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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

**HARRENS LAB INC., a California
corporation, and MING LI, an individual**

Petitioners,

v.

**BUREAU OF CANNABIS CONTROL
(BCC); TAMARA COLSON, in her official
capacity as Acting Chief of the Bureau of
Cannabis Control; and DOES 1-10,**

Respondents.

Case No. RG21089893

**OPPOSITION TO EX PARTE
APPLICATION FOR
TEMPORARY STAY ORDER AND
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

**[Filed Concurrently with Declarations of
Travis White and Juan Ordaz in Support
of Opposition Ex Parte Application for
Temporary Stay Order and Order to Show
Cause Why Preliminary Injunction Should
Not Issue]**

Date: March 4, 2021
Time: 3:30 p.m.
Dept: 17
Judge: Hon. Frank Roesch
Trial Date: To Be Set
Action Filed: February 25, 2021

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1 Respondents Bureau of Cannabis Control and Tamara Colson, in her official capacity as
2 Acting Chief of the Bureau of Cannabis Control (“Bureau”) (collectively, “Respondents”), submit
3 the following memorandum of points and authorities in opposition (“Opposition”) to Harrens Lab
4 Inc. (“Harrens”) and Ming Li’s (“Li”) (collectively, “Petitioners”) Ex Parte Application for
5 Temporary Stay Order and Order to Show Cause Why Preliminary Injunction Should Not Issue.
6 Respondents pursuant to California Rules of Court Rule 3.1113 subdivision (e), request
7 permission to file this Opposition which exceeds 15 pages in length, as the excess pages are used
8 to address the issues presented in Petitioners’ 31 page Ex Parte Application.

9 I. INTRODUCTION

10 Petitioners challenge the Bureau’s revocation of its Provisional Cannabis – Testing
11 Laboratory License (“Provisional License”) for a cannabis testing laboratory, as set forth in the
12 Bureau’s February 4, 2021, Notice of Revocation of License (“Notice”). Petitioners filed an
13 Unverified Petition for Writ of Mandate contending that Petitioners possess a constitutionally
14 protected property right in their Provisional License issued by the Bureau, and that the Bureau’s
15 revocation of the Provisional License without notice, a hearing, or an appeal did not afford
16 Petitioners due process of law even though the Business and Professions Code expressly states
17 that provisional licenses, which are issued without investigation, confer no right to hearing or
18 appeal. (Ex Parte Application, page, 3, lines 6-17; page 8, lines 6-10; and page 8, lines 20-24.)
19 Separately, Petitioners filed this Ex Parte Application requesting a preliminary injunction
20 preventing the Bureau from enforcing its already-completed revocation action, and directing the
21 Bureau to “reinstate, and recognize the ongoing validity of the at-issue license,” until the
22 Unverified Petition for Writ of Mandate is resolved. (Ex Parte Application, page 31, lines 16-23.)
23 This preliminary injunction should be denied.

24 Petitioners bear an especially heavy burden in seeking to reinstate their provisional license
25 through a preliminary injunction. A preliminary injunction is an extraordinary remedy, and
26 Petitioners seek an especially disfavored type of preliminary injunction. Although Petitioners
27 assert that they are merely seeking a prohibitory injunction, Petitioners’ request is actually for a
28 mandatory injunction that would change the status quo and require the Bureau to treat Petitioners

1 as though they were valid and active licensees, pending trial. But mandatory injunctions are
2 disfavored and rarely granted: "The granting of a mandatory injunction pending trial is not
3 permitted except in extreme cases where the right thereto is clearly established." (*Teachers Ins.*
4 *& Annuity Assn. v. Fulotti* (1999) 70 Cal.App.4th 1487, 1493.) The preliminary injunctive relief
5 sought by Petitioners is further disfavored because it seeks to prevent the Bureau from applying a
6 statute expressly authorizing the Bureau to remove provisional licenses without hearing or appeal.
7 The Civil Code and the Code of Civil Procedure, however, expressly prohibit the use of
8 preliminary injunctions not prevent (or reverse) the "execution of a public statute by officers of
9 the law for the public benefit"; nor "the exercise of a public or private office, in a lawful manner
10 by the person in possession." (Code Civ. Proc., § 526, subd. (b)(4) & (6); Civ. Code, § 3423
11 subd. (d) & (f).)

