IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

DARRYL COTTON, an individual, Appellant/Plaintiff, v. THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO, Respondent/Defendant. --- LAWRENCE (a/k/a/ LARRY) GERACI, An individual, Real Party in Interest.	Court of Appeal Case No. D084992 San Diego County Superior Court Case No. 37-2022-00000023-CU-MC-CTL Related Cases: 37-2017-00020661-CU-BC-CTL 37-2018-00034229-CU-AT-CTL 37-2021-00050889-CU-AT-CTL 37-2023-00024570-CU-MC-CTL 25CU017134C 21FL005564C

Appeal from the Order by the Honorable James A. Mangione, Judge of the Superior Court of California, County of San Diego, Entered on September 20. 2024, Denying Petitioner's/Plaintiff's Motion for Reconsideration.

APPELLANT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF APPELLANT'S REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S OPENING BRIEF

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Petitioner/Plaintiff, *in Propria Persona*

Pursuant to the provisions of California Evidence Code §452 for the purposes of COTTON's Opening Brief against the SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO, with Real Party in Interest LAWRENCE (A/K/A LARRY) GERACI, requests the Court take Judicial Notice (i.e. the existence and legal effect) of the following:

EXHIBIT	TITLE
A	CA Business & Professions Codes §§ 19323 & 26057.
B	09/11/2023, Court of Appeal, Fourth District, Division One, SHERLOCK et al v. AUSTIN et al Case No. D081109, Oral Arguments Transcript.
C	09/18/2023, Court of Appeal, Fourth District, Division One, SHERLOCK et al., v. AUSTIN et al., Case No. D081109, Unpublished Opinion finding "shall" as a discretionary duty.
D	City of Porterville, CA, Section 15-93 GROUNDS FOR DENIAL OF REGULATORY PERMIT.
E	08/02/2023, Court of Appeal, Fourth District, Division Three, HNHPC, INC. v. THE DEPARMENT OF CANNABIS CONTROL, et al., Case No. D081109, Published Opinion finding "shall" as a mandatory duty.
F	07/02/2019, Court of Appeal, Fourth District, Division One, SALAM RAZUKI v. NINUS MALAN et al Case No. D075028, Appellants' Appendix, Volume 3 of 19, DECLARATION OF GINA M. AUSTIN dated 07/30/2018.
G	07/08/2019, GERACI v. COTTON, Case No. 37-2017-00010073-CU-BC-CTL, Reporters Transcript, Gina Austin Testimony re her expertise, her client Geraci and City and State applicant licensing and disclosure requirements.
H	07/03/2019, GERACI v. COTTON, Case No. 37-2017-00010073-CU-BC-CTL, Reporters Transcript, Rebecca Berry Testimony re her acting on behalf of Geraci, his strawman, so as to not disclose his interests in a cannabis license application submitted to the City of San Diego
I	02/14/2017, City of San Diego Ordinance No. 0-20793 which set forth that amend the City's current marijuana land use regulations to be in accordance with state law.

J	06/07/2017, HARCOURT, et al., v MALAN, et al., Case No. 37-2017-00020661-CU-CO-CTL, Complaint citing the undisclosed interests "oral" agreements between alleged alter ego's and Malan, a licensee and Gina Austin client with his partner, Salam Razuki.
K	07/10/2018, RAZUKI v. MALAN, et al., Case No. 37-2018-00034229-CU-BC-CTL, Complaint citing the fraudulent alter ego entities citing the undisclosed interests of Razuki through the use of "oral" and "on paper" agreements that allegedly existed between Razuki and Malan, a licensee and Gina Austin client.
L	12/14/2025, Affidavit of Tiffany Knopf re regular cash payments to Austin and Bartell used to bribe certain City officials for cannabis licensing approvals.
M	03/28/2025, COTTON v. CITY OF SAN DIEGO, Case No. 25CU017134C, Verified Petition for Writ of Mandate seeking a court appointed Special Master to conduct a forensic audit of the City of San Diego Cannabis Business Tax revenues which have been collected, remain unpaid or have been forgiven by all the Adult-Use cannabis licensees operating within the City of San Diego.

Dated: September 19, 2025

Darryl Cotton
Petitioner/Plaintiff, *in Propria Persona*

Exhibit A

2016 California Code
Business and Professions Code - BPC
DIVISION 8 - SPECIAL BUSINESS REGULATIONS
CHAPTER 3.5 - Medical Cannabis Regulation and Safety act
ARTICLE 4 - Licensing
Section 19323.

Universal Citation:
CA Bus & Prof Code § 19323 (2016)

19323. (a) A licensing authority shall deny an application if the applicant or the premises for which a state license is applied does not qualify for licensure under this chapter or the rules and regulations for the state license.

(b) A licensing authority may deny an application for licensure or renewal of a state license, or issue a conditional license, if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) The applicant has failed to provide information required by the licensing authority.

(4) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(5) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(6) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(8) Failure to obtain and maintain a valid seller s permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(9) The applicant or any of its officers, directors, owners, employees, or authorized agents have failed to comply with any operating procedure required pursuant to subdivision (b) of Section 19322.

(10) Conduct that constitutes grounds for disciplinary action pursuant to this chapter.

(Amended by Stats. 2016, Ch. 32, Sec. 27. Effective June 27, 2016.)

JUSTIA

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2024 California Code
Business and Professions Code - BPC
DIVISION 10 - Cannabis
CHAPTER 5 - Licensing
Section 26057.

Universal Citation:
CA Bus & Prof Code § 26057 (2024)

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26057. (a) 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.

(b) The department may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure or inability to comply with the provisions of this division, any rule or regulation adopted pursuant to this division, or any requirement imposed to protect natural resources, including, but not limited to, protections for instream flow, water quality, and fish and wildlife.

(2) Conduct that constitutes grounds for denial of licensure under Chapter 2 (commencing with Section 480) of Division 1.5, except as otherwise specified in this section and Section 26059.

(3) Failure to provide information required by the department.

(4) The applicant, owner, or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the department determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the department shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner, and shall evaluate the suitability of the applicant, owner, or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the department shall include, but not be limited to, the following:

(A) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(C) A felony conviction involving fraud, deceit, or embezzlement.

(D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

(E) A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

(5) Except as provided in subparagraphs (D) and (E) of paragraph (4) and notwithstanding Chapter 2 (commencing with Section 480) of Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.

(6) The applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled

substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(7) The 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.

(8) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(9) Any other condition specified in law.

(c) The withdrawal of an application for a license after it has been filed with the department shall not deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any ground.

(Amended by Stats. 2021, Ch. 70, Sec. 44. (AB 141) Effective July 12, 2021. Note: This section was added on Nov. 8, 2016, by initiative Prop. 64.)

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Exhibit B

REPORTER'S TRANSCRIPT

IN RE THE MATTER OF

SHERLOCK, et. al. v. AUSTIN, et. al.

TRIAL COURT CASE NO: 37-2021-00050889-CU-AT-CTL

COURT OF APPEAL CASE NO: D081109

VIDEO-RECORDED PROCEEDING OF

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

IN-PERSON ARGUMENTS

SEPTEMBER 11, 2023

TRANSCRIBED ON: SEPTEMBER 2, 2025

TRANSCRIBED BY: JENNIFER G. TORRES, CSR NO. 13022

(Begin transcription of video-recorded proceeding.)

JUSTICE McCONNELL: We'll next hear the matter of Sherlock versus Austin.

You may proceed. State your appearance --

MR. FLORES: (Inaudible) --

JUSTICE McCONNELL: -- and let us know if you wish to reserve time to respond.

MR. FLORES: Yes, your Honor. I wish to reserve five minutes for rebuttal.

JUSTICE McCONNELL: All right.

MR. FLORES: Andrew Flores on behalf of Mrs. Sherlock, who is present.

JUSTICE McCONNELL: Okay.

MR. FLORES: Your Honors, we're here before this court on a basic fundamental question: Can individuals, who have been previously sanctioned for owning marijuana dispensaries without a permit --

JUSTICE HUFFMAN: Could you speak up a little bit, please?

MR. FLORES: Sure. My apologies.

JUSTICE McCONNELL: Yes, we need you to speak into the microphone as loudly as possible, please. You have a sort of a soft voice.

MR. FLORES: I'll try to enunciate and project.

JUSTICE McCONNELL: All right. Thank you.

MR. FLORES: The question is Can these individuals, who have been previously sanctioned for marijuana dispensaries, illegally operating these dispensaries, apply for a cannabis permit secretly with a straw man practice?

That's, in essence, what the trial court has rubber stamped. They said that that is petitioning activity and it is protected. Clearly, it is not.

As has been discussed in our papers, the first prong is whether or not the activity being challenged is protected petitioning activity. That implies that there are some petitioning activities that are not protected. This is one those.

Clearly, the facts of this case are not in question. The facts are as follows --

JUSTICE McCONNELL: So I'm just trying to grasp the argument that you're making. This is a SLAPP motion --

MR. FLORES: That's correct.

JUSTICE McCONNELL: -- right?

MR. FLORES: That's correct.

JUSTICE McCONNELL: Okay. So you don't dispute that the activity that respondent undertook was petitioning activity?

MR. FLORES: I guess the issue is, Your Honor, that, in essence, before you even get to that, you have to establish whether that petition activity is legal or not. It's --

JUSTICE McCONNELL: No, first you start by determining whether there was petitioning activity within the Code. And then if the respondent admitted illegal conduct, or indisputably illegal, then we can take a look at that.

MR. FLORES: Right. And I guess that's what I'm, in essence, trying to say, Your Honor. This is indisputedly [sic] illegal.

JUSTICE McCONNELL: That she never conceded any illegal conduct.

MR. FLORES: She conceded the facts that are illegal. Does that make sense?

So, in essence, the facts are as follows:

She had a client who had been previously sanctioned for illegal cannibal -- cannabis activity. She was hired to represent this client. They then filed a petition, under the straw man practice, without disclosing that this individual, the person that was prohibited from owning this permit, was the true and in fact owner.

It happened on two separate occasions. One was in the name of their principal secretary. And the other

one was in the Razuki Milan case, which the court may or may not be aware of, but, in essence --

JUSTICE McCONNELL: We're aware of it, yes.

MR. FLORES: -- those individuals, obviously, had their own agreement to hide the true principal or controlling principal in this case.

So they didn't disclose the agency. They didn't disclose the true owners. And they did this purposely. And the reason was, again, the reason is because of the prior sanctions, which would have ultimately led them to having their petition denied.

This is a clear violation of Penal Code 115. It's a false document liability. Not only did they not disclose the owner's interest, but they failed to disclose this relationship that I just mentioned.

This goes against the spirit of the law with respect to marijuana legalization. Transparency is key. The reason the preamble of these -- of these acts state that. They specifically state out that transparency is important to keep criminals from then legitimizing their criminal activity through this process, which is, in essence, what the defendants have done.

Now, the one thing I want to point out, there's been some discussion, at least in the papers, about whether or not this application, whether it's mandatory or

permissive. There's a recent case that just came out. It came out of the 4th District, Division 3, and it was -- it's called HNHPC, Inc. versus the Department of Cannabis Control. Case number is G061298, came out in August, early August, August 3rd, I believe.

In that case, the appellant sought to demand the Department of Cannabis Control establish a database for irregularities in the movement of marijuana products.

JUSTICE McCONNELL: Did you provide that citation to opposing counsel?

MR. FLORES: I have not, Your Honor. I just --

JUSTICE McCONNELL: Did you provide it to the court?

MR. FLORES: It just came out in August, Your Honor. I have not.

JUSTICE McCONNELL: Well, this is September.

MR. FLORES: Fair enough, Your Honor. I have not provided it, no.

JUSTICE McCONNELL: All right. Can you address something else?

MR. FLORES: Sure.

It's important to note that the interpretation of the respondents of the BMP -- the Business and Professions Code section that applies in this case, they're conflating two issues.

There's Section A that talks about the applicants. Okay. And section B -- sorry -- the application. Section A is about the application. Section B is about the applicants.

So, in essence, what the legislature has anticipated is a situation where you may have multiple people applying for one permit, and one person who may not qualify. In that case, it's permissive.

They can -- the department can decide whether this person's minor ownership, or what have you, would bar them from having the application granted.

However, Section B specifically to applicants, and it said, They shall not be granted this CUP. So those individuals, had they been disclosed, would have been specifically denied this CUP. That's -- that's clear.

And what they've done is conflated these two issues in order to make it seem as though they were all permissive when in fact they're not.

So the discussion of shall, I mean we all know it's second-day law school, shall means must for the most part. So in this case, that's exactly what it means.

Now, it doesn't necessarily create a mandatory obligation on the cannabis -- Department of Cannabis Control, however, it does make it illegal. You cannot -- it's not -- it can't be given.

Now, in summation I think the --

JUSTICE McCONNELL: Well, I thought the statute said that in Subdivision B that the existence of one of the listed conditions may support denial of an application.

MR. FLORES: Your Honor, I must have -- I must have gotten confused then. Because the one that does say shall applies to specifically the applicants.

JUSTICE McCONNELL: Well, actually, A says it mandates the denial of a license if one of the conditions set forth in B exists.

But B says the existence of one of the listed conditions may support denial of an application.

MR. FLORES: And that's a key distinction there, Your Honor, at the end. The application, not the applicant. So one applies to the applicant. The other applies to the application like I mentioned.

If you have multiple applicants on one application, then one of those incidents doesn't necessarily gives them discretion there.

But if it's only one applicant, there's no discretion. It's shall.

JUSTICE McCONNELL: Okay. So I'm trying to figure out why Austin's conduct in assisting somebody -- somebody's application for a CUP it was never granted.

Why is that illegal as a matter of law?

That's what you have to establish.

MR. FLORES: Uh-huh.

Your Honor, they have been granted. They -- in this particular instance, the one (video interruption) and then we have another dispensary on Federal Boulevard, that one was not granted, but it was given to another client of Ms. Austin's, which that's where we're talking about collusion and fraud and all those other things.

But I have -- I've thought about this so many times about how to explain this to Your Honors. And I think the most analogous scenario that could illustrate this is if I have a client that comes to me, Your Honor, and says, Mr. Flores, I'd like to get a alcohol license but I'm only 18 and I can't -- I don't qualify, 'cause I'm not 21, and I say, Okay. We'll figure that out.

We submit an application -- I'm an expert in this scenario. We submit an application using the straw man practice to get this license for this minor. How is that not engaging in illegal activity?

I'm assisting my client in obtaining something they should not have. I'm helping them commit a fraud, not only on the jurisdiction that's issuing these, but also on the court, because then I go into court and battle this out, right?

So, to me, the way I see it, they're engaging in the old Hey, Mister, can you buy me beer? That's, in essence, what this is. It's, Hey, Mister, can you get me a cannabis dispensary, even though I shouldn't have one?

And they have plotted, and they have engaged in this activity purposely to do so. So, obviously, this runs much deeper, and there are much more issues. But with respect to these alone, it can't be protected activity.

JUSTICE McCONNELL: So you're relying on a statement that Austin made in some declaration in Razuki.

MR. FLORES: Well, that's part of it, Your Honor, yes.

But, again, they have not disputed those facts.

JUSTICE McCONNELL: If that -- it wasn't before the trial court in this case.

MR. FLORES: Well, again, I think that with the first prong, we're looking at what's pled, not what's proven.

Before we have to prove those things, they have to establish that we haven't pled them appropriately. And I think in the pleadings, in the complaint all this scenario is laid out clearly.

JUSTICE McCONNELL: Okay.

MR. FLORES: That is all. Thank you.

JUSTICE McCONNELL: All right.

