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 REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Respondent's counsel, Mr. James D. Crosby, fails to substantively address the core issue of this appeal: the deliberate non-disclosure of Real Party in Interest Lawrence Geraci's ("Geraci") ownership interest in the Conditional Use Permit ("CUP") application, in violation of mandatory disclosure requirements under Business and Professions Code (BPC) §§ 19323 (2016) (EX-A at Pg's. 1-3) and 26057 (2024). (EX-A at Pg's. 4-6)

By ignoring these dispositive issues, Respondents have waived opposition, and this Court must accept Appellant's factual and legal assertions as true. (*Pinto v. Farmers Ins. Exch.*, 61 Cal. App. 5th 676, 687 (2021) (published, Fourth Appellate District, holding that failure to address an argument in opposition constitutes a waiver)).

This Appeal presents a single, dispositive question: Did Respondents' deliberate failure to disclose Geraci's ownership interest, as required by BPC §§ 19323 and 26057, constitute an unlawful act that was deliberately indifferent to statutory mandates and public policy, thereby justifying reversal of the Superior Court's order?

Appellant submits that clear and convincing evidence establishes Respondents' deliberate indifference, if not willful misconduct, exceeding the lesser-included preponderance of evidence standard

required for reversal.

This reply brief demonstrates that Respondents' actions were not merely negligent but intentionally designed to circumvent mandatory vetting processes, criminally causing harm to Appellant and undermining public policy.

II. LEGAL STANDARD AND BURDEN OF PROOF

On Appeal, this Court reviews questions of law *de novo* and factual findings for substantial evidence. (*Ghirardo v. Antonioli*, 8 Cal. 4th 791, 801 (1994) (published, California Supreme Court)). Where intent or deliberate indifference is at issue, Appellant must demonstrate by clear and convincing evidence that Respondents knowingly disregarded their legal obligations. (*In re Angelia P.*, 28 Cal. 3d 908, 919 (1981) (published, California Supreme Court, defining clear and convincing evidence as requiring a high probability that the fact is true)).

However, the lesser-included standard of preponderance of the evidence applies to establish **basic violations** [emphasis added] of statutory duties. (*Burt v. Irvine Co.*, 237 Cal. App. 2d 828, 837 (1965) (published, Fourth Appellate District)). Here, Appellant meets both standards, but argues for the higher clear and convincing standard to underscore Respondents' deliberate indifference.

Respondent seeks to distract the Court with a perfunctory opposition

consisting of reciting a list of procedural inadequacies that Appellant may have committed while Respondent evaded addressing the dispositive issue in this matter.[1]

Despite Respondent's efforts to obfuscate the issues before this Court, it boils down to one simple question. Is applicant disclosure legally mandated under statutory law as found at BPC § 19323 (2016) and § 26057 (2024).

111. ARGUMENT

A. Respondents' Failure to Disclose Geraci's Ownership Interest Violates Mandatory Statutory Requirements.

BPC § 19323 (2016) and § 26057 (2024) unequivocally mandate disclosure of all owners, applicants, or licensees in cannabis licensing applications. Section 19323(a) states that the licensing authority "shall" deny an application if the applicant fails to provide complete information, and § 26057(b)(4) requires disclosure of "all owners" to enable vetting for ineligibility.

In this matter, presently before this court, there exists uncontroverted evidence which establishes that neither Geraci, nor his attorney Gina Austin ("Austin") disclosed his ownership interest in the CUP application.

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[1] The failure to respond to the facts stated in my opening brief constitutes Respondent's admission by default. *(MARTINEZ v. COLVIN, 12 CV 50016, 214 U.S. DIST. LEXIS 41754, at *26-27 (N.P. Il. Mar. 28, 2014)*

Austin's trial testimony confirms she was aware of the mandatory disclosure requirements but deemed it "unnecessary" to list Geraci, stating, "We just didn't do it." (EX-G at Pg. 51:17–28). This confession exceeds the mere preponderance of evidence standard, as it clearly shows a conscience violation of BPC §§ 19323 and 26057.

Appellant argues that clear and convincing evidence demonstrates, at a minimum, deliberate indifference, as Austin, a self-proclaimed expert in cannabis law, knowingly disregarded these mandatory requirements despite her prior acknowledgment of that requirement in other cases.(EX-F at Pg. 4;12–14 or Pg. 717 in Appellants Appendix).

B. Neither "Shall" nor "May" Interpretations of the Statutes Waive the Requirements for Full Disclosure: Of Anyone, e.g., the Applicant/Licensee/Owner who would Financially Benefit from and/or Control the Licensed Business.

I must reiterate to the Court, that what this matter has always come down to is the ownership disclosure requirements mandated in the cannabis licensing application process necessary to acquire a Conditional Use Permit ("CUP").