12 Far from overcoming this especially heavy burden, Petitioners do not even satisfy the
13 ordinary requirements for a preliminary injunction. First, they have not shown that they are not
14 likely to suffer greater injury from denial of the injunction than Respondents and the public
15 interest are likely to suffer if it is granted. Petitioners allege only lost profits, which cannot
16 outweigh the potentially grave harm to the public if Petitioners are allowed to continue to operate
17 without complying with laws designed to ensure that cannabis goods are safe and to prevent their
18 diversion into the illegal market. Second, Petitioners have not shown a likelihood of success on
19 the merits. In addition to failing to satisfy the threshold requirement of a ministerial duty that
20 could be compelled, Petitioners have failed to show that they have any legally cognizable
21 property right or liberty interest in the Provisional License in the face of the Legislature's express
22 recognition that the license may be revoked without any hearing or appeal or that the
23 investigation in which they were allowed to participate afforded them inadequate process. Thus,
24 Petitioners have not met their heavy burden to show that the Bureau's revocation of the
25 Provisional License should be prevented (or reversed).

26 ///

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28 ///

II. STATEMENT OF FACTS

A. Legalization and Licensing

On January 1, 2018, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which had been passed by the California voters and established a “comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older” went into effect. (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 64, pp. 178-210.) The Bureau was authorized to “create, issues, deny, renew, discipline, suspend, or revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, and sale of cannabis products.” (Bus. & Prof. Code, § 26012, subd. (a)(1).)

In establishing a well-regulated cannabis industry, the licensing agencies’ highest priority is “protection of the public.” (Bus. & Prof. Code, § 26011.5.) To this end, all licensees must meet high standards and comply with the rules and regulations set forth for them. Testing laboratories perform the critical function of ensuring that cannabis goods are free from a lengthy list of contaminants and do not contain toxic levels of substances when ingested by consumers. Each batch of cannabis goods must be sampled and tested by a licensed testing laboratory prior to sale to consumers. Prior to licensure, each testing laboratory applicant must develop testing methods for each test performed and demonstrate their capability to perform regulatory compliance testing. They must follow requirements for sampling cannabis goods that include the size of the sample, how the sample is obtained, and how the sample is maintained, to ensure accurate testing results. Testing laboratories perform tests on cannabis goods to identify the presence and level of heavy metals, residual pesticides, residual solvents, microbial impurities, mycotoxins, and foreign material in cannabis goods. To ensure tests are properly performed, testing laboratories must maintain quality assurance and quality controls within the laboratory and ensure that laboratory employees are qualified to ensure compliance with the laws, rules, and regulations that govern them. (See Cal. Code Regs., tit 16, Additionally, , a testing laboratory is also responsible for ensuring that the chain of custody for samples of cannabis goods is maintained to protect the integrity of the testing process. (Cal. Code Regs., tit. 16, § 5706.) This includes accurately

1 documenting the transport, handling, storage, and destruction of cannabis goods samples. The
2 testing laboratory must be accredited to receive an annual license and is required to follow strict
3 protocols imposed by the accrediting agency. (Cal. Code Regs., tit. 16, §§ 5701 & 5714.)

4 Testing Laboratories have a very important function in ensuring public protection by
5 scientifically determining that cannabis goods meet the safety standards in California. To do so,
6 the testing laboratory must properly sample the batch, protect the sample from any potential
7 tampering, perform the tests accurately, and produce accurate results. Any breakdown in this
8 process allows the possibility that cannabis goods which do not meet California's safety standards
9 are made available to the public for consumption. In some circumstances, this can lead to serious
10 illness or even death.