MS. FRASER: Good afternoon, Your Honors. May it, please, the court, Annie Fraser on behalf of Gina Austin and Austin Law Group.

Just like in his briefing, counsel relies on wild, unsubstantiated, conclusory allegations to support conspiracy that doesn't exist.

They don't contest the -- that this is protected activity. What they argue is that the activity is illegal as a matter of law. But that narrow exception is a very narrow, and it only comes into play for the purposes of the anti-SLAPP statute when there's uncontroverted and uncontested evidence that conclusively establishes the crime as a matter of law. There simply isn't such evidence here.

The counsel relies in argument on Penal Code Section 115, which provides that every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public offices within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of the state is guilty of a felony.

There's been no evidence that Gina Austin or Austin Law Group committed any elements of that offense.

Again, there's allegations to straw man practices

and the fact that, you know, they -- underlying facts that, you know, what he -- defining the issue is whether these other individuals, who have had previously been sanctioned, can apply for the license. But that doesn't establish willful, knowing, and that it is a false or forged instrument.

There just simply isn't any evidence, and there's nothing in counsel's papers or argument that established that there is any illegal activity that's been committed.

The plaintiff relies on -- in part, on a declaration that's submitted in a different case that was not before this court, and I filed a motion in opposition to their Request for Judicial Notice.

But I want to point out a couple of things along those lines, and I raised the simple and unremarkable proposition of appellate law that the -- you can't consider documents that were not before the trial court.

And the response in their reply brief, response to that simple appellate proposition by asking What are the bounds of ALG's counsel legal representation?

Does zealous advocacy allow ALG's counsel to dismiss the law and arguments in its client's own declaration?

Is such not a misrepresentation to this court that makes ALG's counsel jointly liable with ALG as an

after-the-fact accessory to ALG's criminal conspiracy?

In other words, citing a proposition of appellate law, counsel then turns that into a after-the-fact conspiracy that I've engaged in by raising that issue.

And they go even further. They then -- ALG, its clients, and co-conspirators have, until now, been successful in deceive -- having deceived over a dozen federal and state judges at the trial and appellate level into enforcing and/or ratifying their criminal conduct. To appellant's knowledge, ALG and its co-conspirators have perpetrated the largest fraud upon the court in the history of the United States.

Those are the outlandish statements made by counsel, which he makes clear includes this court as having been conceived as part of this grand conspiracy.

On Page 14 of the reply --

JUSTICE CASTILLO: Ms. Fraser --

MS. FRASER: Yes.

JUSTICE CASTILLO: -- let me stop you there for a second.

Putting aside the reference in the declaration that was not before the trial court, what is your understanding of why opposing counsel is raising this argument about the straw man? What is your understanding of that particular argument?

MS. FRASER: I believe my understanding is that he alleges that this is a grand conspiracy. There were 19 people charged, and he alleges that they engaged in a conspiracy to have this practice to minimize or keep the number of marijuana applications in their own little group.

But there's no evidence of that. There's no evidence that anything that the Austin Legal Group and Gina Austin represent certain parties. And there's no evidence that their mere representation was illegal.

They -- there are four conditional use permits that are in this grand conspiracy that's alleged. And Gina Austin or Austin Legal Group, she wasn't involved in three of the CUP's.

And in one of them she represented someone for a short period of time, then withdrew it. So there was nothing even filed that could be, in anyway, considered a forged document.

So the answer to your question is that's the allegations, but there's no evidence that my clients engaged in any illegal conduct.

Did that answer your question?

JUSTICE CASTILLO: Yes, thank you.

MS. FRASER: Another thing I wanted to point out was that on page 14 of the reply brief, appellant cite an

unpublished San Francisco Superior Court opinion.

They referred an attorney who filed false documents to the court, to the district attorney's office, and the state bar. And then conclude -- uses that unpublished authority from a superior court case to --

JUSTICE McCONNELL: Okay. We don't need to hear about that.

MS. FRASER: Okay. Well, and I guess my point, Your Honor, is this case is full of allegations and requests to refer the defendants to the state bar, to the Attorney General's Office, to the -- you know, for criminal investigations based on outlandish allegations and conspiracies with no evidence, whatsoever.

And I did intend to argue that as only to show how outlandish these allegations are down below in the trial court and in this appellate court.

There just simply isn't any evidence that supports their position that there was any illegal conduct by Austin Legal Group and Gina Austin.

If the court has any questions, I'd be happy to otherwise answer them. Otherwise, I'll submit and ask the court to affirm the trial court's order.

JUSTICE McCONNELL: Apparently, there are no further questions. Thank you.

MS. FRASER: Thank you, Your Honors.

JUSTICE McCONNELL: We'll hear from Appellant.

MR. FLORES: Just briefly, Your Honors.

Now, this may be a problem of my own doing with respect to the facts and circumstances around this case. But the simple fact is that before this court, the only issue that I brought up, that I've hung my hat on is the straw man practice.

Now, when opposing counsel gives her description of how -- what they believe the straw man practice is, they go into this diatribe about a big conspiracy. That's not necessarily what needs to be addressed, because the straw man practice is simple.

I have an individual who cannot own a CUP because of their prior sanctions. I then find someone or use their agent to file, apply for, get --

JUSTICE CASTILLO: Mr. Flores, but the issue is that -- at least as I understand, is that there's no evidence of those straw man practices.

And so if you could address what you believe is the evidence that substantiate your case.

MR. FLORES: Yes, Your Honor. The applications themselves. The application --

JUSTICE McCONNELL: Did you submit evidence in opposition?

You argued the pleadings, but I'm trying to see

if -- even the declaration wasn't before the trial court here.

MR. FLORES: Right, Your Honors. And again it's --

JUSTICE McCONNELL: What was the evidence that you submitted?

MR. FLORES: Well, there was no evidence submitted, Your Honor, because --

JUSTICE McCONNELL: Right. That's part of the problem; isn't it?

Aren't you supposed to submit evidence on a SLAPP motion?

MR. FLORES: Right. I understand. But that's only --

JUSTICE HUFFMAN: (Inaudible) I interrupt.

It seems to me we're here in the appellant court. You've got no record of any evidence to support this these claims of all sorts of misbehavior, not in the record, not supported by evidence. Whatever arm waiving value that exists, it does not help the courts of appeal trying to work through and reach a rational decision, based upon the record.

So if it's not in the record, for crying out loud, you shouldn't be arguing it, and you shouldn't be discussing it.

MR. FLORES: I understand the court's position and it is not --

JUSTICE McCONNELL: It's not our position. It's the law. I mean we can't consider things that aren't in the record before us.

MR. FLORES: I think the issue, Your Honors, is that the error in the trial court was exactly that, not looking at what has been pled, as opposed to what's been proven.

JUSTICE McCONNELL: No, it's not that. They -- on a SLAPP motion, it's not just looking at the pleadings. The pleadings you have to submit evidence to support your allegations and you didn't do that here.

MR. FLORES: And I understand that, Your Honor.

My argument is that we don't get to that position because everything else is uncontroverted.

JUSTICE McCONNELL: That's not the impression I have. They didn't -- she -- Austin didn't admit any illegality.

MR. FLORES: Well, Your Honor, because -- they're not saying that they didn't do the action. They're just saying the action is not illegal.

I'm saying that they did the action and that the action is illegal --

JUSTICE McCONNELL: Okay.

MR. FLORES: -- if that's makes sense. We'll submit on that, Your Honor.

JUSTICE McCONNELL: All right. Thank you very much. Matter is submitted. We're in recess for another panel.

(End transcription of video-recorded proceeding.)

CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

I, Jennifer Torres, Certified Shorthand Reporter in and for the State of California, Certificate No. 13022, do hereby certify:

That said video-recorded material was reported by me in shorthand and transcribed, through computer-aided transcription, under my direction to the best of my ability, and that said material is a full, true, and correct transcript of the video-recorded material.

I further certify that I am a disinterested person and am in no way interested in the outcome of this action or connection with or related to any of the parties in this action or to their respective counsel.

IN WITNESS WHEREOF, I hereunto subscribe my name this 9th day of September, 2025.

JENNIFER G. TORRES, CSR No. 13022

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4th 6:2

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9th 20:18

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.

BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

09/18/2023

BRANDON L. HENSON, CLERK

By A. Galvez Deputy Clerk

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."].)

Exhibit D

15-93: GROUNDS FOR DENIAL OF REGULATORY PERMIT:

Nothing in this article shall be construed to require the City to grant a regulatory permit. Notwithstanding this, applications for a regulatory permit are required to be denied for one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or State law, statute, rule or regulation.

B. The business owner or operator has been issued a local or State permit related to cannabis operations at any other location in California, or another state, and that permit was suspended or revoked, or the business owner or operator has had disciplinary action relating to the permit.

C. The business owner or operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application.

D. Consistent with State law or other applicable State law, the business owner or operator, or any responsible person, has been:

1. Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or

2. Convicted of any of the offenses listed in Business and Professions Code section 19323; or

3. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or

4. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in the Act; or

5. Has engaged in misconduct related to the qualifications, functions or duties of a permittee, such as lying on an application, falsifying legal documents, or anything that would otherwise ban the permittee from obtaining a

15-93: GROUNDS FOR DENIAL OF REGULATORY PERMIT:
Nothing in this article shall be construed to require the City to grant a regulatory permit. Notwithstanding this, applications for a regulatory permit are required to be denied for one or more of the following:

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C. The business owner or operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application.

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1. Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or

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4. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in the Act; or

5. Has engaged in misconduct related to the qualifications, functions or duties of a permittee, such as lying on an application, falsifying legal documents, or anything that would otherwise ban the permittee from obtaining a State license under State law; or

6. Consistent with State law or other applicable State law, the business owner or operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices; or

7. The business owner or operator is under twenty one (21) years of age, or any older other age set by the State; or

8. The cannabis operation does not comply with the Zoning Ordinance standards of the City, the development standards set forth in this Code, or the terms of the Development Agreement; or

9. The required annual business license fee, annual regulatory fee or fees specified in this Code or the Development Agreement have not been paid. (Ord. 1853, 5-7-2019)

Exhibit E

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HNHPC, INC., Plaintiff and Appellant, v. THE DEPARTMENT OF CANNABIS CONTROL et al., Defendants and Respondents.	G061298 (Super. Ct. No. 30-2021-01221014) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Reversed.

Law Office of Jeff Augustini and Jeff Augustini for Plaintiff and Appellant.

Rob Bonta, Attorney General, Harinder K. Kapur, Assistant Attorney General, Joshua B. Eisenberg and Ethan A. Turner, Deputy Attorneys General, for Defendants and Respondents.

* * *

Plaintiff HNHPC, Inc., appeals from a judgment entered after the court sustained, without leave to amend, the demurrer of defendants the Department of Cannabis Control (the Department) and Nicole Elliott (collectively defendants) to the first amended petition and complaint (FAP). The FAP alleged the Department failed to perform its mandatory duties and/or failed to properly perform discretionary duties under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, § 26000 et seq.)[1] Among other things, section 26067 requires the Department to "establish a track and trace program for reporting the movement of cannabis and cannabis products throughout the distribution chain." (§ 26067, subd. (a).) To facilitate administration of the track and trace program, the statute also requires the Department to create an electronic database. (*Id.*, subd. (b)(1).) The statute states: "The database *shall be designed to flag irregularities* for the department to investigate." (*Id.*, subd. (b)(2), italics added.) While the FAP acknowledged the Department created a track and trace system, it alleged the system does not flag irregularities as required by section 26067. Plaintiff accordingly sought mandamus and injunctive relief compelling defendants to comply with their duties and mandating they create and maintain a track and trace system capable of identifying and flagging questionable information for further investigation.

In sustaining defendants' demurrer, the court took judicial notice of two government contracts with a contractor to design the track and trace system and the Department's budget request for the 2021-2022 fiscal year. Relying on these documents, the court found the Department had complied with its ministerial duties under section 26067.

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[1] All further statutory references are to the Business and Professions Code unless otherwise stated.

On appeal, plaintiff contends the court erred by taking judicial notice of the documents and by sustaining the demurrer. Assuming, without deciding, that the court properly took judicial notice of the documents, the FAP still states a claim for a writ of mandate and injunctive relief because the judicially noticed documents do not contradict the FAP's allegations. Because the FAP adequately pleaded facts to state a cause of action for a writ of mandate and for injunctive relief, we reverse the judgment.

FACTS

The First Amended Petition and Complaint

In November 2021, plaintiff filed the FAP against defendants asserting causes of action for: (1) a peremptory writ of mandate; and (2) injunctive relief. Plaintiff alleged it is licensed by the State of California and City of Santa Ana to operate a cannabis dispensary. With respect to the Department, plaintiff alleged it "is responsible for, among other things, establishing, implementing, maintaining, and enforcing a 'track and trace program for reporting the movement of cannabis products throughout the distribution chain,' which was expressly mandated to include a 'database' that 'shall be designated to flag irregularities for the department to investigate.'" Elliot is alleged to be the Director of the Department.

According to the FAP, the Department failed to perform its mandatory duties and/or failed to properly perform discretionary duties under MAUCRSA. (§ 26000 et seq.) Relying on section 26067, the FAP emphasized the Department was required by the Legislature to create a track and trace system that "'shall be designed to flag irregularities for the department to investigate . . . .'"

Although the Department created and implemented a track and trace system called Marijuana Enforcement Tracking Report and Compliance (METRC) the system allegedly did not flag for irregularities. As a result, the FAP alleged there is an "exponential rise of 'burner distributors' . . . that conceal and launder State-grown

cannabis for delivery to illegal dispensaries and other unregulated markets within the State as well as for the illegal transport across state lines, all without paying significant legally mandated taxes . . . that other law abiding cannabis licensees [such as plaintiff] are required . . . to pay to the State." The increased use of burner distributors (Burner Distros) allegedly harmed the public and licensed cannabis operators because the Burner Distros undercut legitimate distributors and dispensaries by selling cheaper, unregulated, and untaxed cannabis products. In short, the FAP alleged the Department bolstered "the illegal black market in California and . . . greatly encouraged the illegal export of cannabis across state lines" "by refusing to perform its ministerial duty to flag irregularities within the track and trace system."

The FAP further alleged the current track and trace system could be designed or modified "to flag . . . irregularities and to easily identify Burner Distros, but it would require the State to amend its agreement with the developer of METRC to authorize the work necessary to do so." The Department allegedly refused to modify the track and trace system to comply with the law and the Department's mandatory duties. To the extent defendants had discretion in the creation, implementation, or operation of the track and trace system, including the elements to be flagged for investigation, the FAP alleged defendants abused their discretion.

Based on the above allegations, plaintiff sought mandamus and injunctive relief compelling defendants to comply with their duties and mandating they create and maintain a track and trace system capable of identifying and flagging questionable information for further investigation.

Defendants' Demurrer

In December 2021, defendants filed a demurrer. They argued the FAP was speculative and conclusory, plaintiff failed to allege the elements of traditional mandamus relief, and injunctive relief was unwarranted. With respect to mandamus

relief, defendants argued they satisfied any mandatory duties under section 26067. They noted there was a track and trace system in place, and the Department "contracted for the design of an electronic database and specifically identified the need to flag irregularities." They further emphasized the relevant contract established a methodology for ongoing cooperation between the Department and a third-party company to develop criteria for flagging irregularities. Finally, defendants noted they allocated resources for strategic enforcement efforts. Beyond these duties, defendants argued any remaining duties were discretionary, including the creation of a track and trace system and the deadline to complete the design of the required electronic database.