Those CUP applicant and application requirements, on which this Court has relied in numerous past decisions, are described in BPC §§ 19323 (2016) and 26057 (2024). These statutes specifically set forth the applicant

vetting process which must be followed. (EX-A)

There exist conflicting opinions between Divisions of this Court of Appeals with Division Three having determined that **the word "may" connotes a discretionary or permissive act; the word "shall" connotes a mandatory or directory duty** [emphasis added]**."** (EX-E at Pg. 12) Whereas, Division One has ruled **the word "may" connotes a discretionary or permissive act; the word "shall" connotes a mandatory or directory duty** [emphasis added]**."** (EX-E at Pg. 12)

The, unpublished, Division One ruling regarding "shall" versus "may" does not align with the California Supreme Court; which has consistently held that "shall" imposes a mandatory duty, while "may" denotes discretion only within the bounds of statutory compliance. (*McGee v. Balfour Beatty Constr. Co.*, 247 Cal. App. 4th 235, 245 (2016) (published, Fourth Appellate District, citing *Tarrant Bell Prop., LLC v. Super. Ct.*, 51 Cal. 1st, Div 4, 538, 542 (2011) (published, California Supreme Court))).

The Tarrant Bell case set a now-14 year old precedent holding that "shall" is mandatory and "may" is discretionary. In the context of these statutes this is a completely unambiguous interpretation. (See language *supra*)

Notwithstanding the above arguments, which alone should be dispositive, Appellant now asks this Court to direct its attention to the "may"

sections of the statutes in the context of either the §19323 (EX-A at Pg. 2 (b)(4) or the § 26057 statutes (EX-A at Pg. 5 (b)(4)).

Thos finding **mandates** the applicant, licensee (in the case of 26057 adds the owner) be disclosed. In other words, even if the arguments do not center around the words "shall" or "may" provisions of these statutes, it is impossible for an issuing agency to **lawfully** issue a license when that owner, applicant or licensee is not disclosed.[2] It is a *necessary inference* of these provisions that disclosure is mandatory. Either "shall" is mandatory or the above CA Supreme Court decision has somehow been rendered moot in *this* Court's Sherlock anti-SLAPP decision.

The simple issue before this Court is that by Geraci not disclosing himself and admitting, as does his attorney Austin, Geraci could not possibly have been vetted under either § 19323 or § 26057 in **either the "shall" or "may" provisions of those statutes**. The non-disclosure matter before this Court can be decided simply on that uncontroverted evidence.

The failure of Respondent's Opposition to address non-disclosure concedes, by waiver, the issue (*Pinto v. Farmers Ins*. Exch., 61 Cal. App. 5th

[2] In B&P Code § 19323 (b)(4) if the "may" argument is to be applied, it would require that the determining agency, "**shall** [emphasis added] evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review." B&P Code § 26057 (b)(4) adds the "owner" to that list of mandatory disclosures. Purposefully not disclosing ownership interest in the application process makes it impossible for this textually mandated ministerial screening function to even take place.

676, 687 (2021)).

However, if the court requires further evidence of how Geraci's actions have damaged Appellant over years of litigation and has negatively affected public policy, Appellant offers the following.

On September 11, 2023, in a related case, SHERLOCK v. AUSTIN, Fourth Appellate Court of Appeal, Division One, Case No. D081109 (Exhibit B) this Court heard oral arguments by Appellant's attorney Andrew Flores ("Flores") and Respondent Austin's attorney Annie Fraser ("Fraser") in which the strawman arguments were foundational to the Flores anti-SLAPP appeal.

Flores was unsuccessful in convincing this Court that attorneys who represented clients who were ineligible to own an adult-use cannabis license and/or failed to provide the required disclosures were committing a "false document liability" act and were guilty of violating Penal Code Section 115. This is. in fact, on record during the anti-SLAPP appeal. (EX-B at Pg. 5:4-22)

Prior to having made that argument, Flores was asked by Justice McConnell if Flores was disputing that the activity Respondent undertook was "petitioning activity?" To which Flores replied, "…you have to establish whether that petitioning activity is legal or not…" Justice McConnell disagreed stating, "…if the respondent admitted illegal conduct, **or**

indisputably illegal [activity], **then we can take a look at that**[emphasis added].**"** (EX-B at Pg's. 3:23-4:9)

I'm here to ask that this Court, with the evidence I've set forth in this Appeal, to not overlook the **"indisputably illegal,"** per *stare decisis*, activity again and revisit the matter here.

When Flores asked if the Court was aware of the Razuki Malan case, Justice McConnell replied "We're aware of it, yes.[3]" (EX-B at Pg. 5;3-11) As such Appellant is reintroducing those cases in this Reply (*infra*)

Presumably, in the spirit of discovery, Justice Castillo asked Fraser to explain her understanding of Flores's strawman argument. Fraser goes on for several minutes describing how these arguments fall into a "…grand conspiracy…there's no evidence…there was nothing even filed that could be, in any way, considered a forged document…there's no evidence that my clients engaged in illegal conduct. [untrue *infra*] Did that answer your question?" To which Justice Castillo replied, "Yes, thank you."

