practice as lawful are void as acts in excess of a court’s jurisdiction. I must therefore continue to zealously advocate for my clients, cannot abandon their representation or take legal positions without factual or legal justification even in the face of adverse judgments and rulings (i.e., the Strawman Practice is lawful), even if I am going to be held in civil contempt. See *Heasley v. United States*, 312 F.2d 641, 649 (8th Cir. 1963) (a party cannot be held in civil contempt for disobeying a court order that is void).

As shown in the hyperlinks below is a true and correct copy of the Ex Parte Application for Order Shortening Time on (1) Motion to Vacate Order or, (2), Alternatively, a Stay of Action (the “Motion to Vacate”) in *Flores, et. al. v. Austin, et. al.*, United States District Court, Southern District of California, Case No. 20-CV-000656. The Motion to Vacate demonstrates that the Strawman Practice is illegal, provides material evidence that it is taken in furtherance of a conspiracy by ALG and its clients, and that ALG’s arguments justifying the ownership of a sanctioned client in violation of BPC § 26057 are without any factual or legal justification and are as a matter of common sense and law completely absurd. This is ALG’s argument in its own words: “A plain reading of the statute [BPC § 20657] shows there is no one condition that constitutes an automatic, outright denial. ***The statute gives the licensing authority complete discretion to weigh factors and decide what may constitute grounds for denial.***”<sup>7</sup>

First and foremost, ALG’s argument makes no sense because it ignores the fact that even by its own reasoning, that the DCC has “complete discretion” to deny an application, it is a factual impossibility for the DCC to apply any alleged permissive criteria to exercise its alleged “complete discretion” to an applicant that is not disclosed in the application.<sup>8</sup> *There has never been any argument, judgment or ruling in any Strawman Case by any party or judge that has ever addressed this issue – how the DCC can exercise its discretion to grant an application to an applicant that is not an applicant.*

Second, the DCC does not have “complete discretion” and must, pursuant to the plain language of BPC § 26057 that states “shall deny”, deny an application from an applicant who has been sanctioned for unlicensed commercial cannabis activity (e.g., operating an illegal dispensary) in the three years preceding an application filed for a license.

ALG’s arguments are without any factual or legal justification. Again, even someone without any legal knowledge would understand that this defense to engaging in criminal activity is a self-serving, nonsensical argument. Notwithstanding the simplicity of the illegality of the Strawman Practice, the Motion to Vacate was denied on the underlying premise that the Strawman Practice is not illegal and that judgments and orders enforcing the criminal Strawman Practice are not void as acts in excess of the Court’s jurisdiction. (As shown in the hyperlinks below is a true and correct copy of the order denying the Motion to Vacate.)

This is the situation that the Sherlock Family, numerous other parties, and I find ourselves in. Attempting to prove the Strawman Practice is illegal in the face of numerous judgments and orders in the State and Federal courts that have found directly or indirectly that the Strawman Practice is not illegal. The Sherlock Family, numerous other parties, and I have already been ordered to pay over \$100,000 in attorneys’ fees to ALG, and more attorneys’ fees will be awarded, for daring to seek to establish the Strawman Practice is illegal in contradiction of judgments and orders entered by judges who have uniformly refused to explain why the Strawman Practice is illegal.

Materially, various parties, including myself, have alleged the Strawman Practice is undertaken by ALG as an illegal practice on behalf of its clients with the goal of creating a monopoly in the cannabis market in the City based on the fact that (i) the vast majority of the limited cannabis licenses in the City have gone to clients of ALG; and (ii) an employee of one of ALG’s clients was present and has stated in

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<sup>7</sup> See hyperlink (Motion to Vacate) at 21:

<sup>8</sup> “Commercial cannabis activity is unlawful without a state license and (where required) a local permit.” *Lang v. Petaluma Hills Farm*, No. A156614, 2020 Cal. App. Unpub. LEXIS 7702, at \*1-2 (Nov. 20, 2020) (citing BPC §§ 26032, subd. (a)(1)-(2), 26038, 26055, subd. (d).)

an interview that he was present when attorney Austin and her clients explicitly discussed their plans to create a monopoly (the “Antitrust Conspiracy”).