In support of their demurrer, defendants filed a request for judicial notice and asked the court to take judicial notice of three documents pursuant to Evidence Code section 452, subdivisions (c) and (h): (1) a 2017 contract between the California Department of Food and Agriculture and Franwell, Inc.;[2] (2) a 2021 contract between the California Department of Food and Agriculture and METRC, Inc.; and (3) the Department's budget request for the 2021-2022 fiscal year.

The two contracts were agreements with a contractor to design the California cannabis track and trace (CCTT) system. Among other things, the initial and renewed contracts identified various business needs. In identifying one of those business needs, the contracts stated: "The Licensing Authorities need to be aware of 'irregular' cannabis distribution chain activity (e.g. activity that falls outside expected values and statistical norms). The Licensing Authorities will designate the criteria used to flag irregular activity and will refine this criteria over time. Therefore, the [cannabis activity

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[2] Prior to the Department, the California Department of Food and Agriculture was one of the agencies responsible for licensing and regulating commercial cannabis activity in the state. (§ 26010.7, subd. (a) ["the Department . . . shall succeed to and be vested with all the duties, powers, purposes, functions, responsibilities, and jurisdiction of the Bureau of Cannabis Control, . . . the State Department of Public Health, and the Department of Food and Agriculture"].)

tracking] solution must automatically flag irregularities based on identified criteria and allow the Licensing Authorities to review the specific cannabis distribution chain activity information that is flagged as irregular."

The Department's budget request for the 2021-2022 fiscal year included a section on the Department's "[i]mplementation [p]lan." The plan included "continued enhancements to licensing and track and trace systems." It also appears the Department sought funding for analysis of data aggregated through the CCTT platform, to "[c]onduct more strategic and streamlined compliance and enforcement processes," and to hire information technology staff for the CCTT team.

The Court's Order and Judgment

In January 2022, the court granted defendants' request for judicial notice and sustained the demurrer without leave to amend. With respect to the request for judicial notice, the court found the documents were official acts and records of a state agency and were not reasonably subject to dispute. (Evid. Code, § 452, subds. (c), (h).) The court noted: "'Where, as here, judicial notice is requested of a *legally operative document*—like a contract—the court may take notice not only of the fact of the document and its recording or publication, but also facts that clearly derive from its *legal effect* . . . . Moreover, whether the fact derives from the legal effect of a document or from a statement within the document, the fact may be judicially noticed where, as here, the fact is not reasonably subject to dispute.'"

With respect to plaintiff's petition for writ of mandate, the court concluded the judicially noticed documents demonstrated the Department complied with its ministerial duty. The court added that plaintiff did "not have standing to micro-manage the [Department's] compliance. The manner of compliance is left to [the Department's] discretion." Because the Department complied with its mandatory duty under section 26067, the court found there could be no preliminary injunction.

Finally, the court denied leave to amend. The court noted plaintiff requested leave to amend because most of the Department's arguments were based on uncertainty, ambiguity, or inconsistency. But the court emphasized it sustained the demurrer "based on [the Department's] compliance with the duty to implement a track and trace electronic database." The court accordingly held there was no way plaintiff could cure this defect.

The court entered judgment in favor of defendants in March 2022, and plaintiff filed a timely notice of appeal.

DISCUSSION

Plaintiff contends the court erred by taking judicial notice of the contracts and the Department's budget request and by sustaining the demurrer. Plaintiff alternatively argues the court erred by denying leave to amend. Assuming, without deciding, that the court properly took judicial notice of the documents, the FAP still states a claim for a writ of mandate and injunctive relief because the documents do not contradict the FAP's allegations. Contrary to the court's holding, the documents do not conclusively show the Department created an electronic database that flags irregularities for further investigation. We accordingly reverse the judgment.

Applicable Law[3]

In 2015, the Legislature enacted the Medical Marijuana Regulation and Safety Act, which among other things, created a licensing scheme for medical marijuana. (Former § 19300 et seq.; Stats. 2015, ch. 689, § 4; *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1045.) After passage of Proposition 64 (the

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[3] Defendants summarize various details about the laws that preceded MAUCRSA. We briefly summarize those laws for background, but we do not include all the details as they are not necessary to resolve the instant case.

Control, Regulate, and Tax Adult Use Marijuana Act) in 2016 (*People v. Castro* (2022) 86 Cal.App.5th 314, 320), section 26067 (added by Stats. 2017, ch. 27, § 58) became law.

In 2017, pursuant to a statewide voter initiative, California enacted MAUCRSA, which included an amended version of section 26067. (§ 26000 et seq.). The purpose of MAUCRSA is "to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of" medicinal and adult-use cannabis. (*Id.*, subd. (b).) The statute also "sets forth the power and duties of the state agencies responsible for controlling and regulating the commercial medicinal and adult-use cannabis industry." (*Id.*, subd. (c).)

Section 26067, subdivision (a)(1)-(5) provides: "[T]he [D]epartment shall establish a track and trace program for reporting the movement of cannabis and cannabis products throughout the distribution chain that utilizes a unique identifier and is capable of providing information that captures" various details. At a minimum, the captured information includes the licensee from which the product originated, the licensee receiving the product, the transaction date, the unique identifier for the cannabis or cannabis product, the date of retail sale to a customer, whether the sale is on the retail premises or by delivery, and information relating to cannabis and cannabis products leaving the licensed premises in a delivery vehicle. (*Ibid.*)

Section 26067, subdivision (b)(1) provides: "The [D]epartment, in consultation with the California Department of Tax and Fee Administration, shall create an electronic database containing the electronic shipping manifests to facilitate the administration of the track and trace program, which shall include, but not be limited to, the following information: [¶] (A) The variety and quantity or weight of cannabis or cannabis products shipped. [¶] (B) The estimated times of departure and arrival. [¶] (C) The variety and quantity or weight of cannabis or cannabis products received. [¶] (D) The actual time of departure and arrival. [¶] (E) A categorization and the unique identifier of the cannabis or cannabis product. [¶] (F) The license number issued by the

department for all licensees involved in the shipping process, including, but not limited to, cultivators, manufacturers, distributors, and retailers." As relevant here, section 26067, subdivision (b)(2), which is central to this appeal, states: "The database *shall be designed to flag irregularities* for the department to investigate." (Italics added.)

Standard of Review

"On appeal from a judgment after an order sustaining a demurrer, we review the order de novo, exercising our independent judgment on whether the complaint states a cause of action as a matter of law. [Citation.] We give the complaint a reasonable interpretation, reading it as a whole and viewing its parts in context. [Citation.] We deem all properly pleaded material facts as true. [Citation.] We must also accept as true those facts that may be implied or inferred from those expressly alleged." (*McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1508-1509.) """We also consider matters which may be judicially noticed."" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

"While the decision to sustain . . . a demurrer is a legal ruling subject to de novo review on appeal, the granting of leave to amend involves an exercise of the trial court's discretion." (*McMahon v. Craig*, *supra*, 176 Cal.App.4th at p. 1509.)

Request for Judicial Notice

At the outset, the parties disagree as to whether the court properly took judicial notice of the contracts for the design of the CCTT system and the Department's budget request for the 2021-2022 fiscal year. Plaintiff acknowledges judicial notice can be taken of "[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States." (Evid. Code, § 452, subd. (c).) But plaintiff argues a court cannot take judicial notice of a public agency's contract with a private party. Plaintiff also claims the court could not take judicial notice of facts asserted in the

contracts. The Department disagrees and contends, "Entering into contracts and requesting funding from the legislature clearly fall within" the scope of Evidence Code section 452, subdivision (c). The Department also argues the documents are judicially noticeable under Evidence Code section 452, subdivision (h) because their "authenticity . . . is not reasonably subject to dispute as they have been authenticated by the applicable custodian of records or published online, and are thus subject to immediate and accurate determination." Assuming, without deciding, that the documents were judicially noticeable, they do not contradict the allegations in the FAP. As discussed *infra*, the documents do not show the Department complied with its statutory duties.

Sufficiency of the FAP

A. Writ of Mandate Cause of Action

Plaintiff's first cause of action seeks a writ of mandate for alleged violations of section 26067, which requires, *inter alia*, the Department "in consultation with the California Department of Tax and Fee Administration" to establish "an electronic database containing shipping manifests to facilitate the administration of the track and trace program." (*Id.*, subd. (b)(1).) "The database *shall be designed to flag irregularities* for the department to investigate." (*Id.*, subd. (b)(2), italics added.) Plaintiff argues the FAP stated a viable claim for a writ of mandate and the court erred by finding the Department had complied with its mandatory duties. We agree.

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ." (Code Civ. Proc., § 1085, subd. (a).) A writ of mandate "must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) "'Mandamus . . . is the traditional remedy for the failure of a public official to perform a legal duty.'" (*People for Ethical Operation of Prosecutors ETC. v.*

Spitzer (2020) 53 Cal.App.5th 391, 407.) To adequately state a claim for the issuance of a writ of mandate, a petitioner must allege: (1) "the public official or entity had a ministerial duty to perform"; and (2) "the petitioner had a clear and beneficial right to performance." (*Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43 Cal.App.5th 175, 184.) We address each element in turn below.

1. Ministerial Duty

"'A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion . . . is the power conferred on public functionaries to act officially according to the dictates of their own judgment.'" (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.) "Generally, mandamus may be used only to compel the performance of a duty that is purely ministerial in character. [Citaiton.] The remedy may not be invoked to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular way." (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1002.) "While a party may not invoke mandamus to force a public entity to exercise discretionary powers in any particular manner, if the entity refuses to act, mandate is available to compel the exercise of those discretionary powers in some way." (*Ellena v. Department of Ins.* (2014) 230 Cal.App.4th 198, 205 (*Ellena*).) Whether a statute imposes a ministerial duty is a question of statutory interpretation. (*AIDS Healthcare Foundation*, at p. 701.)

Defendants contend the Department's duty under section 26067, subdivision (b)(2) was discretionary rather than ministerial. They argue "creating an electronic database that flags irregularities is an enterprise that requires creativity, strategy, and many decisions made with overall policy goals and current industry trends

in mind. It does not involve carrying out a ministerial function or meeting a statutory deadline." We disagree with defendants' characterization of the Department's duty.

The statute expressly requires the Department to establish an electronic database that "*shall* be designed to flag irregularities for the department to investigate." (§ 26067, subdivision (b)(2), italics added.) Section 19 of the same code states: "'Shall' is mandatory and 'may' is permissive." (*Ibid.*) "We recognize that the use of the word 'shall' in a statute does not necessarily create a mandatory duty." (*Ellena*, *supra*, 230 Cal.App.4th at p. 211.) But, in the instant case, the statute *requires* the Department to design the electronic database to flag irregularities. (*Wittenburg v. Beachwalk Homeowners Assn.* (2013) 217 Cal.App.4th 654, 667 ["'Ordinarily, the word "may" connotes a discretionary or permissive act; the word "shall" connotes a mandatory or directory duty'"]; *Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614 [same].) The Department did not have discretion to disregard the express flagging mandate. The court accordingly did not err by finding the Department's duty under section 26067 was ministerial. The FAP likewise adequately alleged the Department's duty under section 26067 was ministerial.

Relying on the judicially noticed contracts, defendants next claim the Department complied with its statutory duty so there is nothing to compel. The court likewise found the judicially noticed documents demonstrated the Department complied with its ministerial duty. Not true. The contracts and budget request do not end the inquiry. The Department did not have a duty to enter into a contract but to establish an electronic database that actually flags irregularities. (§ 26067, subd. (b)(2).) The fact still remains the full performance and completion of the contract per its terms—i.e., that the Department provided flagging criteria to the developer who in turn incorporated it into the system—is openly in dispute.

The FAP likewise alleged the Department had to create *and* implement a system that flagged irregularities, but the current CCTT system allegedly does not flag irregularities as legally required. Indeed, the FAP alleged the Department "faile[ed] to perform (or to properly perform as required) their legal duty to implement a system to properly track and flag irregularities"; and plaintiff "seeks to *compel* [defendants] to actually perform their mandatory and/or discretionary legal duties, including . . . the creation and operation of a track and trace system that *in fact* is designed to track and trace cannabis throughout the entire process, and to identify and flag irregularities and questionable transactions for further [investigation]—something it does not do now." The FAP emphasizes "the track and trace system they designed and implemented cannot and is not flagging irregularities and questionable information that would, *inter alia*, reveal unlawful conduct . . . ." The judicially noticed documents do not contradict any of these allegations as a matter of law. (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1055 [complaint's allegations may be disregarded if judicially noticed facts contradict the allegations].)

In any event, the FAP also adequately alleges the Department abused its discretion. Mandamus may be used to correct an abuse of discretion. (*American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547.) When reviewing an exercise of discretion, "the judicial inquiry . . . addresses whether the public entity's action was arbitrary, capricious or entirely without evidentiary support, and whether it failed to conform to procedures required by law." (*California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1443.) The FAP alleges the Department chose not to incorporate flagging capabilities into the CCTT system as required by law and by failing to design the system to track basic irregularities. The judicially noticed documents do not contradict any of these allegations or show the Department actually exercised discretion with respect to the flagging capabilities.

2. Standing

Turning to the standing question, we conclude plaintiff adequately alleged the existence of a clear, present, and beneficial right to the remedy it sought. (*Ellena*, *supra*, 230 Cal.App.4th at p. 211.) Normally, a party must be "beneficially interested" to have standing to seek a writ of mandate. (Code Civ. Proc., § 1086.) "'The requirement that a petitioner be "beneficially interested" has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

Plaintiff's interests here surely suffice. Plaintiff alleged it would directly and substantially benefit from requiring the Department to comply with the laws intended to protect it. As a state cannabis licensee who "'play[s] by the rules," plaintiff alleged it was harmed by the Department's refusal to implement a CCTT system that in fact flags irregularities. The FAP explains defendants "have substantially undermined the competitiveness and financial success of operators such as [plaintiff]" by allowing illegal dispensaries and black market sellers to sell cannabis at significantly lower prices. Given these allegations, plaintiff has adequately alleged standing to pursue a claim for a writ of mandate. (*Save the Plastic Bag Coalition v. City of Manhattan Beach*, *supra*, 52 Cal.4th 155, 165 [""'One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable"'"].)

According to defendants, "the prediction that forcing the Department to take some additional or different action would result in a reduction in criminal competition to licensed operators is speculative . . . ." But this argument raises factual questions that cannot be determined on demurrer. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1098 [finding the plaintiff "was only required to plead ultimate facts" and "[w]ether it [could] produce . . . evidence that will in fact support all or any of those allegations . . . is another matter"].)

Because the FAP adequately alleged the requirement of beneficial interest, we need not address the parties' arguments as to whether plaintiff also has public interest standing.

B. Claim for Injunctive Relief

In its second cause of action, plaintiff seeks an injunction compelling defendants "to comply with their mandatory and/or discretionary legal duties vis-à-vis the track and trace system and their enforcement obligations under State law, and mandating that they create and maintain a track and trace system that is capable of identifying and flagging . . . questionable transactions and information . . . ."

Defendants note injunctive relief is a remedy and not a cause of action. This is true. (*Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 984.) Plaintiff's claim is really a request for an injunction and derives from the allegations of the mandate claim. Because plaintiff has pled a viable claim for a writ of mandate, injunctive relief also is available. (*Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 399 ["'a cause of action must exist before injunctive relief may be granted'"].)

DISPOSITION

The judgment is reversed. Plaintiff shall recover costs incurred on appeal.

SANCHEZ, J.

WE CONCUR:

O'LEARY, P. J.

GOETHALS, J.