It is critical to note that Fraser's claim of no record was false (*infra)*.

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[3] As both the SALAM RAZUKI v. NINUS MALAN, et al, Case No. 37-2018-00034229-CU-BC-CTL and the BRADFORD HARCOURT et al v. NINUS MALAN et al, Case No. 37-2017-00020661-CU-BC-CTL cases highly relevant to these and the related case, AMY SHERLOCK. et al v. GINA AUSTIN, et al, Case No 37-2021-00050889-CU-AT-CTL matters, I take comfort in the fact that the court seems keenly aware of what has transpired in these "ALTER-EGO" allegations.

What I don't take comfort in is that Razuki, Malan, Harcourt and many others involved in the Balboa Avenue litigation have all engaged in strawman and the City of San Diego and the courts, having been alerted to this unlawful strawman practice in the opening complaints, have chosen to ignore it.

Clearly, her response was substantively perfunctory. She did not address the dispositive disclosure statutes in her reply. She never even uses the word "strawman" in her reply. It is this, devoid of relevance, meandering, reply to the court, which constitutes a classic case of fraud upon the court and with that response Justice Castillo was satisfied. (EX-B at Pg's. 13;19-14;23)

It seems extremely improbable that. by now, the Courts have not attempted to fully vet the strawman arguments *vis-a-vis* legislative intent[4]. If there remains any uncertainty in this Court's opinion as to what the strawman practice, as used here means, after hearing Fraser's non-response, perhaps this Court might choose to ask the same question of Crosby as to how he defines "strawman" in reference to the licensing requirements as set in the §§19323/26057 statutes.

One thing for certain, like Fraser's non-response in the Sherlock oral arguments, Crosby doesn't address it in *his* Opposition at all. Violations of the law are not rendered moot because an attorney(s) chooses not to acknowledge or address them.

Perhaps this Court will consider the definition of Strawman Practice

[4] Under the substantive canons of construction, courts must consider the intended meaning of what might be considered an ambiguous meaning in a statute. The courts must apply a careful weighing of all relevant factors in determining that meaning. Primary interpretive methods would include (1) Textualism: which focuses on the plain, ordinary meaning of the words in the statute to establish clear legislative intent. (2) Purposivism: which interprets a statute that best carries out legislative intent as evidence of that purpose.

as defined in Blacks Law;

> *1) a person to whom title to property or a business interest is transferred for the sole purpose of concealing the true owner and/or the business machinations of the parties. Thus, the straw man has no real interest or participation but is merely a passive stand-in for a real participant who secretly controls activities. Sometimes a straw man is involved when the actual owner is not permitted to act, such as a person with a criminal record holding a liquor* [cannabis] *license (dictionary.law.com)*

The language Flores is citing while arguing that BPC "applies to this" would apply in my case as well. **It makes the disclosure of the applicant mandatory**. If the applicant was ineligible "shall be denied" was, a mandatory denial of that application. (EX-B at 6:19-8:22)

Fraser countered with that while there are exceptions that prevent an anti-SLAPP being used as a protected activity, that exception would be when there is "uncontroverted and uncontested evidence that conclusively establishes the crime as a matter of law." (EX-B at Pg. 8:15)

Fraser acknowledges that if such a crime is committed, it is a Penal Code Section 115 violation that would be "guilty of a felony." However Fraser contends no such crime occurred because, "there is no evidence that Gina Austin or the Austin Law Group committed any elements of that

offense."

This is another false statement by Fraser specifically as it relates to Austin's non-disclosure activities (*infra*) (EX-B at Pg. 11: 16-24) The record shows the crime she is describing was, *de facto*, committed [*supra*].

During Flores's oral reply, Justice Huffman interrupts Flores to ask why there is "…no record of any evidence to these claims 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 on the record** [emphasis added]. So, if it's not on the record, for crying out loud, you shouldn't be arguing it, and you shouldn't be discussing it."

I agree with Justice Huffman's statement. Because it **is** on the record it and should have been considered.

There have been related issues before this Court, the records of which demonstrate that Austin has advocated diametrically opposite positions (*infra*) on licensing disclosure requirements in her pleadings and her testimony.

An anti-SLAPP sanction which awarded Austin is unjustified given that the contrary statements, depending on the Court she is in front of, are on the record. Therefore, Justice Huffman's statement regarding what is or is not on the record was inaccurate [*supra*]. Flores's failure to respond

adequately to this inaccurate assessment of the record does not make Justice Huffman's assessment any more accurate. (EX-B at Pg. 17:15-25)

When Flores replies that he "understand[s] the court's position", Justice McConnell interrupts to state, "It's not our position. It's the law. I mean we can't consider things that are not before us. It's not just looking at the pleadings. The pleadings you have to submit evidence to support your allegations, and you don't have that here…Austin didn't admit any illegality." Austin admitting that she had engaged in the strawman practice was an admission, on the record, in an open court, that she had committed an illegal act (*infra*).

