EXHIBIT A

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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.

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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.

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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 B

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

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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 C

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.

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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

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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

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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

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[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

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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

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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.

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[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."].)