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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/22/2023 at 09:57:00 AM
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 **CENTRAL DIVISION**

15 AMY SHERLOCK, et. al.

16 Plaintiffs,

17 vs.

18 GINA M. AUSTIN, et.al.

19 Defendants.

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

PLAINTIFFS' NOTICE OF EX PARTE
APPLICATION AND EX PARTE
APPLICATION FOR STAY OF ACTION

Date: February 23, 2023

Time: 8:30am

Dept: C-75

Judge: Hon. James A. Mangione

20 **TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF**
21 **RECORD:**

22 Plaintiffs – attorney Andrew Flores, Amy Sherlock and her two minor children, T.S. and S.S. (the
23 “Sherlock Family”) – hereby apply to this Court ex parte for an order seeking a stay of this action pursuant
24 to Cal. Code of Civ. Proc. § 916 (the “Application”).

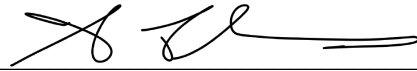
25 Good cause exists to grant this Application because this case was automatically stayed pursuant
26 to Cal. Code of Civ. Proc. § 916 when Plaintiffs perfected their appeal from this Court’s order granting
27 defendants Gina Austin and the Austin Legal Group’s (collectively, “ALG”) motion to strike Plaintiffs
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1 First Amended Complaint (“FAC”) pursuant to Code of Civil Procedure Section 425.16 (the Anti-SLAPP
2 statute) (the “Motion).

3 This Application is based on this notice, the accompanying memorandum of points and
4 authorities, the Declaration of Andrew Flores, the entire record in this matter, and on such further
5 evidence as will be presented at the hearing for this Application.

6 On February 22, 2023, counsel for Plaintiffs provided notice to all parties of this Application.
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8 Law Offices of Andrew Flores

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11 ANDREW FLORES, ESQ.

12 Plaintiff *In Propria Persona*, and Attorney for
13 Plaintiffs AMY SHERLOCK, and Minors T.S. and
14 S.S.
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INTRODUCTION

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Plaintiffs – attorney Andrew Flores, Amy Sherlock, and her two minor children, T.S. and S.S. (the “Sherlock Family”) – hereby move this Court to stay this action pursuant to Code Civ. Proc., § 916(a). The primary claim in Plaintiffs’ First Amended Complaint (FAC) is that attorney Gina Austin and her law firm, the Austin Legal Group (ALG), are aiding their clients engage in unlicensed commercial cannabis activity by helping them secretly acquire ownership of cannabis businesses in the name of their clients’ agents and/or partners (the “Strawman Practice”). The reason that ALG provides its legal services to its clients for them to acquire ownership of cannabis businesses via the Strawman Practice is because ALG’s clients have had judgments entered against them for selling marijuana illegally and are barred by law from owning cannabis businesses for three years from the date of their last sanction. Specifically, California Business & Professions Code § 20657, former § 19323.

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ALG’s clients, desiring to continue to sell cannabis marijuana through a legal dispensary, but which they cannot own in their own name, do so via the Strawman Practice. In other words, ALG’s clients are never licensed to engage in commercial cannabis activity and “*engaging in unlicensed commercial cannabis activity is a crime...*” *Wheeler v. Appellate Div. of Superior Court* (2021) 72 Cal. App. 5th 824, 832 (emphasis added) (citing Bus. & Prof. Code, § 26038, subd. (c).)

Plaintiffs’ FAC alleges the conspiracy between ALG and its clients to engage in unlicensed commercial cannabis activity via the Strawman Practice violates the Cartwright Act, the Unfair Competition Law, and California’s cannabis licensing laws, regulations and public policies.

On August 12, 2022, this Court granted defendants Austin and ALG’s special motion to strike Plaintiffs’ FAC pursuant to Code of Civil Procedure Section 425.16 (the Anti-SLAPP Statute) (the “Motion). The Motion argued and the Court agreed that the Strawman Practice is not criminal activity.

Plaintiffs disagree and filed an appeal of the Court’s granting of the Motion. Upon perfection of the appeal, because the Motion found the Strawman Practice is not criminal that is the underlying premise of every cause of action in the FAC, the entire action was automatically stayed pursuant to Code of Civil Procedure section 916. Thus, this Court was deprived of jurisdiction to issue any orders by matters “embraced” or “affected” by the subject of the appeal – the legality of the Strawman Practice. (Cal. Code Civ. Proc. § 916(a).)