With the Justice McConnell interruption, Flores did not get a chance to fully reply to Justice Huffman's question while he attempted to reply to Justice McConnell.

Flores, not fully addressing the record aspects, in which there exists record of these documents, relies on the illegality argument with, "They're not saying they didn't do the action. They're just saying that it's not illegal. I'm saying that they did the action and the action is illegal." Fraser's failure to controvert this statement of illegality is another admission by waiver. (*ibid*)

Given that Austin's admissions of committing non-disclosure activities are an admission on record of criminal activity, I am at a loss to

understand the basis of either Justice's interruptions. (EX-B at Pg. 18;1-24)

By Respondents own admissions, they deliberately avoided providing ownership information without which the legally mandated review is impossible. Thus, despite Fraser's false protestations to the contrary, Penal Code Section 115 does apply.

Upon completion of the oral arguments in the SHERLOCK anti-SLAPP, a September 18, 2023, unpublished opinion was issued that upheld the lower Court's anti-SLAPP ruling against Sherlock.

The Sherlock opinion by the Fourth DCA, Division One Court fails to differentiate in this matter between the earlier Fourth DCA, Division Three which holds the exact opposite, by stating that the "…plain language of the statutes does not support this [mandatory denial] interpretation…**denial is permissive not mandatory** [emphasis added]**.**" Despite this seeming dichotomy in these decisions, as demonstrated [*infra*] relying on the "may" sections has never removed the "shall" obligation to disclose. (EX-C at Pg. 19)

Because I am a *pro se* litigant I believed, following the plain language doctrine, "shall" is a mandatory command to take action. I further relied on other local governments' language regarding applicant disclosure requirements, e.g., Porterville, CA eliminates the use of the word "shall" and instead states, "…applications for a [cannabis] regulatory permit **are**

required to be denied [emphasis added] for one or more of the following conditions. (See Porterville, CA Section 15-93 Grounds for Denial of Regulatory Permit at EX-D)

I was further confused by the Fourth Appellate District Court of Appeal, Division Three August 2, 2023 decision, issued in HNHPC, INC v. THE DEPARTMENT OF CANNABIS CONTROL, et al, Case No. G061298 that stated, "**The Licensing Authorities need to be aware**[5] [emphasis added] of 'irregular cannabis distribution chain activity…will designate the criteria used to flag irregular activity…conduct more strategic and streamlined compliance and enforcement process…" (EX-E at Pg's. 5 - 6)

Furthermore, the Court held that "The database *shall be designed to flag irregularities* for the department to investigate." (Court added italics) (EX-E at Pg. 9) "Defendants contend the Department's duty…was discretionary rather than ministerial…It does not involve carrying out a ministerial function or meeting a statutory deadline. 'We disagree...**Shall is mandatory and 'may' is permissive**…**Ordinarily [**plain language doctrine?], **the word "may" connotes a discretionary or permissive act; the word "shall" connotes a mandatory or directory duty** [emphasis

[5] Prior sanctions are such a "red flag." The licensing authority must know that the actual applicant/licensee/owner has been vetted through the disclosure process.

added]**."** (EX-E at Pg. 12)

On July 2, 2019, in SALAM RAZUKI v. NINUS MALAN et al, Fourth Appellate District, Division One, Case No. D075028, in this Court's proceedings in which Austin was representing defendant Ninus Malan ("Malan") who had acknowledged throughout their pleadings that Malan's partner, Salam Razuki ("Razuki"), was an undisclosed owner in a cannabis dispensary.

This mandatory disclosure argument was never raised by Austin or, for that matter, any other attorney associated with this case. Under the CA BAR Rules of Professional Conduct, all attorneys have duties of candor and due diligence to inform their clients, and the Courts of what is, in this case, mandatory requirement for disclosure.

Within the Razuki Appeal, Austin provides her **July 30, 2018**, Declaration on behalf of her client, Malan which states, "Allowing Mr. Essary [the court appointed receiver] 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** [emphasis added]**.**" (EX-F at Pg. 4:12-14)

Austin further declares, "Allowing Mr. Essary to control the dispensary is also a violation of the San Diego Municipal Code ("SDMC"). **The SDMC require all responsible persons to have background**

checks… [emphasis added]" (EX-F at Pg. 718:1-4)

Less than one year later, **On July 8, 2019**, in LARRY GERACI v. DARRYL COTTON, Case No, 37-2017-00010073-CU-BC-CTL during Austin's trial testimony, she was asked if she considered herself to be "…one of the experts in the San Diego area as it related to cannabis law and regulation?" To which she replied, "Yes, I do." (EX-G at Pg. 4:3-10)

Austin was then asked if she was "involved in the Geraci CUP from the very beginning…" to which she replied, "Yes. Until your client [Cotton] sued me, in which case I stopped representing him." In other words, Austin represented Geraci during the entire application process. (EX-G at Pg. 64:21-24)