Exhibit F

Court of Appeal, Fourth Appellate District, Division One
Kevin J. Lane, Clerk/Executive Officer
Electronically FILED on 7/2/2019 at 4:03:11 PM

In the

Court of Appeal

of the

State of California

FOURTH APPELLATE DISTRICT
DIVISION ONE

D075028

SALAM RAZUKI,
Plaintiff-Respondent,

v.

NINUS MALAN, SAN DIEGO UNITED HOLDINGS GROUP, LLC, FLIP MANAGEMENT, LLC, BALBOA AVE COOPERATIVE, CALIFORNIA CANNABIS GROUP, DEVILISH DELIGHTS, INC., CHRIS HAKIM, MIRA ESTE PROPERTIES, LLC and ROSELLE PROPERTIES, LLC,
Defendants-Appellants.

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE EDDIE C. STURGEON · CASE NO. 37-2018-000034229-CU-BC-CTL

APPELLANTS' APPENDIX
Volume 3 of 19 – Pages 543 to 816 of 6477

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Attorneys for Defendants
Ninus Malan

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO- CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

vs.

NINUS MALAN, an individual; CHRIS HAKIM, an individual; MONARCH MANAGEMENT CONSULTING, INC., a California corporation; SAN DIEGO UNITED HOLDINGS GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC. a California nonprofit mutual benefit corporation; and DOES 1-100, inclusive;

Defendants.

CASE NO. 37-2018-00034229-CU-BC-CTL

DECLARATION OF GINA M. AUSTIN

[Imaged File]

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I, Gina M. Austin, declare:

1. I am attorney admitted to practice before this Court and all California courts and, along with Tamara M. Leetham, represent defendant Ninus Malan ("Malan") in this matter. I make this declaration in support of Malan's ex parte application to vacate order appointing receiver. Unless otherwise stated, all facts testified to are within my personal knowledge and, if called as a witness, I would and could competently testify to them.

2. I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation.

3. I have represented Ninus Malan, San Diego United Holdings Group, Balboa Ave Cooperative, and California Cannabis Group in multiple matters in San Diego County Superior Court.

4. My firm also performs additional legal services for these defendants to include corporate transactions and structuring, land use entitlements and regulations related to cannabis, and state compliance related to cannabis.

5. On Tuesday July 17, 2018, I specially appeared in Judge Medel's department in response to an ex parte application by Salam Razuki to appoint a receiver and for a temporary restraining order in the instant litigation. The purpose of my special appearance was to inform the court that none of the defendants had been served, that our office had not been retained to represent any of the defendants in this matter, and request that the court set the matter for a proper noticed hearing after the defendants had been served. A true and correct copy of the transcript from that hearing is attached as Exhibit A and incorporated by reference.

6. Judge Medel summarily granted the application and Plaintiff's request to appoint Mr. Essary as the receiver. There was no discussion of the proposed order or any response from the court regarding the lack of notice, service, or harms that would create a need for immediate relief.

7. Outside the courtroom I asked opposing counsel to send me a courtesy copy of the order as soon as it was signed. I did not receive a courtesy copy of the order until late that evening.

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8. At approximately noon on July 17, 2018, Heidi Rising, the manager of a separate dispensary Golden State Greens and then contract operator of the Balboa dispensary, called me and informed me that the prior operators of the Balboa dispensary were outside and harassing customers and that the prior security guard was there brandishing a gun. Golden State Greens is a separate client of Austin Legal Group. I instructed Ms. Rising to call the police and drove up to the dispensary to meet with police when they arrived to explain the events that had happened in court earlier that morning.

9. At approximately 2pm, upon reviewing a copy of the register of actions in this case, I telephoned Mr. Essary to (i) request a copy of the order and the bond, (ii) discuss the issues in the case, and (iii) determine the process for moving forward. Mr. Essary informed me that he was going to immediately "take possession of all assets" including the dispensary and put the prior operator back in control of the dispensary. I informed him that I could not allow him to do that until the defendants had been served with an order. I specifically informed Mr. Essary that neither my office nor any of the defendants had been served with the court's order appointing the receiver. Mr. Essary informed me that he had years of experience and taken control of millions of dollars and would take possession of the dispensary immediately. In response to my objections that none of the parties had been served with the order or bond, Mr. Essary stated that he didn't have to serve anyone as he had a court order appointing him the receiver and that was enough.

10. Around 3 pm on July 17th, Heidi rising telephoned me because a man was pounding on the dispensary's door and demanding he be let in. Heidi did not feel safe leaving the dispensary. The man with a gun was outside, and people working with him were sitting on her car. I drove to the dispensary to pick her up and help her escape.

11. When I arrived at the dispensary I was speaking with Ms. Rising on the phone to determine where to pick her up. She stated that the people outside were trying to break down the front door and we agreed I would pick her and two other Golden State Greens employees up in the back of the dispensary. When I arrived the people outside had just broken down the front door of the dispensary and there were people running around the corner of the dispensary towards

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my car as if to attack us. Out of fear, as soon as Heidi and her two other associates were in my car, I drove away as fast as I could. We were chased by the man who had been at the dispensary earlier in the day brandishing his gun.

12. Despite the fact that none of the defendants had been served with the court's order, on July 19, 2018 I emailed Mr. Essary and informed him of the issues I believed to need immediate attention. A true and correct copy of this email is attached as Exhibit I to the Declaration of Tamara M. Leetham. In a response email on July 19, 2018, Mr. Essary acknowledged receipt of my email and stated that he had retained an attorney Mr. Griswold.

13. I am informed and believe that either Mr. Essary or Mr. Griswold or both have taken possession of the Balboa dispensary and have placed the prior operator SoCal Building Ventures as operator.

14. Allowing Mr. Essary to control the dispensary is a violation of State law. The Bureau of Cannabis Control ("BCC") requires all owners to submit detailed information to the BCC as part of the licensing process. An owner is defined as:

> (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.
> (2) The chief executive officer of a nonprofit or other entity.
> (3) A member of the board of directors of a nonprofit.
> (4) ***An individual who will be participating in the direction, control, or management of the person applying for a license*** [emphasis added].

Cal. Bus. Prof Code § 26001(al).

15. Based upon the definition of an Owner, Mr. Essary would be deemed by the BCC to be an owner and would have to submit all the requisite information required by Title 16 Chapter 42 of the California Code of Regulations before he would be allowed to legally take possession and control of the Balboa dispensary.

16. Based upon the definition of Owner, SoCal Building Ventures would also be deemed an owner. I am informed and believe that its re-appointment as operator of the Balboa dispensary is also a violation of state law as none of the CCR Title 16 information has been submitted to the BCC.

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17. Allowing Mr. Essary to control the dispensary is also a violation of the San Diego Municipal Code ("SDMC"). The SDMC requires all *responsible persons* to have a background checks and a valid Marijuana Outlet Operating Permit. (SDMC Article 2, Division 15.) A true and correct copy of SDMC Article 2, Division 15 is attached hereto as Exhibit B.

18. The SDMC defines *Responsible Person* as "a person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term Responsible Person includes but is not limited to a property owner, tenant, person with a Legal Interest in real property or person in possession of real property." (SDMC §11.0210). The term also includes "a permittee and each person upon whom a duty, requirement or obligation is imposed by this Article, or who is otherwise responsible for the operation, management, direction, or policy of a police-regulated business. It also includes an employee who is in apparent charge of the premises." (SDMC 33.0201.)

19. Mr. Essary and SoCal Building Ventures are responsible persons and are in violation of the SDMC for failure to obtain the requisite background checks and permits.

20. I am informed and believe that SoCal Building Ventures has caused the Balboa dispensary to be in violation of the SDMC and the City of San Diego has issued various notices of violation that if left uncured will threaten the ability of Balboa to maintain its Conditional Use Permit to operate. A true and correct copy of the current code enforcement action pending against the Balboa dispensary is attached hereto as Exhibit C.

21. I am informed and believe that upon the appointment of Mr. Essary as the receiver, the Balboa dispensary has engaged in additional violations of the SDMC by failing to provide two security guards during operating hours and one security guard during non-operating hours.

22. The Balboa dispensary is currently in the process of a compliance and tax audit by the City of San Diego. The City has demanded responses by Friday August 3rd. Failure to provide these responses included financial data from the databases that are in the exclusive control of Mr. Essary and/or SoCal Building Ventures could cause irreparable harm and a loss of the Balboa dispensary's right to operate.

23. There are two hearings scheduled before the Hearing Officer for the City of San

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Diego for land use entitlements for the properties located at 8859 Balboa ("8859 CUP") and 9212 Mira Este ("9212 CUP"). These hearings are of critical importance to the future rights and privileges of those two properties. Approval by the Hearing Officer at each of these hearings requires specific knowledge and skills of the City of San Diego licensing process and historical facts that neither Mr. Essary or SoCal Building Ventures has.

24. The 8859 CUP is scheduled for a public hearing on August 15, 2018. Ninus Malan and the various entities that he is a member of will be irreparably harmed if this hearing is delayed or if they are not adequately represented. The City of San Diego is only issuing 40 permits. If the 8859 CUP is not heard by the Hearing Office on August 15, 2018, it is possible that the 8859 CUP would be unable to be approved in the future.

25. The 9212 CUP is scheduled for a public hearing in early September. Ninus Malan and the various entities that he is a member of will be irreparably harmed if this hearing is delayed or they are not adequately represented. Due to the permit number limitations, if the 9212 CUP is not heard by the Hearing Office in early September, it is possible that the 9212 CUP would be unable to be approved in the future as there are more than 60 applications for only 40 permits.

26. Our office has been responsible for processing the state applications related to cannabis operations at both the Balboa dispensary and 9212 Mira Este. Processing of these applications requires specific knowledge and skill of the state licensing requirements as well as the current state cannabis rules and regulations. An immediate response is required by the BCC from the Balboa dispensary and the Mira Este operations. It is my opinion that neither Mr. Griswold nor Mr. Essary have the knowledge and skills relevant to state cannabis law to effectively process these applications. Failure to immediately respond to the BCC and California Department of Public Health will likely jeopardize the permits and the ability to legally operate at these locations.

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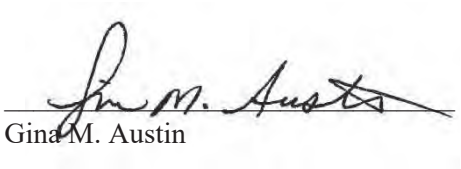
I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed in San Diego, California, on July 30, 2018.



Gina M. Austin

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Exhibit G

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 8, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057774

APPEARANCES

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I N D E X

Q Do you have an estimate?
A Somewhere between 20 and 25.
Q Okay. Now, do you consider yourself one of the experts in the San Diego area as it relates to cannabis law and regulation?
A Yes, I do.
Q And do you speak regularly at industry conferences on subjects related to cannabis law and regulation?
A Yes, I do.
Q Can you give me some examples of conferences you've spoken at.
A The most recent -- well, most recently, I did a law school panel, a panel for the Thomas Jefferson law school. Before that, I think I was in Chicago speaking at the Arcview conference. And before that, it would have been at the NCIA, National Cannabis Industry Association, conference in Los Angeles.
Q And what type of topics have you spoken at those conferences?
A Regulatory compliance issues, corporate structuring, funding mechanisms, local -- dealing with local jurisdictions and municipalities.
Q And do you know Larry Geraci?
A Yes.
Q And was Mr. Geraci your client?
A Yes.
Q Had your firm provided services to him in

Q Are you aware that Mr. Geraci has been sanctioned for illegal cannabis activity on three occasions for owning property in which illegal marijuana principals were housed?

A No.

Q You're not aware of that?

A No.

Q Did you do any type of -- actually, have you worked with Mr. Geraci on any project other than the 6176 CUP?

A I'm not sure I can answer that for client privilege. I know he waived with regard to this. If someone could instruct me whether or not it's been waived to everything, that would be helpful.

MR. WEINSTEIN: Waived, your Honor.

THE COURT: I'm sorry?

MR. WEINSTEIN: We will waive the privilege.

THE WITNESS: Okay. Yes. I did work with him on -- working on some other land use entitlement projects.

BY MR. AUSTIN:

Q Were those marijuana related?

A They were not.

Q So in the forms that we saw up on the board, you said that Rebecca Berry's name was all that was required because the -- any CUP runs with the land. Correct?

A That's correct.

Q So if Ms. Berry was Mr. Geraci's agent, wouldn't you say that in fact Mr. Geraci did have an interest in the CUP?

A I'm sorry. The question is I would say that Mr. Geraci has an interest in the CUP because Rebecca Berry was his agent?

Q Yes.

A Yeah. I believe that they were working together to obtain the CUP.

Q So in Exhibit 30, which has already been admitted into evidence, the first page, Part 1, it's fine print. But three lines down, does it not say to list -- and by the list it's referring to -- anyone --

THE REPORTER: Can the reporter hear that last part again, and louder Counsel.

BY MR. AUSTIN:

Q Okay. In Part 1, it refers to the ownership disclosure statement. And three lines down, it says the list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest, including tenants who will benefit from the permit, all individuals who own the property.

A Yes.

Q So after reading that, why does it seem unnecessary to list Mr. Geraci?

A I don't know that it -- it was unnecessary or necessary. We just didn't do it.

Q But at some point, his involvement would have to be disclosed. Correct?

A Like I said, this -- the purpose of this form is for conflict of interests. And so at some point -- and it happens all the time -- the applicant isn't the name of the person who's -- who's on the form. And we go to planning commission. And the planning commissioners have reviewed all the documents. And they wouldn't have seen Mr. Geraci's name. And had he known one of them or had done work with one of them and they would need to recuse, they would then be upset that it didn't get listed on the form.

Q Right. That makes sense.

So if Mr. Geraci has been sanctioned for illegal cannabis activity --

MR. WEINSTEIN: Objection, your Honor. May we have a sidebar?

THE COURT: The objection is sustained.

Next question. And the request for sidebar is deferred at this time.

BY MR. AUSTIN:

Q On the state level, would Mr. Geraci's interest have to be disclosed in his -- his involvement with the CUP?

A Yes. At the -- when -- once the CUP -- if the CUP had been issued and a state permit had been applied for, then they're -- the state's rules are much more explicit as to what -- who needs to be disclosed as an

owner and a financially interested party. But we didn't get to that point.

Q Okay. So as the main attorney on the CUP application, you were involved in pretty much all important conversations?

MR. WEINSTEIN: Object. Vague and ambiguous as phrased.

THE COURT: Do you -- do you understand the question, Ms. Austin?

THE WITNESS: I think he's asking me if I was involved in every conversation.

THE COURT: All right. The objection is overruled.

Please answer.

THE WITNESS: I wasn't involved in every conversation.

BY MR. AUSTIN:

Q Just the most important ones that would have an effect on the outcome?

A I would hope so.

Q All right. And you're familiar with Abhay Schweitzer?

A Abhay Schweitzer, yes.

Q Did you ever have an email conversation with Mr. Schweitzer asking that Mr. Geraci's name not be included in any of the applications?

A Maybe. I worked with Abhay on dozens of projects. And this is several years ago. But maybe.

A I was not involved, no.
Q Okay. You've been involved with approximately 25 CUPs?
A In San Diego?
Q In San Diego.
A Yes.
Q Yes. How many of those were successful?
A The majority of them. I think -- so many of these came in after the fact while we were doing compliance. But we're working with about 25 clients here in San Diego. There have been three in the City -- or two in the city proper of San Diego that have not been approved that I worked on from the beginning.
Q So you have roughly a 23 out of 25 success rate?
A Yes. Not all of those I started in the beginning, though. So, I mean, I may be working with them at the tail end of it. It may be coming in currently to make -- keep their CUPs. There's a lot of different -- a lot of different things.
Q It's fair to say you were involved on the Geraci CUP from the very beginning. Correct?
A Yes. Until your client sued me, in which case I stopped representing him.
Q All right.
MR. AUSTIN: I have no further questions.
THE COURT: Redirect?
MR. WEINSTEIN: Just one question, your Honor.