1 However, the Court continues to issue orders by matters that are the subject of the appeal. Those
2 orders include similar legal issues for which appeal is sought. Plaintiff has been forced to file appeals
3 for those matters as well. *See* ROA 258 and 257 (Notice of Appeal) An immediate stay of the entire
4 action is necessary and mandated.

5 **MATERIAL FACTUAL AND PROCEDURAL HISTORY**

6 A. Lawrence Geraci and Salam Razuki have had judgments entered against them for selling
7 marijuana without a license - engaging in unlicensed commercial cannabis activities.

8 On October 27, 2014, Geraci entered into a stipulated judgment with the City of San Diego in
9 which he was sanctioned for operating an illegal dispensary - unlicensed commercial cannabis activity -
10 in *City of San Diego v. The Tree Club Cooperative, Inc. et al.*, San Diego Superior Court Case No. 37-
11 2014-0020897-CU-MC-CTL (the “Tree Club Judgement”). (Declaration of Andrew Flores (“AF Decl.”),
12 Ex. A.)

13 On June 17, 2015, Geraci entered into a stipulated judgment with the City of San Diego in which
14 he was sanctioned for operating an illegal dispensary - unlicensed commercial cannabis activity - in *City*
15 *of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-MC-CTL.
16 (AF Decl., Ex. B.)

17 On April 15, 2015, Razuki was sanctioned for operating an illegal dispensary - unlicensed
18 commercial cannabis activity - in *City of San Diego v. Stonecrest Plaza, LLC*, Case No. 37-2014-
19 00009664-CU-MC-CTL (the “Stonecrest Judgment”). (AF Decl., Ex. C.)

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21 B. The Motion to Strike

22 On June 16, 2022, ALG filed the Motion. (AF Decl., Ex. D.) In the Motion, ALG argued that the
23 Strawman Practice is not illegal as alleged by Plaintiffs:

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

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

9 (AF Decl., Ex. D (emphasis added).)

10 C. Plaintiffs’ Opposition to the anti-SLAPP Motion, the ruling, and the perfecting of the appeal.

11 On July 25, 2022, Plaintiffs filed their opposition. (AF Decl., Ex. E.) Materially, Plaintiffs
12 opposed to motion on the grounds that ALG’s Motion fails completely to explain how (i) Geraci and
13 Razuki can engage in commercial cannabis activity without being licensed and (ii) that the plain language
14 of BPC §§ 19323/26057 contradicts ALG’s self-serving criminally exculpating interpretation of
15 California’s cannabis licensing laws that interprets “shall deny” as “may deny.” (*Id.*, Ex. E at 13-14.)

16 On July 29, 2022, ALG filed its reply. (AF Decl., Ex. F.) On August 12, 2022, the trial court
17 entered its ruling finding the Strawman Practice is not illegal as a matter of law. (AF Decl., Ex. G.)

18 On December 2, 2022, Plaintiffs perfected record on their appeal. (AF Decl., Ex. H.)

19 ARGUMENT

20 The anti-SLAPP statute provides that: “An order granting or denying a special motion to strike
21 shall be appealable under Section 904.1.” (Code of Civ. Proc. § 425.16(i) (emphasis added).) Code of
22 Civil Procedure section 916, subdivision (a) provides in pertinent part: “[T]he perfecting of an appeal
23 stays proceedings in the trial court upon the judgment or order appealed from or upon the matters
24 *embraced* therein or *affected* thereby, including enforcement of the judgment or order, but the trial court
25 may proceed upon any other matter embraced in the action and not affected by the judgment or order.”
26 (Code Civ. Proc., § 916(a) (emphasis added).) “The purpose of the automatic stay provision of section
27 916, subdivision (a) is to protect the appellate court’s jurisdiction by preserving the status quo until the
28 appeal is decided. The automatic stay prevents the trial court from rendering an appeal futile by altering
the appealed judgment or order by conducting other proceedings that may affect it.” (*Varian Med. Sys.,
Inc. v. Delfino*, 35 Cal. 4th 180, 189 (2005) (cleaned up).)

1 “Under section 916, the trial court is divested of subject matter jurisdiction over any matter
2 embraced in or affected by the appeal during the pendency of that appeal. The effect of the appeal is to
3 remove the subject matter of the order from the jurisdiction of the lower court. Thus, that court is without
4 power to proceed further as to any matter embraced therein until the appeal is determined.” (*Id.* at 196-
5 97 (cleaned up).)

6 A. Plaintiffs allege the Strawman Practice is criminal activity and filed an appeal from this
7 Court’s order finding the Strawman Practice is not criminal activity.