11 **B. Legislative Enactment**

12 Initially, the Bureau was authorized to issue both temporary and annual licenses. (Former
13 Bus. & Prof. Code, § 26050.1 added by Stats 2017 ch 27 § 32 and repealed January 1, 2019; Bus.
14 & Prof. Code, § 26050, subd. (c).) The temporary license was issued for a four-month duration,
15 with opportunities for 90-day extensions, through December 31, 2018. (Former Bus. & Prof.
16 Code, § 26050.1 added by Stats 2017 ch 27 § 32 and repealed January 1, 2019; Cal. Code Regs.,
17 tit. 16, § 5001.) The temporary license holder was required to comply with all laws, rules, and
18 regulations, governing commercial cannabis activity. (*Ibid.*) The agency decision to deny or
19 revoke a temporary license did not entitle the applicant or temporary license holder to a hearing.
20 (*Ibid.*)

21 In 2018, prior to the statutory expiration of temporary licenses, Business and Professions
22 Code section 26050.2, was enacted and gave the Bureau discretion to "issue a provisional license
23 to an applicant if the applicant has submitted a completed license application to the licensing
24 authority...." (Bus. & Prof. Code, § 26050.2, subd. (a) added by Stats. 2018 ch. 857, § 1 (Sen.
25 Bill No. 1459).¹ Provisional licensees are not required to complete all the requirements for an
26 annual license. (Bus. & Prof. Code § 26050.2, subds. (a)(1) & (2).) This allows a commercial

27 _____
28 ¹ All statutory references are to the Business and Professions Code, unless otherwise
indicated.

1 cannabis business to complete the requirements for the annual license while still operating its
2 business. At the same time, and similar to the temporary license, the Legislature expressly stated
3 an applicant or provisional license holder is *not* entitled to a hearing or an appeal if the agency
4 decides to deny or revoke a provisional license:

5 (h) Refusal by the licensing authority to issue a license pursuant to
6 this section or revocation or suspension by the licensing authority
7 of a license issued pursuant to this section shall not entitle the
8 applicant or licensee to a hearing or an appeal of the decision.
9 Chapter 2 (commencing with Section 480) of Division 1.5 and
10 Chapter 4 (commencing with Section 26040) of this division and
11 Sections 26031 and 26058 shall not apply to licenses issued
12 pursuant to this section.

13 (Bus. & Prof. Code, § 26050.2, subd. (h).)

14 The enactment of section 26050.2, subdivision (h), served the policy goal of providing
15 commercial cannabis businesses the opportunity to conduct a legal business, while aiding in the
16 development of a comprehensive statewide regulated marketplace. Because provisional licenses
17 can be issued based only on the submittal of an annual license application and a showing that
18 other licensing requirements are being pursued, there is a need to be able to immediately stop the
19 operation of such a business if it is not complying with state law requirements. Additionally, the
20 Bureau is not required to issue a provisional license, nor is the applicant required to accept a
21 provisional license if they do not want to accept the terms applicable to said license. An
22 applicant, who is concerned with the ability of the provisional license to be revoked without a
23 hearing, may choose to wait until a decision is made on their annual license application.

24 **C. Background Regarding the Revocation of Petitioners' Provisional License**

25 In April 2020, the Bureau received the first of several complaints against Harrens, a
26 commercial cannabis testing laboratory provisional license holder and annual license applicant²,
27 related to its commercial cannabis testing laboratory operations. The complaints made similar
28

² A provisional license may only be issued to an applicant for an annual license. (Bus. & Prof. Code, § 26050.2, subd. (a).) If the annual license application is denied, the applicant has the right to a hearing pursuant to the Administrative Procedure Act. (Bus. & Prof. Code, § 26058.) As of the date of this filing, there has been no final decision made regarding Petitioners' application for an annual license.

1 allegations of violations of the laws and regulations governing commercial cannabis operations.
2 For example, several allegations were that Harrens was shipping cannabis samples using a third-
3 party courier services and had improper testing protocols. (Declaration of Travis White,
4 submitted herewith ("White Decl.") ¶ 2.)

5 The Bureau notified Petitioner Li of the alleged violations, and they had numerous
6 communications in which the violations and laboratory operations were discussed and in which
7 Petitioner Li had the opportunity to respond to these allegations. (White Decl. ¶ 2.) During these
8 communications, however, Petitioner Li offered conflicting information. (White Decl. ¶ 3.)