Exhibit H

Geraci vs. Cotton, et al.

Reporter's Transcript of Proceedings

July 03, 2019

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 3, 2019

Reported By:
Margaret A. Smith, CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057773

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I N D E X

represented medical cannabis, collectives and cooperatives with regard to regulatory compliance issues. She's also been successful in obtaining permits from local municipalities and representing them in front of local municipalities.

Mr. Geraci, you will learned, hired Ms. Austin to be on the team he put together to attempt to obtain approval of the conditional use permit for the dispensary on the property he was buying from Mr. Cotton.

There are two more people on the long list I need to introduce you to. The first one is Firouzeh. And I'm hoping I'm pronouncing that right because it's not -- it doesn't sound how it's spelled. But it's Fairsday Tirandazi. Ms. Tirandazi was an employee of the City of San Diego. She was an initial project manager for the City responsible for the CUP application that was submitted on this property. At that time, she was the initial project manager, and she worked in the San Diego -- City of San Diego's development services department.

The last person is another City employee. Her name is Sherlynn Tac, T-a-c. She's also employed by the City of San Diego. And at a time, she was the second project manager after Ms. Firouzeh (sic) was transferred from the department. Ms. Tac was the second manager at the City for the CUP application that was being processed that had been applied for by Ms. Berry on

THE COURT: As framed, sustained.
MR. AUSTIN: Withdrawn. I have no further questions.
THE COURT: All right. Redirect.
MR. WEINSTEIN: No, your Honor.
THE COURT: All right. May Mr. Geraci be excused?
MR. WEINSTEIN: Yes, your Honor.
THE COURT: Counsel?
MR. AUSTIN: Yes, your Honor.
THE COURT: Thank you very much, Mr. Geraci.
All right. Counsel, your next witness?
MR. WEINSTEIN: Rebecca Berry.

Rebecca Berry,
being called on behalf of the Plaintiff/Cross-Defendant, having been first duly sworn, testified as follows:

THE CLERK: Please state your full name and spell your first and last name for the record.
THE WITNESS: Rebecca Ann Berry.
THE REPORTER: May the reporter have the spelling of Ann?
THE COURT: Could you spell your middle name, please.
THE WITNESS: Ann, A-n-n.
THE COURT: Thank you.
Counsel, please continue.

MR. WEINSTEIN: Thank you.

(Direct examination of Rebecca Berry)

BY MR. WEINSTEIN:

Q Ms. Berry, are you -- first of all, let's talk about your education. Have you graduated from high school?

A Yes.

Q And when?

A 1967.

Q From where?

A Granite Hills High School.

Q And did you take college after that?

A Some college.

Q Where at?

A Grossmont College.

Q And when was that?

A 1968 and then 10 years later, I took classes probably in -- no. Fifteen years later. So --

Q Okay. And did you get a degree from Grossmont?

A No.

Q Okay. Other than attending Grossmont, have you attended any -- any schooling since you graduated from high school?

A Real estate and as the real estate broker ministerial training.

Q Okay. And let's take the latter first. Would you -- did you say ministerial training?

A Yes.

Q Okay. What training did you have that was ministerial?

A Through my church and as a licensed practitioner and counselor.

Q Okay. And when -- did you get some type of license with respect to that?

A Yes.

Q What license is that?

A Licensed counselor in 1991 and a minister, 1999.

Q Okay. And are you still counselor or a minister?

A Counselor but not a minister.

Q Okay. Now, you had -- you obtained a real estate license?

A Yes.

Q Is that a -- well, when did you obtain a real estate license?

A It's been 10, 12 years.

Q From today?

A From today.

Q Okay. And was it a salesperson's license? A broker's license? What kind of license?

A Salesperson's license.

Q And have you used that salesperson's license in connection with real estate transactions?

A Yes.

Q Okay. Now, did you act as a real estate agent

or broker with respect to the sale of -- the agreement to sell property that's the subject of this lawsuit?

A No.

Q Okay. Were you involved at all in the negotiation of -- of that agreement?

A No.

Q Do you know Darryl Cotton?

A No.

Q Have you -- when is the first time you ever saw him?

A Yesterday in the courtroom.

Q Okay. Have you ever spoken to him on the phone?

A No.

Q Have you ever seen him in the office?

A No.

Q Okay. Now, are you currently employed?

A Yes.

Q And by whom?

A Tax and Financial as the real estate broker and through my church as a teacher and counselor.

Q Okay. Let's focus on Tax and Financial.

How long have you worked at Tax and Financial Center?

A Almost 15 years.

Q And what's your current job position at Tax and Financial Center?

A I'm an assistant to Larry Geraci, and I manage

the office.

Q And how long have you been in that position?

A Almost 15 years.

Q So the entire time you've been there?

A Yes.

Q Now, in -- as you know, this case -- do you know -- do you understand this case involves an attempt to obtain a CUP conditional use permit to operate a dispensary at a property that Mr. Geraci was attempting to purchase?

A Yes.

Q Okay. Were you the applicant on that CUP application?

A Yes.

Q Okay. And as -- as the applicant -- as the applicant, did you understand that you were acting at all times as the agent for and on behalf of Mr. Geraci?

A Yes.

Q Why -- what was your understanding as to why you were the applicant on that CUP application?

A Mr. Geraci has a federal license, and we were afraid that it might affect it at some point.

Q What lines -- what federal license is that?

A He's an enrolled agent.

Q And did you have a discussion with him about the fact that there was a possibility or it was unknown whether him being an applicant on the property would affect his enrolled agent license?

A Yes.
Q All right. Were there any other reasons that you recall that you were the applicant -- chose to be the applicant on the project?
A No.
Q Were you willing and -- were you willing to be the applicant on the project as Mr. Geraci's agent?
A Yes.
Q Now, in connection with the CUP application project, were you involved at all in the communications with the City?
A Yes.
Q Okay. And what was your involvement in communications with the City?
A They -- I -- what I would do is if I got any information, I would simply direct it to Mr. Geraci or his team.
Q Okay.
A And then I made no decisions.
Q Okay. And so did you also have any communications with the team that Mr. Geraci had put together to pursue the CUP application?
A I had some interaction.
Q And -- and which members of the team do you recall having interaction with?
A Abhay.
Q That's Mr. Schweitzer?
A Mr. Schweitzer.

Q What did you understand his role as?

A He had something -- he was -- he had an architect company or something like that. And so I -- I wasn't really sure. I didn't know who the people were. And so I would just get this information and direct it to Mr. Geraci and the team for their approval.

Q Okay. So you would receive information from the team -- from the team in connection with the CUP application?

A Yes.

Q And then what would you do with that information?

A I would forward it to Mr. Geraci for his direction.

Q Okay. And then what would happen after you forward it to him for his direction?

A He would tell me what to do with it.

Q Okay. And then did you carry out his instructions?

A Yes.

Q Did you make any discussions with respect to the CUP application?

A No decisions.

Q Now, in connection with the CUP application, did you have to sign forms to be submitted to the City of San Diego?

A Yes.

Q Okay. Did you prepare those forms?

A No.
Q Who prepared those forms?
A The team.
Q Okay. And, generally, who on the team prepared those forms?
A I really don't know because I -- just whoever would give it to me. And -- or through Mr. Geraci, I would sign it and take care of it.
MR. WEINSTEIN: Okay. And -- could you bring up Exhibit 34, please.
I offer Exhibit 34.
THE COURT: Any objection?
MR. AUSTIN: No, your Honor.
THE COURT: Exhibit 34 will be admitted.
(Premarked Joint Exhibit 34, Forms submitted to City of San Diego in relation to 6176 Federal Blvd CUP Application, dated 10/31/16, Form DS-3032 General Application dated 10/31/2016, was admitted into evidence.)
BY MR. WEINSTEIN:
Q So, Ms. Berry, this is called the general application form. It's the first page of Exhibit 34.
Is that your signature at the bottom of the page?
A Yes.
Q Okay. And did you prepare that form?
A No.
Q Was it prepared for you?

A Yes.
Q And did you sign it on or about October 31st, 2016?
A Yes.
Q Okay. When you signed that form, was it your understanding that the form had been prepared under the direction of either Mr. Schweitzer or Ms. Austin?
A Simply by the team. I did not know who prepared it.
Q Okay. Would you go to the next form, please. The next form is a D.S. 190 form, an affidavit for medical marijuana consumer cooperatives for conditional use permit.
Was that one of the forms that you were provided to sign for the CUP application?
A Yes.
Q Did you prepare that form?
A Yes.
Q Did you --
A I'm sorry. I did not prepare it. I'm so sorry.
Q Is that your signature and date at the bottom of the page?
A Yes.
Q When you signed this form, did you understand that it had been prepared by somebody on the team?
A Yes.
Q And were you involved in making any decisions

as to how this form would be filled out?
A No.
Q Next document. Okay. This next form is deposit account/financially responsible party. Is that another form that you signed in connection with the CUP application?
A Yes.
Q Okay. And did you date it, sign it on October 31st, 2016?
A Yes.
Q And did you prepare that form?
A No.
Q Did you understand it was prepared by somebody on the team?
A Probably, yes.
Q And did you understand -- have an understanding as to -- well, do you have any responsible -- responsibility for deciding how to fill out the form?
A No.
Q Okay. The last form, please. Okay. This form is called ownership disclosure statement. Would you go to the signature section.
And was this a form that you signed in connection with the CUP application?
A Yes.
Q Okay. And did you prepare this form?
A No.
Q Did you understand it was prepared by somebody

on your team?

A Probably.

Q Okay. And did you -- were you responsible for making any determinations as to how to fill out this form?

A No.

Q So in signing these forms, you were relying on the team to properly prepare the forms?

A Yes.

Q Did you get involved in any discussions that you recall with them about how to fill these forms out?

A No.

Q So is it fair to say that your role in connection with the application was simply to be the liaison between the team and the City and Mr. Geraci?

A Yes.

Q Did you ever become aware of any issues related to problems in getting the CUP application processed, that you recall?

A I really didn't get that involved. I knew there were things going on, but I didn't really pay that much attention to it. I wasn't really that involved with it.

Q Did you get emails concerning issues regarding the CUP application that you simply forwarded on to Mr. Geraci?

A Yes.

Q And was he the one making decisions with

respect to those issues?

A Yes.

MR. WEINSTEIN: Your Honor, may I have a moment.

THE COURT: You may.

BY MR. WEINSTEIN:

Q Just in case I missed it, I know it's been quick. But am I correct you've never spoken to Mr. Cotton?

A No.

Q Have you ever communicated with him by email if you're aware?

A He sent one email, but I've never sent him anything.

Q Okay.

A I got one email from him.

Q And what did you do with that email?

A I read the first line or two and forwarded it to Larry.

MR. WEINSTEIN: Okay. I think that's all I have, your Honor.

THE COURT: All right. Cross-examination.

(Cross-examination of Rebecca Berry)

BY MR. AUSTIN:

Q Good afternoon, Ms. Berry.

A Good afternoon.

Q So on Exhibit 30, you signed a document saying that --

A Do I need to look it up?
Q Yeah, if you could. Exhibit 34. On the first page at the very bottom, is that your signature? I think we've already established that it is.
A Yes.
Q It's dated October -- October 31st. So at that time, do you -- do you know whether Mr. Cotton and Mr. Geraci had entered into a real estate contract?
A No.
Q And why were you told to be the applicant on this?
A Like I said, it was because Larry -- or Mr. Geraci had a federal license.
Q So because of this license, you did not -- let me put this differently.
So if you go to page 4 on that same exhibit.
A Page 4.
Q It's fine print, but in Part 1.
A Okay.
Q Starting at the third sentence, it says the list must include the names and addresses of all persons who have an interest in the property recorded or otherwise and state the type of property interest, whether --
A Okay. So you're saying page 4, part 1 to be completed when property is held. Is that what you're talking about?
Q That is the section, yes.

A Okay. And then what are you saying?
Q The third sentence, starting halfway through the third line down.
A Okay.
Q The list must include the names and addresses of all persons who have an interest in the property.
So why upon signing this did you not include Mr. Geraci's name? Did -- was he not to have any interest in the CUP?
A I simply signed this. It was filled out by our team and I signed it. Trusting Mr. Geraci and the team.
Q Did it concern you at all that this could potentially either lead to the denial of the application for being incomplete or possibly even legal penalties against you?
A No. I didn't -- I was not involved in it.
Q So you had no concern?
A It didn't even -- no. It didn't even enter my mind.
Q So on that same page, it's checked off that you're the tenant/lessee.
Do you see that a couple lines above your signature there in the --
A Yes.
Q Okay. And going back a page to page 3, also October 31st, you say you're the president. What are you the president of?
A I believe that I put president because I'm the

real estate -- I -- I don't even remember. There -- it was -- it seemed like a good reason to do it.

Q Okay. So going back another page, page 1, on this page, you check off the part -- there's two options: There's owner and there's agent. You check off owner. Is that correct?

A I did not check that box.

Q Someone else checked it?

A Yes.

Q Okay. Then on page 1, that's where it says you're the applicant. So there's just a lot of contradiction. But it didn't matter to you what was being signed?

A I simply signed it and under direction from our team.

Q Okay.

A And Mr. Geraci.

Q Have you ever been the applicant on any other CUPs?

A No.

Q So you have no involvement with any other CUPs at all?

A No.

Q Okay. Did Mr. Geraci offer to pay you more to sign these documents?

A No mention of any money was ever -- never talked about, any money.

Q Even in the event of the CUP application being

approved?

A No.

Q Okay. So are you still a real estate broker?

A Yes.

Q Have -- so as of now, you've definitely seen the November 2nd document that your boss, Mr. Geraci, alleges was the official contract?

A Yes.

Q You've seen and read it?

A Yes.

Q Do you feel in your experience and expertise that that contract contains all the essential elements that a California real estate contract should contain?

A Quite often buyers and sellers will get into -- make up -- get an arrangement together and make up their own contract. It happens a lot.

Q Right.

A So I was not involved in this.

Q Okay. I mean, if someone asks you to write a real estate contract, would yours be at all similar to that particular contract?

MR. WEINSTEIN: Object. It's an incomplete hypothetical. Vague and ambiguous.

THE COURT: Sustained.

BY MR. AUSTIN:

Q If someone asked you to complete a real estate contract for them, do you think you would submit a three-sentence document similar to the November 2nd

Exhibit I

Item 51 Sub Item A
2/14/2017
(O-2017-93)
REV. COPY

ORDINANCE NUMBER O- 20793 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 22 2017

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2, DIVISION 7 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 42.0709; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 BY AMENDING SECTION 113.0103; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 2 BY AMENDING SECTION 113.0225; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 126.0303; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 131.0112; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTIONS 131.0322 AND 131.0323; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 5 BY ADDING NEW SECTION 141.0504, BY RENUMBERING SECTION 141.0504 TO SECTION 141.0505, SECTION 141.0505 TO SECTION 141.0506, SECTION 141.0506 TO SECTION 141.0507, AND SECTION 141.0507 TO SECTION 141.0508; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY REPEALING SECTION 141.0614; AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 2, DIVISION 3 BY AMENDING SECTION 152.0312; AMENDING CHAPTER 15, ARTICLE 3, DIVISION 3 BY AMENDING SECTIONS 153.0309 AND 153.0310; AMENDING CHAPTER 15, ARTICLE 6, DIVISION 3 BY AMENDING SECTION 156.0308; AMENDING CHAPTER 15, ARTICLE 14, DIVISION 3 BY AMENDING SECTION 1514.0305, ALL RELATING TO MARIJUANA REGULATIONS.

