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January 18, 2023

Via Electronic Email

To: *Department of Cannabis Control*
Tamara.Colson@cannabis.ca.gov

City of San Diego, Office of the City Attorney
cityattorney@sandiego.gov; mphelps@sandiego.gov

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

Ms. Tamara Colson, the City of San Diego, and Travis Phelps:

Ms. Colson, thank you for your response to my January 10, 2023, demand letter (a copy of which is attached hereto). I have three comments in response to your letter.

First and foremost, your response does not address the critical issue of our demand. The demand that the Department of Cannabis Control (DCC) take action to cease attorney Gina Austin and the Austin Legal Group's (collectively, "ALG") business practice of applying for local cannabis permits and state licenses for her clients (principals) in the name of her client's agents who do not disclose the principals and their ownership interests and prior sanctions for unlicensed commercial cannabis activity (the "Strawman Practice"). ALG's clients are unlicensed parties engaging in unlicensed commercial cannabis activities in the name of their agents. This is criminal activity.

This is the gravamen of our demand. This is a public policy issue of great importance to all taxpayers in the State of California. The gravity and the need for the DCC to take immediate action is clear. The DCC is the has "the sole authority to create, issue, deny, renew, discipline, condition, suspend, or revoke licenses for commercial cannabis activity." (Cal. Bus. & Prof. Code § 26012.) State and local government agencies, including the judiciaries, are enforcing ownership rights to state cannabis businesses operating pursuant to state licenses issued by the DCC in clear violation of the state and DCC laws and regulations. The DCC has been provided with evidence that ALG admits to taking the Strawman Practice but argues that such a practice is not illegal.

Respectfully, again, please reply and plainly state what steps the DCC is going to take to cease the Strawman Practice? Alternatively, please confirm if you agree with ALG that its clients can own a

state license and operate a cannabis business even though they are not disclosed as owners to the DCC and are not vetted by the DCC to undergo the required vetting process, including background checks, for the issuance of a state license.

Second, to the extent our demand was not clear, the demand letter was sent on behalf of Amy Sherlock, her minor children T.S. and S.S., myself, and as a follow-up to Mr. Hurtado's independent complaint filed on October 20, 2022. Further, it was sent on behalf of the public. Any California taxpayer has standing to bring forth suit against the DCC to have it enforce its own regulations to ensure compliance with state laws passed by the Legislature. (*See, e.g., Farmer v. Bureau of Cannabis Control*, 2020 Cal. Super. LEXIS 3579, *19 ("The Court finds that the Bureau's compliance with the MAUCRSA/Proposition 64 is a strong public duty, that the interpretation and scope of the law is strongly in the public interest, and that Petitioner is seeking to procure enforcement of the Bureau's duty to comply with MAUCRSA/Proposition 64, the proposition's purpose and intent.")).

Third, please note that neither Mr. Phelps nor the City of San Diego responded to our demand. It is our position that you should take their failure to respond as an admission that the City of San Diego is aware of the Strawman Practice and is knowingly issuing local permits to parties that cannot own cannabis businesses pursuant to state laws, DCC regulations and the San Diego Municipal Code, including that. Those permits are then forwarded to the DCC as part of applications for state licenses and the DCC issues state licenses presuming that the City of San Diego is complying with state law requiring disclosure of owners. That the City of San Diego, and notably Mr. Phelps who was attorney of record in one of the actions in which ownership rights to a cannabis permit and license were recognized via the Strawman Practice, should be deeply concerning because they had firsthand knowledge of the prior sanctions for illegal cannabis activity within three years of the permit application for a permit. To state this very plainly, the City of San Diego is knowingly allowing, condoning, and ratifying the illegal acquisition of cannabis licenses for parties to engage in unlicensed commercial cannabis activity. This is unlawful and needs to be ceased immediately.

Lastly, in response to your request for the businesses that are operating pursuant to the Strawman Practice, they were provided in the demand letter. We are therefore confused why you would request information already provided. However, for ease of reference, here are the parties and locations again:

1. Ninus Malan at 8864 Balboa Avenue, Ste. E, San Diego, CA 92123 (Balboa Property).
Currently held by Prodigious Collectives LLC, C10-0000949-LIC.
2. Abhay Schweitzer at 6220 Federal Boulevard, San Diego, CA 92114 (Federal Property).
Currently held by 2018fmo, LLC C10-0000775-LIC.


But, again, the issue is not the identification of these two locations, and we are aware of more, but that ALG admits to undertaking the Strawman Practice. And the City of San Diego is aware of it. The DCC has a mandate to enforce its regulations and comply with laws passed by the Legislature. Attorney Austin is simply a bad-faith actor aiding her clients in unlawfully acquiring secret ownership of cannabis businesses. The City of San Diego's acts and omissions in this matter give rise to liability and its failure to respond should be viewed by the DCC as an admission of its knowing liability.

In sum, this unlawful business practice by ALG must be immediately enjoined. And, while it is outside the scope of any action by the parties I am representing in this letter, the DCC should investigate, discover, and revoke all licenses that were unlawfully acquired pursuant to ALG's Strawman Practice.

Please let us know by 5:00 p.m. on January 23, 2022 what steps the DCC will take to enjoin the Strawman Practice by ALG, to ensure the City of San Diego is complying with state and DCC laws and regulations in the issuance of cannabis permits, and when such action will take place.

Respectfully, if these specific issues are not addressed in your response, suit will be filed against the DCC seeking immediate injunctive relief to ensure the DCC is complying with state laws and its own regulations.

Sincerely,

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

Andrew Flores, Esq.



January 17, 2023

Via electronic mail afloreslaw@gmail.com

Andrew Flores
The Law Offices of Andrew Flores
427 C Street, Suite 220
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Dear Mr. Flores:

The Department of Cannabis Control (Department) has received your letter dated January 10, 2023 sent to complaint analyst Monica Favreau. This information will be added to the information provided in the complaint received from your client Joe Hurtado on October 20, 2022 regarding the same subject matter.

As indicated in the December 12, 2022 communication from Ms. Favreau to your client, please provide the names of the businesses, their business license numbers and business addresses for those you allege are involved in this activity. Any additional specific information you can provide to the Department regarding the allegations will also assist the Department in handling the complaint.

Thank you for your cooperation.

Sincerely,

Tamara Colson

Tamara Colson
Deputy Director
Legal Affairs Division