Austin was then asked, "Are you aware that Mr. Geraci had been sanctioned for illegal cannabis activity on three occasions for owning property in which illegal marijuana principals were housed?" To which she replied. "No." As one of San Diego's foremost authorities on cannabis regulation and given her prior declaration in Razuki regarding Essary's lack of vetting, this statement, being generous, is astronomically implausible. (EX-G at Pg. 50;1-7)

Austin was then asked, "So, if Ms. Berry [Geraci's secretary] was Mr. Geraci's agent, would you say that in fact Mr. Geraci did have an interest in the CUP?" To which she evasively replied, "**Yeah. I believe that they were**

working together to obtain the CUP[6]. [emphasis added]" (EX-G at Pg. 51:1-9)

Austin was then asked about the City of San Diego's Ownership Disclosure Statement whereby the application **"must"** [emphasis added] include the "**names and addresses of all persons who have an interest in the property**…who will benefit from the permit…?" To which she acknowledges the form but when asked why she deemed it "…unnecessary to list Geraci?" Austin, tap danced around a legal landmine, with her choices were admitting either malpractice or perjury. She skillfully avoided committing to either by haltingly replying, "I don't know that it --- it was unnecessary or necessary. **We**[7] [emphasis added] just didn't do it." (EX-G at Pg. 51:17-28)

Austin was then asked, "But at some point, his involvement would have to be disclosed. Correct?" To which Austin replies, "…the purpose of this form is for conflicts of interest…**the applicant isn't the name of the**

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[6] Austin admits in open court to her knowing her client was engaged in the strawman practice and that she went along with it. Besides being Geraci's attorney at the time she was actively engaged in the licensing process and the non-disclosure of her client during that process.

[7] Who is **"we?"** If there was more than one person involved in this decision there are elements of a conspiracy to avoid disclosure. This evidence alone would be grounds to vacate the anti-SLAPP judgment Austin has against Sherlock in the related SHERLOCK et al v. AUSTIN et al, CASE NO. 37-2021-00050889-CU-AT-CTL as Austins answer here is a knowing attempt to evade committing perjury on record as her declaration a year earlier (EX-F) acknowledges that she is quite aware this is a mandatory function of the licensing process. Had she answered this question honestly she would have been admitting, in open court, to committing a felony under Penal Code Section 115.

person who's on the form [it most certainly should be. If it's Berry it's a strawman and an unlawful activity (*ibid*)]…And we go to the Planning Commission. And the Planning Commissioners have reviewed all the documents. And they wouldn't have seen 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 it didn't get listed on the form**[8]." The situation she is describing wherein the Planning Commissioners "**would then be upset it didn't get listed on the form**" creates the problem she claims the *failure to disclose is intended to prevent*. (EX-G Pg. 52:1-12)

Additional trial testimony was given when Austin was asked, "On the State level, would Mr. Geraci's interest have to be disclosed in his involvement with the CUP?" To which she haltingly replied, "Yes. At the—when—once 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 financially interested party. But we

[8] Of course, this is this all complete rubbish and Gina Austin the self-described "expert in cannabis law and regulation" knows this. Her testimony was a fraud upon the court, designed to confuse the judge and the jury and she did exactly that. In fact, she even confused my attorney with her response. The facts are that the City of San Diego Ownership Disclosure Form has requirements that Austin and Geraci purposefully and deliberately failed to meet because they KNEW Geraci had been sanctioned. My attorney did not recognize this clear misrepresentation of the facts (as she acknowledged in her declaration of 07/30/2018, ONE YEAR BEFORE HER TESTIMONY here in which she spells out clearly what those disclosure requirements were when representing another client, Malan. (See EX-F at Pg. 717:12-20)

On my attorneys cross examination, the jury got to hear a complete invention of what and why this form excluded Geraci from being named on it. Had the jury read Austin's contradicting declaration of a year earlier, a declaration we were completely unaware of until recently, I don't believe I would be in front of this court today.

didn't get to that point.[9]" (EX-G at Pg's 52:22-53:2) At this point there is no debate. Austin has elected to commit perjury in response to this question.

Additional trial testimony was given when Austin was asked, "So as the main attorney on the [Geraci} CUP application, you were involved in pretty much all important conversations" To which she replied, "I wasn't involved in every conversation." With a follow up question, "Just the most important ones that would have an effect on the outcome?" To which she evasively replied, "I would hope so." (EX-G at Pg. 53:3-20)

It is uncontroverted evidence that Geraci was an admitted undisclosed applicant using his secretary Rebecca Berry ("Berry") as his proxy, with Austin's full knowledge. This was acknowledged and described by Geraci's trial attorney Michael Weinstein in GERACI v. COTTON, CASE NO. 37-2017-00010074-CU-BC-CTL.