8 ***California law requires a state license for commercial cannabis activity.*** (Bus.
9 & Prof. Code, §§ 26038 [civil penalties for engaging in commercial cannabis
10 activity without a license]; 26053 [license required for all commercial cannabis
11 activity].) “Commercial cannabis activity” (both medical and non-medical)
12 includes “the cultivation, possession, . . . processing, storing [or sale] . . . of
13 cannabis and cannabis products as provided for in this division.” (Bus. & Prof.
14 Code § 26001, subs. (k), (ae)-(af).) Cities and counties are authorized to adopt
15 local laws regulating cannabis. (Bus. & Prof. Code, § 26200.) ***Commercial***
16 ***cannabis activity is unlawful without a state license and (where required) a***
17 ***local permit.*** (Bus. & Prof. Code, §§ 26032, subd. (a)(1)-(2), 26038; *see also*
18 Bus. & Prof. Code § 26055, subd. (d).)

19 *Lang v. Petaluma Hills Farm*, No. A156614, 2020 Cal. App. Unpub. LEXIS 7702, at *1-2 (Nov. 20,
20 2020) (emphasis added). “[E]ngaging in unlicensed commercial cannabis activity is a crime...”
21 (*Wheeler v. Appellate Div. of Superior Court* (2021) 72 Cal. App. 5th 824, 833 (emphasis added) (citing
22 Bus. & Prof. Code, § 26038, subd. (c)).

23 On December 5, 2022, the Court in *Vertical Bliss* granted the Department of Cannabis Control’s
24 motion for summary judgment and awarded **\$128,061,000** in sanctions against defendants for engaging
25 unlicensed commercial cannabis activity in violation of BPC § 26038. (*Cal. Dep’t of Pub. Health v.*
26 *Vertical Bliss*, 2022 Cal. Super. LEXIS 77003, *4-5.)

27 Here, ALG admits that acts that constitute she is aiding her clients engage in unlicensed
28 commercial cannabis activity - her aiding her clients apply for cannabis permits and licenses via the
Strawman Practice and engaging in commercial cannabis activity without having a license issued in their
name. ALG just denies the legal conclusion that her acts are criminal. However, the Court agreed with
ALG and found that ALG’s clients – Lawrence Geraci and Salam Razuki - can engage in commercial
cannabis activity without a license and therefore the Strawman Practice is not illegal.

1 Plaintiffs respectfully disagree and filed an appeal from the Court’s granting of the anti-SLAPP
2 motion.

3 B. This entire action is about whether there is a conspiracy for parties to engage in unlicensed
4 commercial cannabis activity via the Strawman Practice – a matter “embraced” and “affected”
5 by the pending appeal.

6 The gravamen of Plaintiffs FAC is that ALG is engaging in criminal conduct pursuant to a
7 conspiracy with her clients to unlawfully acquire and engage in unlicensed commercial cannabis activity
8 via the Strawman Practice. The Court’s granting of ALG’s anti-SLAPP motion finding the Strawman
9 Practice is not illegal as a matter of law “embraces” and “affects” the entirety of Plaintiffs’ case. (Code
10 Civ. Proc., § 916(a) (emphasis added).) Consequently, pursuant to the plain language of Code Civ. Proc.,
11 § 916(a), this “court is without power to proceed further as to any matter embraced [by the appeal] until
12 the appeal is determined.” (*Varian*, 35 Cal. 4th at 196-97 (cleaned up).)

13 Conclusion

14 This action is based on the allegation the Strawman Practice is criminal because engaging
15 unlicensed commercial cannabis activity is a criminal act. More specifically, that ALG’s clients Geraci
16 and Razuki cannot own and operate cannabis businesses with the necessary permits and licenses being
17 held in the name of third parties/strawpeople. However, the Court granted ALG’s anti-SLAPP motion
18 agreeing with ALG that the Strawman Practice does not constitute criminal activity and that ALG’s
19 clients can engage in commercial cannabis activity without being licensed. Plaintiffs disagreed and filed
20 an appeal.

21 Pursuant to Cal. Code of Civ. Proc. § 916(a), even though this Court disagrees and finds the
22 Strawman Practice is lawful, it is evident that the appeal whose focus is the legality of the Strawman
23 Practice “embraces” and “affects” Plaintiffs’ entire case. Consequently, this action was automatically
24 stayed upon perfecting of the appeal. The Court should issue a stay and vacate any orders issued
25 subsequent to the perfecting of Plaintiffs’ appeal.
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1 Date: February 9, 2023

2 Law Offices of Andrew Flores

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5 Plaintiff *In Propria Persona*, and Attorney for
6 Plaintiffs AMY SHERLOCK, and Minors T.S. and
7 S.S.

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