WHEREAS, the City of San Diego has adopted land use regulations for facilities for the transfer of medical marijuana to qualified patients and primary caregivers, known as medical marijuana consumer cooperatives; and

WHEREAS, on November 8, 2016, the Adult Use of Marijuana Act (AUMA) was approved by the voters, which establishes state licensing requirements for commercial marijuana activity, defined as the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, regardless of medical purposes; and

WHEREAS, the City of San Diego desires to amend the current medical marijuana consumer cooperative land use regulations in accordance with state law, to apply to the retail of all marijuana; and

WHEREAS, the City of San Diego desires to explicitly prohibit the cultivation, distribution, storage, production, and testing of marijuana and marijuana products; and

WHEREAS, the City of San Diego does not currently regulate marijuana deliveries, however, because the unrelated use of land for the delivery of marijuana has resulted in facilities being used for the distribution of marijuana without regulation, the City of San Diego desires to explicitly prohibit the delivery of marijuana, except from a permitted location, and as may be otherwise authorized pursuant to Proposition 215; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 2, Division 7 of the San Diego Municipal Code is amended by amending section 42.0709, to read as follows:

§42.0709 Fowl, Rabbits, Racing or Homing Pigeons or Fancy Pigeons, Maintenance—Regulations and Exceptions

(a) through (d) [No change in text.]

(e) Keeping or maintaining chickens located on a premises zoned for a single dwelling unit, developed with a single dwelling unit, developed with a community garden in accordance with section 141.0203, or developed

Exhibit J

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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

Exhibit K

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Attorneys for Plaintiff
SALAM RAZUKI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

v.

NINUS MALAN, an individual; MONARCH MANAGEMENT CONSULTING, INC. a California corporation; SAN DIEGO UNITED HOLDING GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; MIRA ESTE PROPERTIES, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; and DOES 1-100, inclusive,

Defendants,

CASE NO. 37-2018-00034229-CU-BC-CTL

COMPLAINT FOR DAMAGES FOR:

(1) BREACH OF CONTRACT
(2) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(3) BREACH OF ORAL AGREEMENT
(4) BREACH OF FIDUCIARY DUTY
(5) FRAUD AND DECEIT
(6) MONEY HAD AND RECEIVED
(7) CONVERSION
(8) ACCOUNTING
(9) APPOINTMENT OF RECEIVER
(10) INJUNCTIVE RELIEF
(11) DECLARATORY RELIEF
(12) CONSTRUCTIVE TRUST
(13) DISSOLUTION

DEMAND FOR JURY TRIAL

Plaintiff SALAM RAZUKI complains and alleges as follows:

I.
INTRODUCTION

1. For years, Salam Razuki ("Razuki") and Ninus Malan ("Malan") engaged in numerous business dealings and property investments. The two entered into certain oral agreements whereby Razuki would provide the initial cash investment to purchase a certain asset while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of that particular asset and Malan would be entitled to twenty-five percent (25%) of said profits & losses. Unfortunately, due to Malan's refusal to be completely forthcoming with the Partnership Assets (as defined below in Section III), this oral agreement became untenable and disputes arose. Instead of litigating the matter, Razuki and Malan decided to enter into an Agreement of Compromise, Settlement and Mutual General Release (referred to herein as the "Settlement Agreement") to memorialize their prior oral agreements and to describe additional duties and obligations for each of them. Under the Settlement Agreement, Razuki and Malan agreed to transfer all Partnership Assets into one entity, RM Property Holdings, LLC ("RM Holdings") which was formed for that particular business purpose. After recuperating any initial investments related to the Partnership Assets, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of RM Holdings and Malan would be entitled to twenty-five percent (25%) of the profits & losses of RM Holdings.

2. Even with the Settlement Agreement in place and RM Holdings formed, Malan continued to deceive Razuki and manipulate the Partnership Assets for his own gain. Shortly after the Settlement Agreement was signed, Malan began negotiations to sell some of the Partnership Assets while they were still under his name. During these sale negotiations, Malan never informed the potential buyer of Razuki's interest in the Partnership Assets. Based on information and belief, Malan intentionally stole and/or redirect revenue from the Partnership Assets to a new entity owned by Malan (*i.e.* Monarch). Given Malan's blatant breach of the Settlement Agreement and his clear intentions to conceal the profits of the Partnership Assets, Razuki now brings this instant Complaint in order to enforce the terms of the Settlement Agreement and take control of his Partnership Assets.

II.
PARTIES AND JURISDICTION

3. Plaintiff SALAM RAZUKI ("Razuki") is an individual residing in the County of San Diego, State of California.

4. Defendant NINUS MALAN ("Malan") is an individual residing in the County of San Diego, State of California.

5. Defendant MONARCH MANAGEMENT CONSULTING, INC. ("Monarch") is a California corporation organized under the laws of the State of California. Monarch's principal place of business is in the County of San Diego, State of California. Razuki is informed and believes and thereon alleges that Monarch has two shareholder, Chris Hakim (hereafter "Hakim") and Malan who are also the officers and directors of said corporation.

6. Defendant SAN DIEGO UNITED HOLDING GROUP, LLC ("SD United") is a California limited liability company organized under the laws of the State of California. SD United's principal place of business is in the in the County of San Diego, State of California.

7. Defendant FLIP MANAGEMENT, LLC ("Flip") is a California limited liability company organized under the laws of the State of California. Flip's principal place of business is in the in the County of San Diego, State of California.

8. Defendant MIRA ESTE PROPERTIES, LLC ("Mira Este") is a California limited liability company organized under the laws of the State of California. Mira Este's principal place of business is in the in the County of San Diego, State of California.

9. Defendant ROSELLE PROPERTIES, LLC ("Roselle") is a California limited liability company organized under the laws of the State of California. Roselle's principal place of business is in the in the County of San Diego, State of California.

10. The true names and capacities of defendants sued as DOES (the "DOE Defendants") are unknown to Razuki and therefore are sued under such fictitious names. Razuki is informed and believes, and based upon such information and belief alleges that defendants sued as DOES are in some manner responsible for the acts and damages alleged. Razuki will amend this complaint when the true names and capacities of such fictitiously named defendants are ascertained.

11. Malan, Monarch, SD United, Flip, Mira Este, Roselle and DOE Defendants are collectively referred to as "Defendants" hereinafter

12. Razuki is informed and believes, and thereon alleges that at all times mentioned

Defendants were acting as the agent, employee, attorney, accountant, and/or representative of each other and within the scope of the above-mentioned agency, employment, relationship, and/or representation. In doing the acts alleged, each defendant was acting with the full authority and consent of each other defendant.

13. Razuki is informed and believes and thereon alleges that some of the corporations, limited liability companies, and entities named as defendants herein including, but not limited to, Monarch, SD United, Flip, Mira Este, Roselle, and DOES 1 through 100, (hereinafter occasionally collectively referred to as the "Alter Ego Entities"), and each of them, were at all times relevant the alter ego of Malan (hereinafter occasionally collectively referred to as the "Individual Defendants") by reason of the following:

a. Razuki is informed and believes and thereon alleges that said Individual Defendants, at all times herein mentioned, dominated, influenced, and controlled each of the Alter Ego Entities and the officers thereof as well as the business, property, and affairs of each of said corporations.

b. Razuki is informed and believes and thereon alleges that, at all times herein mentioned, there existed and now exists a unity of interest and ownership between said Individual Defendants and each of the Alter Ego Entities; the individuality and separateness of said Individual Defendants and each of the Alter Ego Entities have ceased.

c. Razuki is informed and believes and thereon alleges that, at all times since the incorporation of each, each Alter Ego Entities 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. Razuki is informed and believes and thereon alleges that, at all times herein mentioned, each of the Alter Ego Entities was 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 the Alter Ego Entities were diverted by said Individual Defendants to themselves.

e. Razuki is informed and believes and thereon alleges that, at all times herein

mentioned, each of the Alter Ego Entities was organized by said Individual Defendants as a device to avoid individual liability and for the purpose of substituting financially irresponsible corporations in the place and stead of said Individual Defendants, and each of them, and accordingly, each Alter Ego Entities was formed with capitalization totally inadequate for the business in which said entities was engaged.

f. By virtue of the foregoing, adherence to the fiction of the separate corporate existence of each of the Alter Ego Entities would, under the circumstances, sanction a fraud and promote injustice in that Razuki would be unable to realize upon any judgment in his favor.

14. Jurisdiction is proper with the above-entitled Court as all parties are residents of this county and any contract/agreement that is the subject of this action was entered into in this jurisdiction and was to be performed entirely within the jurisdiction of this Court.

III.
GENERAL ALLEGATIONS

15. Since 2016, Razuki and Malan have engaged in numerous business dealings relating to property investments in San Diego County. The oral agreements between Razuki and Malan was simple: Razuki would provide the initial investment to purchase the property and Malan would manage the property (*e.g.* ensure upkeep and acquire tenants). After Razuki was paid back for his initial investment, Razuki would receive seventy-five percent (75%) of any profits while Malan would receive twenty-five percent (25%) of any profits.

16. Under this oral agreement, Razuki trusted Malan to provide proper accounting of the revenue generated from the various properties and provide him with the agreed upon profit split.

17. Over the years, Razuki and Malan have acquired the following interests, directly or indirectly, (the "Partnership Assets") in the following businesses and/or entities:

a. <u>One hundred percent (100%) interest in SD United.</u> SD United owns real property located at 8859 Balboa Avenue, Suites A-E, 8861 Balboa Avenue, Suite B, and 8863 Balboa Avenue, Suite E. Razuki and Malan own, directly or indirectly, a marijuana retail business located at 8861 Balboa Avenue and 8863 Balboa Avenue. Razuki provided all the initial monetary investment for SD United. However, on paper,

Malan owned a one-hundred percent (100%) in and to SD United.

b. One hundred percent (100%) interest in Flip. Flip served as the operating entity for Razuki and Malan's marijuana retail businesses located at 8861 Balboa Avenue and 8863 Balboa Avenue. Razuki provided all the initial monetary investment for this business. On paper, Malan owned a one-hundred percent (100%) in Flip.

c. Fifty percent (50%) interest in Mira Este. Mira Este owns real property located at 9212 Mira Este Court, San Diego, CA 92126. Razuki and Malan own, directly or indirectly, a marijuana distribution and manufacturing business located at 9219 Mira Este Court. Razuki provided fifty percent (50%) of the initial monetary investment for Mira Este. On paper, Malan owns a fifty percent (50%) ownership interest in Mira Este.

d. Fifty percent (50%) interest in Roselle. Roselle owns real property located at 10685 Roselle Street, San Diego, CA 92121. Razuki and Malan own, directly or indirectly, a marijuana cultivation business located at 10685 Roselle Street. Razuki provided fifty percent (50%) of the initial monetary investment for Roselle. On paper, Malan owns a fifty percent (50%) ownership interest in Roselle.

e. A twenty percent (20%) interest in Sunrise Property Investments, LLC ("Sunrise"). Sunrise owns real property located at 3385 Sunrise Street, San Diego, CA 92102.

f. A twenty-seven percent (27%) in Super 5 Consulting Group, LLC ("Super 5"). Super 5 is the operator of a marijuana dispensary located at 3385 Sunrise Street, San Diego, CA 92102.

18. For all the Partnership Assets, regardless of the paperwork, Razuki and Malan had an oral agreement that after recuperating the initial investments, Razuki would share in seventy-five percent (75%) of the profits & losses and Malan would share in twenty-five percent (25%) of the profits & losses.

19. For Mira Este and Roselle, Hakim provided fifty percent (50%) of the initial investment and owns a fifty percent (50%) ownership in Mira Este and Roselle.

20. SD United, Flip, Mira Este, and Roselle are all entities involved in Razuki and Malan's marijuana operations. The marijuana operations were structured as such:

a. California Cannabis Group (a non-profit entity where Malan serves as President and CEO), and Devilish Delights, Inc. (a non-profit entity where Malan serves as President and CEO) are the license holders for the marijuana operations.

b. Flip served as the operator for the marijuana operations.

c. SD United, Mira Este, and Roselle are the property owners for the physical location of the businesses and held the Conditional Use Permits (CUPs) for the marijuana operations.

21. Under this structure, Razuki believed all revenue and profits from the marijuana operations would be deposited into accounts owned by either SD United, Flip, Mira Este, or Roselle.

A. Dispute Regarding the Partnership Assets

22. Unfortunately, this oral agreement was untenable. The agreement provided Malan would maintain proper records of all the profits & losses from the businesses, which was not done.

23. Additional problems arose. In early 2017, Mira Este required capital for building renovations. Malan, as the property manager, approached The Loan Company of San Diego, LP to acquire a hard money loan for approximatley one million dollars ($1,000,000). Mira Este was the named borrower on the loan and Razuki signed on as the guarantor of the loan. Razuki provided additional property (property that was solely owned by Razuki) for collateral on the loan.

24. Because Razuki agreed to be guarantor and provided collateral, the loan was approved.

25. However, shortly after the funds were deposited into Mira Este's account, Malan intended and did take $390,000 of the new funds for his personal use.

26. To date, the funds Malan withdrew from Mira Este's account have not been repaid.

B. The Settlement Agreement

27. In order to memorialize the oral agreement and resolve any ambiguities in Razuki and Malan's business relationship, Razuki and Malan decided to enter into the Settlement Agreement. A copy of the Settlement Agreement is attached to this Complaint as **Exhibit A**.

28. The Settlement Agreement had three central components:

a. Razuki and Malan would transfer all the Partnership Assets into a newly created entity, RM Holdings within thirty (30) days;

b. Razuki and Malan would work together to calculate Razuki's cash investments

Exhibit L

AFFIDAVIT OF TIFFANY KNOPF

I, Tiffany Knopf, do hereby attest as follows:

1. I am over the age of eighteen and am a resident of the County of San Diego, California. The facts set forth herein are true and correct as of my own personal knowledge or belief. If called upon to testify, I could and would competently testify as to them.

2. This affidavit is limited to the facts set forth and cannot be deemed an admission, denial or purposeful omission of other known, material and interconnected facts that are not set forth herein.

3. I make this affidavit in support of ongoing litigation brought forth by, or related to, Amy Sherlock and her children, T.S. and S.S. (the "Sherlock Family"), and Darryl Cotton ("Cotton"). Specifically, litigation arising from or related to the application and/or ownership of cannabis businesses acquired through the legal services of attorney Gina M. Austin and her law firm, the Austin Legal Group (ALG), for their clients (principals) in the name of third parties (agents) in which the agents do not disclose their agency with, or ownership of, their respective principals (the "Strawman Practice").

4. In July 2010, I met Adam Knopf. Adam was divorced with four children, and I was a single mother with a single son. At the time Adam was operating a medical marijuana dispensary pursuant to a one-year permit issued by the City of San Diego known as Point Loma Patients Association (PLPA). At that time, he was a charismatic man and I believed him to be an ambitious and kind man. We began dating in January 2011 and were married in September 2012.

5. When I first met Adam, he and Sergio Berga co-owned PLPA, which was initially located in a storefront at 3045 Rosecrans Street Ste. 214, San Diego, CA 92110 and was in operation from mid-2009 to late 2011.

6. In 2011, PLPA received a notice from the City of San Diego that they were unpermitted and had to cease operations and ordered to shut down. This City action resulted in the dissolution of the PLPA partnership between Adam and Sergio.