Further, that some of ALG’s clients have unlawfully defrauded certain parties of their ownership rights to cannabis permits/licenses through forged documents (for example, the Sherlock Family). Further still, that the actions taken in furtherance of the Antitrust Conspiracy by ALG, its clients and their agents include threats and acts of violence against litigants and third-party witnesses to prevent exposure of their criminal acts. However, and this point cannot be overemphasized enough, this email is not seeking to prove the allegations of acts and threats of violence or other allegations of unlawful behavior by ALG and its clients as set forth in the Motion to Vacate and the related pleadings described therein. This email is a complaint/demand focused *solely* on the fact that the Strawman Practice *is* taking place, it *is* illegal, and it *is* an issue of grave public importance that requires immediate action by law enforcement agencies and the DCC.

The need for the Strawman Practice to be declared illegal is an issue of public concern that must be addressed because, among other reasons, it represents an ongoing criminal conspiracy that is being effectuated through federal and state cannabis licensing agencies that is being ratified by the federal and state courts. It *has* and *is* going to cost the federal and state tax-payers millions of dollars to enjoin and vindicate the rights of the public and of the private parties damaged by ALG and its clients who undertook the Strawman Practice.

Furthermore, establishing the illegality of the Strawman Practice will, along with other facts that can already be established, lead to the only reasonable conclusion even by a criminal standard - beyond a reasonable doubt - that the allegations of acts and threats of violence are true. They were taken to avoid criminal and civil liability and constitutes egregious Civil Rights violations of all parties involved. This kind of activity, threatening, harassing, and bribing witnesses are serious allegations that have been declared under penalty of perjury by numerous parties and which have never been addressed.

It is my sincere hope that the Federal and State Departments of Justice, the FBI, the San Diego Police Department, and the DCC, upon confirming that ALG is in fact admitting to taking the Strawman Practice, but nonsensically arguing it is not illegal, will take seriously the allegations that numerous parties have had acts and threats of violence taken against them and their families.

As *Vertical* shows, even without taking into account criminal liability, the civil penalties for engaging in unauthorized commercial cannabis activities can be over \$100,000,000. It is reasonable to understand such liability can be more than sufficient motive for ALG and its clients to take the alleged acts and threats of violence against litigants and third-party witnesses. As set forth in the Motion to Vacate, there is evidence to support the possibility that ALG’s clients may have had a role in the death of the Michael Sherlock – the husband and father of the Sherlock Family. After Mr. Sherlock’s death, ALG’s clients ended up owning Mr. Sherlock’s interests in cannabis permits for two cannabis dispensaries and the real property at which one of the dispensaries operated that are collectively valued at over \$10,000,000.

The Motion to Vacate, ruling denying the motion, and the supporting declarations and Requests for Judicial Notice of the documents cited in the motion are too voluminous to attach. Links to the motions and supporting documents are provided here below for ease of reference.

*Ex parte application to vacate judgment:* [https://151farmers.org/wp-content/uploads/2018/04/22-10-12\\_-EP-Application-Motion-to-Vacate-ROA-43.0.pdf](https://151farmers.org/wp-content/uploads/2018/04/22-10-12_-EP-Application-Motion-to-Vacate-ROA-43.0.pdf)

*Andrew Flores Affidavit:* [https://151farmers.org/wp-content/uploads/2018/04/22-10-12\\_-Flores-](https://151farmers.org/wp-content/uploads/2018/04/22-10-12_-Flores-)

[Affidavit-ROA-43.1.pdf](#)

*Amy Sherlock Affidavit:* [https://151farmers.org/wp-content/uploads/2018/04/22-10-12\\_Sherlock-Affidavit-ROA-43.2.pdf](https://151farmers.org/wp-content/uploads/2018/04/22-10-12_Sherlock-Affidavit-ROA-43.2.pdf)

*Request for Judicial Notice I:* [https://151farmers.org/wp-content/uploads/2018/04/22-10-13\\_RJN-Volume-I-ROA-44.pdf](https://151farmers.org/wp-content/uploads/2018/04/22-10-13_RJN-Volume-I-ROA-44.pdf)

*Request for Judicial Notice II:* [https://151farmers.org/wp-content/uploads/2018/04/22-10-13\\_RJN-Volume-II-ROA-45.pdf](https://151farmers.org/wp-content/uploads/2018/04/22-10-13_RJN-Volume-II-ROA-45.pdf)

*Request for Judicial Notice III:* [https://151farmers.org/wp-content/uploads/2018/04/22-10-13\\_RJN-Volume-III-ROA-46.pdf](https://151farmers.org/wp-content/uploads/2018/04/22-10-13_RJN-Volume-III-ROA-46.pdf)

*Order Denying Sherlock's Motion to Vacate:* <https://151farmers.org/wp-content/uploads/2018/04/ECF-48.pdf>

### **Demand**

In *Farmer*, a petition for writ of mandate against the DCC, the court addressing the issue of standing said:

The Court finds that the [DCC's] compliance with the MAUCRSA/Proposition 64 is a strong public duty, that the interpretation and scope of the law is strongly in the public interest, and that Petitioner is seeking to procure enforcement of the [DCC's] duty to comply with MAUCRSA/Proposition 64, the proposition's purpose and intent.