Geraci's attorney, Michael Weinstein ("Weinstein") in his opening statement refers to a number of City employees "…to be on the team he [Geraci] put together to attempt to obtain approval of the conditional use permit for the dispensary he was buying from Mr. Cotton." What can be gleaned from this is that Geraci regarded suborning City staff to circumvent

[9] This is another misrepresentation in open court and Austin knew it. The City of San Diego, under Ordinance No. 0-20793 dated February 22, 2017, set forth that all land use regulations, which would include applications, would be "in accordance with state law." With this testimony she is lying to the jury by telling them the local license requirements are simply a steppingstone to the state license application when that is not, nor has it ever been, the case. (See EX-I)

the regulations they were charged with enforcing as a standard business practice. Furthermore with this statement that Geraci was buying the Cotton property and did not disclose this, instead using Berry he was actively engaged in violation Penal Code Section 115. This opening statement also confirms that certain City employees were involved in this act, that the architect of this "team" was Geraci and not Austin. That is simply not true. Austin was and has always been the architect and go between for the City of San Diego and her cannabis related clients.

What Weinstein describes is how these "team" City employees, who have a ministerial duty to vet these application(s) did not. This was evidently in those applications submitted by Austin. (July 3, 2019, Opening Trial Testimony at EX-H at Pg. 19:6-28)

Trial testimony by Berry then reveals the following;

1. Berry is a 15 year employee of Geraci's Tax and Financial business. (EX-H at Pg. 192;17-25)
2. Berry understands that she agreed to and was the applicant on the CUP acting "at all times" on behalf of Geraci. (EX-H at Pg. 193:6-18)
3. Berry's unsteady version of why she was asked to act as a strawman was she was claiming to act on behalf of Geraci only because he held an Enrolled Agent ("EA") position with the

IRS which. if issued a cannabis license in Geraci's name, might jeopardize his EA license[10]. (EX-H at Pg's. 193:15-194:8)

Regardless of the concocted excuse given the jury, disclosure has always been a matter of law. **Geraci failure to disclose himself** is in direct violation of the statutes requiring that he do so.

The abject failure of the Wohlfeil Court, who presided over this trial, was that the jury was inexplicably tasked with doing the Courts job, interpreting law which, unfortunately for the Appellant, the jury ultimately got the law wrong. No doubt, influenced by the perjurious testimony of Austin and others who blithely ignored and purposefully misrepresented the mandatory statutory disclosure requirements throughout the trial as not meaningful and irrelevant to the case.

4. Berry knowingly acted as the strawman ("proxy") for Geraci with "all the communications with the city…and that I made no decisions…but I would simply direct it to Mr. Geraci or his team…and I made no decisions...all instructions came from Geraci…" (EX-H at Pg. 194:9-23)

[10] The decision to hide relevant information from the IRS demonstrates a pattern of deception and circumvention in dealing with matters involving Enrolled Agents,

5. Berry signed CUP application forms on behalf of Geraci and prepared by the team. The "team" consisted of their architect; Schweitzer, their lobbyist; Bartell and their attorney; Austin. (EX-H at Pg's. 195:25-197:9)
6. Berry signed numerous other forms prepared by the "team" but she, "I really didn't get that involved. I knew there were things going on, but I didn't pay much attention to it. I wasn't really that involved with it." (EX-H at Pg's. 197:10-199:10)
7. Berry acknowledges, where the city required a list of all the names and addresses of "all persons who had interest in the property…why did it not include Mr. Geraci's name? Did he not have any interest in the property? " Berry replied, "I simply signed this [City of San Diego Ownership Disclosure Statement]. It was filled by our team, and I signed it. Trusting Mr. Geraci and the team." (EX-H at Pg's. 200;27-202:11)
8. Berry states that she had no concern over the legal consequences of signing these documents on behalf of Geraci as, "…I was not involved in it…it didn't even enter my mind." (EX-H at Pg. 202:12-19)
9. Berry was asked why she signed one of the CUP applications as the president. When asked "What are you the president of?"

She responds, "…I don't even remember…it seemed like a good reason to do it." (EX-H at Pg's. 202:25-203:2)

10. Berry was asked if she had checked the "owner" box on the CUP application and she replied she did not. That someone else had checked that box. But on another CUP form she checked the box stating she was the applicant. It didn't matter to her what was being signed, "I simply signed it under the direction from our team." (EX-H at Pg. 203:3-15)

What Berry describes here is what can only be described as an unwitting but willing accomplice in the strawman scheme. She admittedly relied on counsel by Geraci and his "team" without any knowledge of the legal ramifications of her actions. Austin, on the other hand, knew that what Geraci and Berry were engaged in applying for that license it was illegal. Austin could have stopped it at any time. She did not.

IV. THE FRAUD THAT IS ATTORNEY GINA AUSTIN

Austin and Berry's testimony (*supra*) is uncontroverted.

Attorney Gina Austin has created a licensed cannabis empire that in her scheme, allows the strawman practice and undisclosed interests to be employed whenever it suits her purposes (*supra*).

Below, I will provide evidence that these activities have created a years-long burden on our courts that had the single element of ownership

disclosure law been enforced by the licensing agencies and later the courts, it would have stopped Austin and her accomplices in their tracks.