7. When Adam and Sergio ceased the PLPA partnership they both agreed to split $100,000 in cash from the operations of PLPA. However, in approximately May of 2012, I went with Adam to Thousand Oaks, California in order to meet Sergio and collect Adam's $50,000.

8. Sergio reneged on the deal, keeping the full $100,000. Adam was very angry, but there was nothing he could do about it as he told me he had no legal recourse.

9. With the dissolution of the PLPA partnership, Adam immediately began a cannabis delivery service, operating out of an office on Rosecrans Street in Point Loma, CA. Adam had told me his operation of the PLPA delivery service was legal as only storefront dispensaries were illegal to operate.

10. Attorney Austin submitted an alleged resignation by Adam from PLPA dated February 14, 2014. A true and correct copy of which is attached hereto as **Exhibit A**.

11. The resignation was fabricated. At no point was Adam not the owner and operator of PLPA.

12. In his resignation, Adam appoints, effective immediately, James Jennings as President and Secretary and Heidi Rising as Vice-President and Treasurer.

13. James Jennings is my brothers life partner and was unaware that Adam had done this. See Jennings Affidavit attached hereto as **Exhibit B.**

14. On November 15, 2023, I retrieved a box of papers that Adam had secretly stored at my parents' house in Bonita, CA. My mother was cleaning things out in the garage and asked me if I wanted it. I had not been aware of the box nor what was in it until I opened it the following morning.

15. Inside the box were the 2014 PLPA tax returns and supporting financials prepared by Justus "Judd" Henkes, CPA("Henkes"). See **Exhibit C**

16. Henkes did not file Form 1023 as required of a not-for-profit business but instead files 1120 corporate return of a for-profit.

17. Henkes, in Schedule K of the return, purposefully misidentifies PLPA as a 446190-business activity code, Sales of Medical Supplies.

18. Henkes, does not even pretend to treat PLPA as a not-for-profit enterprise but instead takes deductions that would not be federally allowed as a schedule one drug had the business been properly identified and any money left after expenses were to be distributed amongst the members of the collective.

19. Adam was listed as 100% owner in 1125-E portion of the return.

20. In the state DE-9 filed 2014-Q4, it can be seen that Adam received payroll compensation of $150,000 during this period. See **Exhibit D.**

21. This DE-9 also shows me having been an employee and receiving $21,346.16 in compensation. I have never worked for PLPA ever. That figure was another way for Adam to take money out of the business while making it look like a payroll expense. Of note, the phone number shown at the bottom of this form is Adams: (619) 886-4251 number.

22. Adam used our home address for his PLPA bank account. Here it can be seen that Adam maintained an account at Home Bank of California which he closed on September 30, 2014. Of note, there are merchant deposits, payroll and tax payments being shown. See **Exhibit E.**

23. On March 9, 2015, in the CITY OF SAN DIEGO v. PLPA ET AL ("CITY v. PLPA") sought a COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF (ROA-1) in which Adam Knopf was not a named defendant. Heidi Rising ("Rising") an employee of PLPA (See Exhibit D) was a named defendant. See **Exhibit F**

24. James Jennings was not a named defendant in the CITY v. PLPA complaint.

25. I was not named in the CITY v. PLPA complaint.

26. James Jennings is not named or compensated in any DE-9 filing ever produced by PLPA, Knopf or Henkes. Adam, on the other hand was compensated by PLPA after his purported resignation.

27. On September 4, 2014, the Homeland Bank of California statement shows 11 PAYROLL payments having been made. The Payee is not named. (See Exhibit E)

28. The gross amounts shown having been paid and withheld in the 2014 DE-9 forms would indicate the PAYROLL payments being made out of the Homeland Bank of California account are less the withholdings made and then forwarded to the State and Federal government with matching employer contributions on the employees behalf.

29. The payees are not identified by the Homeland Bank of California Statement and at no time did PLPA ever show having had 11 employees in a DE-9 quarter much less during a single week when PAYROLL is shown on the Homeland Bank of California statement for 11 employees.

30. The CITY v. PLPA case, after having been assigned to 4 different judges, on May 27, 2015, Judge Wohlfiel signed a STIPULATION FOR ENTRY OF FINAL JUDGMENT IN IT'S ENTIRETY AND PERMANENT INJUNCTION for PLPA and Rising which **"effective immediately…**enjoined and restrained from operating at the PROPERTY…" Adam Knopf was not named in the complaint or the judgment. See **Exhibit G**.

31. On March 9, 2015, San Diego City Attorney Jan I. Goldsmith issued a press release stating, among 18 others, PLPA had been shut down. See **Exhibit H**

32. PLPA was not shut down by the City action. PLPA continued to operate and Rising agreed to stand in on behalf of Adam so he could apply for a Conditional Use Permit ("CUP") as the City opened up these licenses in 2015. Had Adam been named in the complaint and judgment he would have, under local and state law, been ineligible to apply for a CUP for a period of 3 years.

33. In January 2022, in a series of text messages I had with Adam, see **Exhibit I**, it can be seen where Adam is telling me that "I've owned the business [PLPA] since 2009…until the City made me change it to a consumer cooperative in 2015 that did not change anything other than a name change…whoever is poisoning your brain when I find out they are going to feel the wrath I guess I'll just print out your phone list here and find out who's attacking my wife…It's all in the database in the state at the IRS and many other locations …I never had a red shop I was probably 215 compliant [how are you *probably* 215 compliant when you're CPA is filing for-profit tax returns?] with the state the only problem was the city didn't have their zoning together so we were allow to open up wherever we wanted. Once the zoning was put into place we applied accordingly with the same entity. 100% the same [PLPA and PLPCC] business." These statements conveniently ignore the fact that Adam had, as far as the City was concerned, purportedly resigned on February 10, 2014. [The question becomes who actually did payroll for Adam/PLPA, as he is incapable of having done this type of bookkeeping and accounting.]

34. On June 28, 2019, in KARL BECK v. PLPCC ET AL, a Class Action lawsuit, Judge Wohlfeil signed a Judgment that ordered the defendants parties to pay those members of the of the not-for-profit cooperative the money that the defendants had not been distributing back to its members. See **Exhibit J.**

35. In early 2014, Adam and I began our investing in the permitting process for a CUP to operate a dispensary at 3452 Hancock Street, San Diego, CA 92110 that came to be called Point Loma Patients Consumer Cooperative (PLPCC) (now known as Golden State Greens). The CUP was granted in March 2015.

36. I, along with Adam, were listed as the Director of PLPCC as reflected in the Articles of Incorporation dated April 24, 2014. A true and correct copy of which is attached hereto as **Exhibit K**.

37. After we were married, I came to discover that Adam is an evil, intensely racist, homophobic and physically and emotionally abusive individual with a complete disregard for the law in every aspect of his life, especially in his business endeavors and the pursuit of money.

38. Provided with this affidavit are video recordings of Adam that include: (12.1.1) Adam using the word "nigger," which he often did; (12.1.2) an altercation during which he forcibly took my phone while verbally abusing me; (12.1.3) a secret recording taken by my son of Adam verbally abusing me calling me a "fucking loser;" (12.1.4) Adam screaming at me repeatedly to tell my teenage son to "beat the shit out of" his girlfriend who came to our house at 11:00 PM and, in Adam's view, "disrespected" our family; and (12.1.5) Adam

verbally abusing me in the car and calling me a "stupid bitch." These recordings have been posted to: www.justice4amy.org at Litigation-Section 12.

39. Attached hereto as E**xhibit L** are text messages from Adam in which he threatens me and abuses me, including by writing: "You're a dumb bitch. I should beat your ass so ya get it" and "… you're a fake ass bitch with fake ass money trying to take half a man's hard-working money because you can't control your fucking mouth or your son you fucking loser."

40. In February 2015, while driving to Mammoth, Adam started hitting Micah, his son, and threatened to kill me.

41. On July 5, 2015, Adam broke my finger because I informed him that his son was disrespecting me, and I asked him to take an active role in parenting and disciplining his son because of his disrespect towards me. This was the first time that I realized that I wanted to divorce Adam as he was not the man, I believed him to be.

42. Tayler is Adam's daughter. During the custody battle in Adams first marriage, this May/2014 text was sent from Tayler to her biological mother received a "Mom, I'm scared," text message where Tayler was begging for her mom to come rescue her as Adam was beating her. See **Exhibit M.**

43. In August 2015, Adam and I opened PLPCC. With the exception of accounting, I worked in every aspect of the dispensary, including the hiring and training of staff, marketing, and dealing with customers. The dispensary was very profitable, with most months bringing in over a million dollars in sales a month. I was the one who created the name Golden State Greens after we consulted with a marketing professional who said that PLPCC was too long and not "catchy" enough.

44. In 2015, I met Michael Sherlock at my home several times when Adam introduced me to him as they were partnering up to create cannabis businesses. At one point, Adam and I went to the Sherlock Family's home and I met Amy Sherlock and her children.

45. Thereafter, Adam partnered with Michael as part of a joint venture under the name of Full Circle, LLC intended to be a for-profit company that managed nonprofit dispensaries and other cannabis and related businesses.

46. In 2017, in one of his violent episodes, Adam chased my son, Zay, around our house, caught him, physically assaulted him by repeatedly punching him, and broke his hand. I became deeply frightened by his retaliation not just against me, but also my son, if I followed through with divorce proceedings.

47. I first filed for divorce on February 4, 2021, but I dismissed the proceeding because Adam begged me to do so saying that divorce exposing our financial records in litigation would jeopardize our business interests and would "ruin" us financially.

48. By May 2021, Adam's physical and emotional abuse had reached new heights. I had discovered that Adam, in anticipation of the divorce, had started transferring numerous assets out of his name or acquiring assets in the name of other parties and entities. When I confronted Adam with this, he told me "I was on a need-to-know basis" which meant I was to agree to and sign whatever he put in front of me. I refused to do so without understanding the what and why of what he wanted me to sign. When I wouldn't do that, I now have come to learn Adam would simply forge my signature if it suited his purposes.

49. By June 2021, I knew that the dispensary was making millions, worth millions, and that Adam had no intention of ever honoring my 50% ownership of the dispensary that we opened and built together. That his sole role a

that point with me was to keep me from acquiring 50% of the assets we had built together and that he had acquired with the profits from the business.

50. Adam told me that if we stayed together, we would make "billions," but that if I divorced him I would "walk away with less than half a million."

51. By this point in time the issue of divorce had arisen multiple times and he would either act apologetically or threaten me, telling me that I was trying to "steal" half of the business from him. The value of the business and the profits earned therefrom became Adam's sole motivation for not divorcing. (In mid-2023, I heard Adam turned down a $36,000,000 offer for the dispensary now known as Golden State Greens Point Loma ("GSG PL").)

52. I refiled for divorce in June 2021 and had Adam served in January of 2022. Since our divorce proceedings have begun, Adam has made me look like a mentally unstable woman making unfounded accusations that include he is a violent individual who has generated tens of millions in profits in cash that he has hidden.

53. During the course of the divorce proceedings, I have come to find out that Adam, along with his legal counsel, attorney Austin and his CPA/CFO accountant Henkes, have fabricated evidence, filed tax returns with false information and fabricated financial records all in an attempt to make it appear that the dispensary makes very little profit.

54. Adam is able to fabricate the poor financial performance of the dispensary for three reasons. First, the vendor for the point-of-sale system (POS) at Golden State Greens is 3KeyMedia that operates as Cannabis Cloud, which was founded and owned by Gary Strahle ("Strahle") and Adam with each having a 50% ownership interest. In other words, Adam owns the business that is supposed to track sales, but that just means he manipulates the records of the sales to reflect alleged poor performance.

55. In our divorce proceedings, Adam claims that he is no longer the owner of 3KeyMedia/Cannabis Cloud and that he was bought out by Strahle. This is false. I have a witness, who told me that they were present when Strahle and Adam were on a call with Gina. Strahle and Adam told her that they needed to hide Adam's ownership interest in 3KeyMedia because of our divorce proceedings.

56. I have recently come to find out that Strahle was selling the PLPA/PLPCC/GSG patient list to the black market to unlicensed dispensaries owners. It was a way for Adam to generate money from those black-market dispensaries by charging them for that patient list.

57. Second, the accountant Henkes, has had an ownership interest in PLPCC/Golden State Greens since around June of 2015.

58. Third, ALG has been counsel for PLPCC/Golden State Greens since at least 2014 or early 2015.

59. Attorney Austin has knowingly aided Adam in acquiring secret undisclosed interests in multiple dispensaries throughout California and, I believe, outside California, with the millions in cash generated from PLPCC/Golden State Greens. Adam and Gina even used my family members as "strawmen" to effectuate these transactions.

60. On April 22, 2014, Adam entered into a joint venture with Michael "Biker" Sherlock ("Biker")of United Patients Consumer Cooperative ("UPCC") and the permittee at another dispensary located at 8863 Balboa Avenue that acted as the Operating Agreement between PLPCC and UPCC. See **Exhibit N.**

61. On July 23, 2014, Adam had a new UPCC SOI filed that included, as Adam's representative, my brother acting as the Secretary for UPCC. See **Exhibit O**.

62. My brother had not agreed to this and as stated in his affidavit declined any participation in UPCC. See **Exhibit P**.

63. Adam has both disclosed and undisclosed ownership interests in the cities of San Diego, Chula Vista, Lemon Grove, La Mesa, Encinitas, and Fresno. I believe that he has ownership interests in other cities throughout California and outside, including Boston, MA, where he has not been disclosed to the licensing agencies.

64. On or around July 24, 2023, during the course of my divorce proceedings, Adam's business relationship with Michael Sherlock and Full Circle, LLC arose. I was reminded of Amy Sherlock, and I decided to reach out to her. I came across Amy's www.justice4amy.org website and read about the ongoing litigation the Sherlock Family has with Gina. Thereafter, I communicated with her and learned about Gina's Strawman Practice for her other clients in addition to Adam.

65. I don't claim to understand the legal or factual issues that are part of the litigation brought forth by the Sherlock Family and Cotton but in speaking with them about their issues I believe that the Sherlock Family was deprived of their ownership interests in cannabis compliant properties and cannabis businesses via forged documents and with the Strawman Practice.

66. I believe them because of what Adam and Gina have done to me. Attached hereto as **Exhibit Q** is a true and correct copy provided by Adam in our divorce proceedings in which I allegedly resigned from PLPCC and left my 100% ownership interest to him. I never signed that resignation. It is forged.

67. I would never have signed away for no reason my ownership interest in the dispensary and left it to Adam. The value of the business was created by Adam and myself together and I would never "give" him my ownership interests for no consideration.

68. In learning about the Sherlock Family's litigation arising from the Strawman Practice and the related cannabis laws, there are several facts that came immediately to mind about Gina, her clients and associates that are set forth below:

    a. At no point has Adam operated any dispensary he has owned as a nonprofit. As set forth above, even his first licensed dispensary with Sergio was operated for profit.

    b. Adam and Full Circle paid invoices by ALG for work done for Full Circle for services provided during the time that Adam and Michael were partnered.

    c. Over the course of years, I was with Adam when weekly payments between $10,000 to $20,000 in cash were made to James (A.K.A Jim) Bartell as our political lobbyist, some of which were to pay for Bartell's services and others were to be used to bribe City of San Diego officials in pay-to-play agreements for preferable treatment in the issuance of cannabis permits. Often times Gina and Henkes were at these meetings.

69. It is my understanding that a third-party forensic expert has determined that Michael was murdered and did not die, as initially reported, by suicide.