*Farmer v. Bureau of Cannabis Control*, 2020 Cal. Super. LEXIS 3579, \*19-20.

This plain language means that anybody can bring forth suit in the City against the City and the DCC to ensure that they are abiding by California's cannabis licensing laws. As noted, this email is a complaint and demand to the DCC and the City. This demand to the DCC and the City requires that they take all necessary steps required by law to cease and enjoin the illegal Strawman Practice that is being effectuated via the City and the DCC.

Further, that the DCC and the City intervene in (i) *Flores, et. al. v. Austin, et. al.*, United States District Court, Southern District of California, Case No. 20-CV-000656 and (ii) *Sherlock, et. al., v. Austin, et al.*, Superior Court of California, San Diego, Case No. 37-2021-00050889 and represent to the Federal and State that the Strawman Practice *does* violate State and City cannabis licensing laws, regulations and public policies. That it is in fact illegal because “***engaging in unlicensed commercial cannabis activity is a crime.***”<sup>9</sup>

In response to the communication by Monica Favreau, the analyst for the DCC in charge of DCC Complaint No. 4689 (demanding the DCC enjoin ALG's Strawman Practice and intervene in ongoing judicial actions in which the Strawman Practice is being declared not illegal), the following are the addresses at which ALG's clients have directly admitted they have undisclosed ownership interests.

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<sup>9</sup> *Wheeler v. Appellate Div. of Superior Court*, 72 Cal. App. 5th 824, 833 (2021); BPC §§ 26038 [civil penalties for engaging in commercial cannabis activity without a license]; 26053 [license required for all commercial cannabis activity].)

Ninus Malan at 8864 Balboa Avenue, Ste. E, San Diego, CA 92123 (Balboa Property).  
Abhay Schweitzer at 6220 Federal Boulevard, San Diego, CA 92114 (Federal Property).

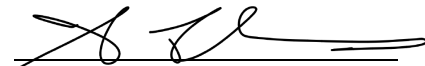
On behalf of the Sherlock Family, myself and other similarly situated individuals, we respectfully demand that the DCC and the City, each separately respond to this email **no later than 5:00 P.M. on January 17, 2023**. We respectfully demand the DCC and the City respond and recognize the Strawman Practice is illegal and state what steps they will respectively take to cease and enjoin the Strawman Practice. Furthermore, an estimated timeline for intervening in the named matters above to state that ALG's Strawman Practice is prohibited by State and City laws and regulations.

The complexity of the facts and current procedural posture is complex. However, the illegality of ALG's Strawman Practice is not. California's cannabis public policies regarding cannabis licensing are founded on the principles of transparency, which the Strawman Practice clearly violates.<sup>10</sup>

Lastly, although this correspondence is a legal "demand," I and the parties on whose behalf I am writing respectfully request that the parties receiving email take whatever action they can to aid us. ALG and its clients are wealthy, take acts and threats of violence, and they have outlitigated us for years. But they have done so without a single fact in their favor. I cannot explain the adverse judicial rulings with 100% certainty, but I don't need to. Whether there is purposeful or negligent judicial misconduct at issue, judgements and orders that enforce the illegal Strawman Practice and therefore deprive victims of acts and threats of violence from having their day in court are void.

This situation is one that defies belief given the simplicity of the illegality of the Strawman Practice. Any and all help with contact information for additional government or non-government entities that can provide support will be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Flores', written over a horizontal line.

Andrew Flores, Esq.

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<sup>10</sup> See *Racioppi v. Bosov*, No. 2:20-cv-03797-FMO-JC, 2021 U.S. Dist. LEXIS 185551, at \*6 (C.D. Cal. Mar. 12, 2021) (“Although the Court has not fully digested the pertinent Ordinance and BCC provisions and what they require, such provisions generally appear to **require transparency regarding the ownership of entities dispensing cannabis.**”) (emphasis added).