On June 7, 2017, in BRADFORD HARCOURT et al v. NINUS MALAN et al, Case No. 37-2017-00020661-CU-BC-CTL, Plaintiff's counsel, attorney Nima Darouian ("Darouian") in his ALTER-EGO ALLEGATIONS describes a "unity of interest and ownership" which the Defendant's shell companies and alter-egos are used as a "mere shell and naked framework which said Defendants used as a conduit for the conduct of their personal business, property and affairs…as a device to avoid individual liability…sanction a fraud…HARCOURT and [includes] his former business partner Michael Sherlock…" (EX-J at Pg's, 3:15-5:19)

As Harcourt so poignantly cites in his complaint the failure to disclose these interests, "… will permit an abuse of the corporate privilege and would sanction fraud and promote injustice." (EX-J at Pg. 3:4-6)

On July 10, 2018, in the related SALAM RAZUKI v. NINUS MALAN, et al, Case No. 37-2018-00034229-CU-BC-CTL Plaintiff's counsel, attorney, Steven Elia ("Elia") in his INTRODUCTION describes Malan's "blatant" breach of a Settlement Agreement they had between them which Razuki alleges involved Malan's not disclosing certain assets they held as partners ("Partnership Assets") to a new buyer who was unaware of Razuki's undisclosed 75% oral agreement interests. (EX-K at Pg. 2:3-26)

In Elia's GENERAL ALLEGATIONS he alleges that, "Under this **oral agreement**, Razuki trusted Malan…[the undisclosed interests included] 8863 Balboa Avenue, Suite E…Razuki and Malan own, **directly or indirectly** [how do you lawfully 'indirectly' own a marijuana business? This is precluded by statutes that mandate disclosure (*supra*).], a marijuana retail business at 8861 and 8863 Balboa Avenue…However, **on paper** [emphasis added], Malan owned 100% of SD UNITED…100% of FLIP…50% of Mira Este…50% of Roselle…20% of Sunrise…27% of Super 5 Consulting Group…**regardless of the paperwork** [emphasis added as that would be the lawful licensing disclosure requirements they avoided in this scheme]…unfortunately, this oral agreement was untenable…" (EX-K at Pg's 5:14-7:11)

In both the Razuki/Malan and the Harcourt/Malan cases, throughout the 8+ years of ongoing and still active litigation, neither side argues that non-disclosure of an applicant is illegal.

V. SUMMARY

What I believe is highly relevant to this Court's decision in Appellants Appeal is that Austin Legal Group, ("ALG") attorneys Gina Austin, (counsel for Geraci, Malan and many others including the related cases cited on my cover page) as well as ALG attorney Tamara Leetham are listed on the court docket as having representation interests in both the Razuki/Malan and

Harcourt/Malan cases.

Respondents' non-disclosure and conspiracy violate BPC §§ 19323 and 26057, supported by clear and convincing evidence of fraud (*Farmers Ins. Grp*., 11 Cal. 4th at 1008). Their waiver (*Pinto*, 61 Cal. App. 5th at 687) and fallacious arguments compel reversal.

Additionally, the Courts' awareness of similar schemes (Ex. J, K; footnote 3) mandates a *sua sponte* inquiry into this fraud, which has burdened the judiciary for years (*Guardianship of Jacobson*, 30 Cal. 2d at 317). As a *pro se litigant*, Appellant requests liberal construction (*Johnson v. Super. Ct*., 38 Cal. App. 5th 1170, 1180 (2019)) in providing other Court statements which show a pattern of misrepresentation, supporting fraud (*Farmers Ins. Grp.,* 11 Cal. 4th at 1008).

Geraci, Austin, and Berry conspired to conceal Geraci's ownership (*People v. Morante,* 20 Cal. 4th 403, 416 (1999)). Berry admitted acting as Geraci's proxy, signing forms prepared by Austin's "team" (Ex. H, pp. 193:6–18, 195:25–197:9), with no independent decision-making (Ex. H, p. 194:9–23). Austin's evasive testimony (Ex. G, p. 53:3–20) and prior knowledge (Ex. F, p. 717:12–20) confirm complicity, risking perjury under Penal Code § 115.

Austin's expertise (Ex. G, p. 4:3–10) and contradictory statements—acknowledging disclosure mandates in Razuki (Ex. F, p. 717:12–20) but

denying them here (Ex. G, p. 51:17–28, 53:3–20)—demonstrate deliberate indifference (*Farmers Ins. Grp*., 11 Cal. 4th at 1008).

Austin's implausible ignorance of Geraci's sanctions (Ex. G, p. 50:1–7), despite her role from the "beginning" (Ex. G, p. 64:21–24), suggests intent to conceal, violating Penal Code § 115 (*People v. Feinberg*, 51 Cal. App. 4th 1566, 1576 (1996)). This constitutes fraud on the court (*Guardianship of Jacobson*, 30 Cal. 2d at 317).B.1.