70. Learning that Michael was murdered reminds me of the December 3, 2015, day that I first heard he had died.

71. On December 3, 2014, Adam received a call from Brad Harcourt, ("Harcourt") a partner in the 8863 Balboa property purchase, which Adam took on speakerphone. Harcourt told Adam that Michael had been found with a gunshot wound to his head. I asked Adam if what I heard was true and Adam had no reaction. He said nothing. He looked at me with a straight face. I started crying and asked Adam to take the call off speaker and walked out of the room. I was horribly distraught by this information.

72. Later, after that call had ended, we spoke about Bikers death and while I was still very emotional at no time did, he seem upset. He showed no emotion, no grief, whatsoever.

73. Years later while on a walk by the beach, Adam pointed out the spot where Biker's body was found. Other than pointing out the spot he had nothing more to add and showed no signs of distress over losing someone who had been a part of his life.

74. During the course of my divorce proceedings the financial documentation produced and discovered reflects that Adam, Henkes and Strahle unlawfully applied for and successfully received Paycheck Protection Plan (PPP) and Small Business Administration (SBA) loans for Golden State Greens and 3KeyMedia by not identifying themselves, or their entities, as being cannabis-oriented businesses.

75. It is my understanding that PPP and SBA loans cannot be acquired for marijuana purposes because the distribution and sale of cannabis continues to be illegal under the Federal Controlled Substance Act (CSA) with SD County District Attorney criminal investigations and indictments having been issued for certain parties, i.e., Grassroots, Jesus Cardenas and Adrea Cardenas who have allegedly engaged in these practices.

76. Nothing in the way of financial data that Adam, Henkes or would offer to support the actual financial condition of their PLPCC/GSG-PL or the for-profit management entities can or should be relied on.

77. Although Cannabis Cloud has an inventory management function it was not used at the Hancock Street dispensary. Instead, there were two sets of POS books that were used to upload the financial data to Henkes' QuickBooks program where it could be further manipulated. I would ask that anyone interested in learning more about how PLPCC/GSG-PL business and other types of unlawful conduct refer to staff affidavits for,

    a. Alexis Bridgewater **(Exhibit R)**

    b. Lauren Houston **(Exhibit S)**

    c. Teresa Porkolab **(Exhibit T)**

78. In consideration of my own and my families safety and as a result of what I've discovered during my divorce proceedings, I have been in regular communication with Special Agents of the Federal Bureau of Investigation and have provided them documentation evidencing, among other things, Adam's operation of non-profit dispensaries on a for-profit basis as well as the payments made to Bartell for bribes for preferable treatment regarding cannabis CUPs by government officials.

79. I do not claim to understand the totality of the issues raised by the litigation arising from or related to ALG's use of the Strawman Practice as a legal service. But what I do know is that any litigation to which Gina and the attorneys from her law firm are involved in, or in which Bartell or Henke are allegedly impartial third parties cannot be trusted to reach a just result if it is premised on the notion that Austin and ALG are not capable of fabricating evidence, documents, or suborning and submitting perjured statements and testimony.

I declare under penalty of perjury according to the laws of the State of California that the statements made herein are true and correct. Executed on December 14, 2023.

T. Knopf

Tiffany Knopf

Note: For Notary, See Attached CA All Purpose Ack. For TIFFANY ANN KNOPF

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN DIEGO)

On 12.14.2023 before me, MEHUL. V. RAWAL (NOTARY PUBLIC)
(insert name and title of the officer)

personally appeared TIFFANY ANN KNOPF,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MEHUL V. RAWAL
Notary Public - California
San Diego County
Commission # 2441819
My Comm. Expires Apr 16, 2027

Signature _____ (Seal)

Exhibit M

DARRYL COTTON, *In pro se*
6176 Federal Boulevard
San Diego, CA 92114
Telephone: (619) 954-4447
151DarrylCotton@gmail.com

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DIVISION

DARRYL COTTON, an individual,

Plaintiff and Petitioner

v.

CITY OF SAN DIEGO, A Municipal Corporation; and DOES 1-100

Defendants and Respondents.

Case No.: 25CU017134C

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND OTHER LAWS

Plaintiff and Petitioner DARRYL COTTON ("COTTON") alleges as follows:

INTRODUCTION

1. COTTON brings this action under the California Public Records Act ("CPRA"), as well as the California Constitution, the common law, and other legal authorities. COTTON has made lawful CPRA requests to Defendant/Respondents, but they have illegally failed to disclose the responsive public records.

PARTIES

2. COTTON is a resident of the City of San Diego and is acting on his own behalf, both as a taxpayer and a concerned citizen. COTTON is a government "watchdog" who is driven to ensure that public agencies comply with all applicable laws aimed at promoting transparency and accountability in government.

3. Defendant and Respondent CITY OF SAN DIEGO ("CITY") is a "local agency" within the meaning of Government Code Section 6252,

4. The true names and capacities of the Defendant/Respondents identified as DOES 1 through 100 are unknown to COTTON, who will seek the Court's permission to amend this pleading in

order to allege the true names and capacities as soon as they are ascertained. COTTON is informed, believes and, on that basis, alleges that each of the fictitiously named Defendants/Respondents 1 through 100 has jurisdiction by law over one or more aspects of the public records that are the subject of this lawsuit or has some other cognizable interest in the public records.

5. COTTON is informed believes and, on that basis, alleges that, at all times stated in this pleading, each Defendant/Respondent was the agent, servant, or employee of every other Defendant/Respondent and was, in doing the things alleged in this pleading, acting within the scope of said agency, servitude, or employment and with the full knowledge or subsequent ratification of his principals, masters and employers. Alternatively, in doing the things alleged in this pleading, each Defendant/Respondent was acting alone and solely to further his or hers own interests.

JURISDICTION and VENUE

6. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6253, 6258 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq*., and 1084 *et seq*.; the California Constitution, and the common law, amongst other provisions of law.

7. Venue in the Court is proper because the obligations, liabilities and violations of law alleged in this pleading occurred in the County of San Diego in the State of California.

FIRST CAUSE OF ACTION:
Violation of Open-Government Laws
(Against All Defendants/Respondents)

8. The preceding allegations in this pleading are fully incorporated into this paragraph.

9. On or about March 8, 2025, COTTON submitted a request to CITY for certain public records, identified as **PRA 25-1809**, pertaining to the payment status of a post audit/appeal assessment by the CITY of $542,727.07. This amount was determined to be a CITY Cannabis Business Tax ("CBT"), owed by Mr. Adam Knopf ("KNOPF") and GSG PL INC ("GSG") that had been paid to the CITY. The CITY responded on March 19, 2025, claiming they had "No responsive documents" to my request. A true and correct copy of that request and response is attached to this pleading as Exhibit "A."

10. On October 5, 2023, the CITY Treasurer sent a letter[1] addressed to KNOPF and GSG that demanded payment for the audit period of 4/1/18 through 12/31/21 as a post appeal determination amount of $542,727.06 be paid to the CITY within 14 days of that letter. A true and correct copy of that letter has been attached to this pleading as Exhibit "B."

11. This $542,707.06 tax liability had been disputed by KNOPF/GSG attorney, Gina Austin ("AUSTIN") who would argue that her client did not owe the assessed amount but was instead due a refund of $24,278.80 due to (1) Statute of Limitations had passed and (2) the GSG cannabis sales were medical, which would have been an argument to support qualified, non-taxable medical transactions but unfortunately for KNOPF/GSG they were unable to provide any supporting evidence that the sales were medical and may have qualified for the disallowance.

12. AUSTIN has represented KNOPF since at least 2014 when he was awarded a Conditional Use Permit ("CUP") at the 3452 Hancock Street location where the cannabis sales for this tax liability occurred. The award of that CUP by the CITY to KNOPF has raised serious procedural issues, evident in a pay-to-play scheme that the CITY engaged in with AUSTIN and have been detailed in COTTON's March 21, 2025, Affidavit thus raising concerns that while the tax liability has been determined COTTON has reason to believe it has not been paid. A true and correct copy of that Affidavit has been attached to this pleading as Exhibit "D."

13. COTTON's request to the CITY was to simply find out if that $542,727.06 had been paid in full, or partially and/or was there a payment plan in place that would have secured the debt to the CITY. It did not request any documents that would have been protected under Attorney Client Privilege.

14. PLAINTIFF is informed, believes and, on that basis, alleges as follows:

A. CITY did not do a thorough search for all public records responsive to PLAINTIFF's request, including but not limited to failing to search for responsive public records

[1] While these Exhibit "B" documents have been marked confidential, they are and remain, at the heart of a contentious divorce proceeding between Tiffany and Adam Knopf. In her San Diego County Grand Jury Complaint filed on 12/18/2023 Mrs. Knopf provided this CITY letter as an exhibit within that complaint which can be seen at the hyperlink titled "Steering Document" on the grounds that no confidentiality exists when that document is protecting criminal activities.

maintained on the personal accounts and/or devices of public officials. By way of example and not limitation, CITY has never provided COTTON with any affidavit or any other evidence that the outstanding KNOPF/GSG tax liability owed to the CITY had been paid.

B. CITY has not produced public records responsive to COTTON's request.

C. To the extent these documents may be protected by the privileges being cited in the response, COTTON would request that the CITY be ordered to declare if any, or all of the unpaid tax liability was paid, or if any payment plan was agreed to between the parties which would have satisfied this liability.

15. COTTON and other members of the public have been harmed[2] as a result of Defendants'/Respondents' failure to produce the public record responsive to COTTON's request[3]. By way of example and not limitation, the legal rights of COTTON to access information concerning the conduct of the people's business is being violated and continues to be violated.

SECOND CAUSE OF ACTION:
Declaratory Relief under Code of Civil Procedure Section 1060 *et seq.*
(Against all Defendants/Respondents)

16. The preceding allegations in this pleading are fully incorporated into this paragraph.

17. COTTON is informed, believes and on that basis alleges that an actual controversy exists between COTTON, on the one hand, and Defendants/Respondents, on the other hand, concerning their respective rights and duties under the CPRA, the California Constitution, the common law, and other applicable legal authorities. As alleged in this pleading, COTTON contends that, at least, public records responsive to COTTON's request exists and that Defendants/Respondents are required by law to produce

[2] In a related but directly on-point decision, on October 30, 2017, in DONNA FRYE v. CITY OF SAN DIEGO, Case No. 37-2017-00041323-CU-MC-CTL, Plaintiff and Petitioner "FRYE", a former CITY Councilmember (2001-2010), alleges, in her VERIFIED COMPLANT, she cites to specific CITY acts which include, "…this institutionalized secrecy…the [CITY] policy…actually promotes secrecy…the policy is illegal…" (ROA-1 at Pg.2:7-12) On March 16, 2022, Judge John S. Meyer signed an ORDER granting FRYE, the prevailing party, $92,640.15 in attorney's fees and costs. (ROA-147)

[3] A March 2024 California State Auditor Report on the State of Local Cannabis Licensing cites San Diego as one of the local governments where issues such as; bias, lack of transparency in the permitting process and government officials engaged in pay-to-play bribery were conditions found to exist. (See the "CA STATE AUDITOR Report No. 2023-116" at Exhibit "C")

each and every responsive record or alternatively, if said documents are protected by Attorney Client Privilege, convey to COTTON and the public, that the tax liability was paid in full, or in part and if in part, there exists an executed payment plan that would satisfy the tax liability.

18. COTTON desires a judicial determination and declaration as to whether disclosable public records were unlawfully withheld by Defendants/Respondents and whether they were required by law to produce such records in a timely manner and if the CITY does indeed, as in Austin's own Declaration, have "unclean hands[4]" when it comes to certain characters on the inside of the CITY's adult-use cannabis industry. .

PRAYER

A. On the First Cause of Action;

1. A judgment determining or declaring that Defendant/Respondents have not promptly and fully complied with the CPRA, the California Constitution, the common law, and/or other applicable laws with regard to COTTON's request.

2. A writ of mandate ordering Defendant/Respondents to promptly and fully comply with the CPRA, the California Constitution, the common law, and all other applicable laws with regard to COTTON's request; and

3. Preliminary and permanent injunctive relief directing Defendants/Respondents to fully respond to COTTON's request to inspect and obtain copies of all responsive public records, or alternatively, if said documents are protected by Attorney Client Privilege, convey to COTTON and the

[4] In a separate but related and relevant CITY cannabis business tax collection matter, another one of Austin's clients, Steven Dang, was named as a codefendant in the CITY OF SAN DIEGO v. XTRACTA DISTRIBUTION INC., ET AL ("XTRACTA") complaint in which the CITY had determined that Austin client had an unpaid CBT amount due of $684,852.56. The CITY alleges in their May 2022 complaint that XTRACTA. and the codefendants, as equitable owners where any separateness between them is a "mere fiction and does not really exist...,were undercapitalized...which resulted in CITY's loss…XTRACTA being a shell of a corporation with minimal assets, further adding to City's loss" (See the "03/21/2025, Cotton Affidavit" at Exhibit "D", Pg. 189, 3:4-19) to which XTRACTA counsel, attorney Gina Austin, replied that the CITY was not entitled to the damages being sought because, *inter alia*, the CITY had "unclean hands" in this matter. (See the "03/21/2025, Cotton Affidavit" at Exhibit "D", Pg. 202, 3:14-16) The CITY responded to that by filing a REQUEST FOR DISMISSAL with prejudice. (See the "03/21/2025, Cotton Affidavit" at Exhibit "D", Pg. 206) Thus COTTON's PRA 25-1809 request, and the important public policy issues at stake here, demand that the CITY reply, with at a minimum, proof-certain that the KNOPF/GSG tax liability has been fully satisfied and properly credited into the CITY's General Fund.

public, that the tax liability was paid in full, or in part, and if in part there exists an executed payment plan that would satisfy the assessed tax liability.

B. *On the Second Cause of Action;*

1. An order determining and declaring that the failure of Defendants/Respondents to disclose all public records responsive to COTTON's request to inspect and obtain copies of all responsive public records responsive to COTTON's request and to permit COTTON to inspect and obtain copies of the responsive public records does not comply with the CPRA, the California Constitution, the common law, and/or other applicable laws; and,

2. Preliminary and permanent injunctive relief directing Defendants/Respondents to fully respond to COTTON's request to inspect and obtain copies of all responsive public records, or alternatively, if said documents are protected by Attorney Client Privilege, convey to COTTON that the tax liability was paid in full, or in part and if in part there exists an executed payment plan that would satisfy the tax liability.

C. *On All Causes of Action:*

1. That the Court, applying the doctrine of *Stare Decises,* find the CITY, having a proven history of failing to provide responsive documents, appoint a special master to conduct a forensic audit of the CITY's responses to CPRA requests relating to adult-use cannabis licensing since the October 30, 2017, FRYE complaint when these issues were initially brought to the Court's attention (*supra*).

2. An order providing for the Court's continuing jurisdiction over this lawsuit in order to ensure that Defendants/Respondents fully comply with the CPRA, the California Constitution, the common law, and/or other applicable laws;

3. All legal expenses incurred by COTTON in connection with this lawsuit, and;

4. Any further relief that this Court may deem appropriate.

//

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Date: March 27, 2025.

Respectfully submitted,

Darryl Cotton, in propria persona
Plaintiff/Petitioner

Attachments:

Exhibit A: March 19, 2025, CITY's Response to COTTON's PRA 25-1809

Exhibit B: October 5, 2023, CITY Treasurer Tax Deficiency Letter to KNOPF/GSG

Exhibit C: March 2024, California State Auditor Cannabis Licensing Report No, 2023-116

Exhibit D: March 21, 2025, Affidavit of Darryl Cotton