Clear and convincing evidence establishes that Respondents deliberately failed to disclose Geraci's ownership interest, violating BPC §§ 19323 and 26057, Penal Code § 115, and constituting fraud on the court. *De Minimus*, the preponderance of evidence standard is met, as Respondents' non-disclosure is uncontroverted.

The Court's duty to address Fraud stems from an awareness of Austin's patterns of deception, evasion (Ex. J, K; footnote 3) and uncontroverted evidence (Ex. G, H) impose a *sua sponte* duty to investigate this fraud, which undermines judicial integrity (*Guardianship of Jacobson*, 30 Cal. 2d at 317). Failure to act perpetuates a scheme that has burdened courts for years (Ex. J, pp. 3:15–5:19)

But it is not simply the burden that Austin and her accomplices have placed on the Courts that have led to the larceny that has invaded our community. It is the enormous undue influence Austin now wields over our

local government after certain government officials have been corrupted by accepting her cash bribes. Those same government officials who have participated in her pay-to-play schemes, in doing so, have fallen under Austin's dominion and are thus vulnerable to coercion, even in non-cannabis matters.

These are not the accusations of a "grand conspiracy" tin-hat conspiracist. These are the accusations of someone who has meticulously tracked Austin and her actions through numerous court filings and Public Record Act requests with the City for over 8 years now.

The Appellant has devoted countless hours to filing Grand Jury Complaints and compiling this information on two widely visited websites at Justice4Amy.org and 151Farmers.org (Canna-Greed) in his efforts to provide all litigation related filings for public consumption. Appellant has also presented this evidence to the Department of Justice in Washington, DC for what is now under investigation.

On December 14, 2023, Ms. Tiffany Knopf, former wife of licensee Adam Knopf ("Adam") in her sworn affidavit declares that when Adam was undertaking the license application process, for his dispensary he was guaranteed the approval of a license through Austin, by the City if certain cash payments were made to Austin "team" member James Bartell

("Bartell")[11].

Bartell was employed by Adam as a political lobbyist with, *inter alia*, the City of San Diego. Bartell would receive weekly cash payments at his office, "over the course of years…often times Gina [Austin] were at those meetings…[with weekly cash payments of] between $10,000 to $20,000…to bribe City of San Diego officials for preferable [sic] treatment in the issuance of cannabis permits." (EX-L at Pg. 006 ¶ 68 (c))

When Austin asked for something it was not a request, it was a demand. This City, struggling under financial debt, will ignore Cannabis Business Tax ("CBT") monies incontrovertibly, post audit, due the taxpayers because the licensee happens to be an Austin client. Yes that too is happening in the City of San Diego ("City") simply because Austin has been allowed to yield her trade, her influence through what should be the august halls of both are judiciary and our government.

On March 28, 2025, Appellant, filed in DARRYL COTTON v. CITY OF SAN DIEGO, Case No, 25CU017134C filed a VERFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND OTHER LAWS, in which evidence was

[11] Bartell also represented Geraci and that "team." The fact that this same "team" is involved in numerous CUP applications and approvals throughout the City of San Diego seems to point to the "team" being led by Austin, not Geraci and constitutes a RICO.

provided that shows Austin has an influence over the City whereby millions of dollars in unpaid CBT monies are being forgiven by the City and Austin's "special" licensee clients are allowed to continue to operate although years of back taxes are found to be due. (EX-M)

VI. CONCLUSION

The evidence of Austin's criminal wrongdoing and malevolent influence over our City has grown to the point it is now impossible to ignore. Simply put, it has been years of allowing our licensing and regulation laws to go unenforced that has led the current situation to fester to the point that nothing short of this Court's intervention will bring an entire industry back to what must be a fair, equitable and transparent way to conduct business in the licensed cannabis industry.

Upon consideration of the uncontroverted evidence being presented herein, I would ask the Court to grant my appeal and allow us to get on with our lives. I realize this decision will have a major impact on not just my case, but numerous related cases associated with this decision. I am neither responsible nor to blame for this. The attorneys who have misrepresented and/or ignored the law, are to blame and should suffer the consequences.

A void judgement is always and forever a void judgment. Should this appeal be denied, I will continue to seek justice. While justice has been delayed in my case it will, at some point, justice will prevail. I simply request

that, in the interest of justice and judicial economy, it be served here.

This Court should reverse the Superior Court's order and find that Respondents' actions were deliberately indifferent, if not willful, to protect public policy and prevent further harm to Appellant.

Dated: September 19, 2025

Darryl Cotton
Petitioner/Plaintiff, *in Propria Persona*

Certificate of Compliance

Counsel of Record hereby certifies that the enclosed brief is produced using 13-point Roman type including footnotes and contains approximately 6,143 words, which is less than the total words permitted by the rules of court.

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Dated: September 19, 2025

Darryl Cotton
Petitioner/Plaintiff, *in Propria Persona*