9 At the conclusion of the investigation, the Bureau determined that Petitioners engaged in
10 numerous ongoing violations, even after being advised of doing so, which evidenced a failure to
11 comply with the provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act
12 (MAUCRSA) and its implementing regulations, and provided causes for discipline under
13 Business and Professions Code section 26030. (White Decl. ¶ 3.) Petitioners' violations
14 included, but were not limited to, failing to take accurate representative samples of cannabis
15 goods harvest batches (Cal. Code Regs., tit. 16, §§ 5705, 5707); failing to comply with laboratory
16 transportation and chain of custody requirements by using third party courier services to ship
17 cannabis goods samples (Cal. Code Regs., tit. 16, §§ 5706, 5709); failing to generate shipping
18 manifests prior to transportation of cannabis goods (Cal. Code Regs., tit. 16, § 5049); transporting
19 cannabis samples without affixing METRC identification labels to cannabis sample packaging
20 (Cal. Code Regs., tit. 16, § 5049); making premises modifications without seeking prior Bureau of
21 Cannabis Control approval (Cal. Code Regs., tit. 16, § 5027); and, failing to run and maintain a
22 video surveillance system (Cal. Code Regs., tit. 16, § 5044). (White Decl. ¶ 3.)

23 On February 4, 2021, the Bureau personally served Petitioners with a Notice of Revocation
24 of Provisional License. (Ex Parte Application, Declaration of Ming Li, Exhibit A.) The notice
25 states:

26 The license has been revoked for failure to comply with the
27 provisions of the Medicinal and Adult-Use Cannabis Regulation
28 and Safety Act (MAUCRSA) and its implementing regulations, a
cause for discipline under Business and Professions Code section
26030. Specifically, violations include, but are not limited to:

1 inability to take accurate representative samples of cannabis goods
2 harvest batches; inability to satisfy laboratory transportation and
3 chain of custody requirements by using third-party courier services
4 to ship cannabis goods samples; failing to generate shipping
5 manifests prior to transportation to cannabis goods; transporting
6 cannabis samples without affixing METRC identification labels to
7 cannabis sample packaging; making premises modifications
8 without seeking prior Bureau approval; and failing to run and
9 maintain a video surveillance system. (See Cal. Code Regs., tit. 16,
10 §§ 5027, 5044, 5049, 5705, 5706, 5707, 5709.)

11 This revocation is effective immediately and you may no longer
12 engage in any commercial cannabis activity under this license.
13 Pursuant to Business and Professions Code section 26050.2
14 subdivision (h), you are not entitled to a hearing or appeal of this
15 decision.

16 (*Ibid.*)

17 At the time the Notice was delivered, which occurred approximately 10 months after the
18 initial complaint was received and months after Petitioner Li was first questioned about possible
19 violations, the Bureau observed and received reports from witnesses of ongoing and continuing
20 violations of the laws, rules, and regulations, governing commercial cannabis testing laboratory
21 licensees. (White Decl. ¶ 4.) A third-party courier service was still being used to transport
22 cannabis samples (Cal. Code Regs., tit. 16, §§ 5706, 5709), and improper testing protocols were
23 still being employed. (Cal. Code Regs., tit. 16, §§ 5705, 5707). Additional violations included,
24 but were not limited to, cannabis goods stored in an area not part of the testing laboratory licensed
25 premises approved and regulated by the Bureau (Bus. & Prof. Code, § 26055; Cal. Code Regs.,
26 tit. 16, § 5033, subd. (c)); cannabis waste not being properly discarded (Cal. Code Regs., tit. 16, §
27 5054); and, cannabis samples not properly labeled (Cal. Code Regs., tit. 16, § 5049).

28 Subsequently, on February 5, 2021, Harrens acknowledged understanding the reasons for
the revocation of its testing laboratory provisional license. (Declaration of Juan Ordaz, submitted
herewith (“Ordaz Decl.”) ¶ 3.)

In short, the Bureau is charged with public protection, which is the “highest priority” for
the Bureau “in exercising licensing, regulatory, and disciplinary functions.” (Bus. & Prof. Code, §

1 26011.5.) Petitioners were advised of the violations in their testing laboratory operations,
2 understood the violations, yet continued to engage in those acts right up until the time the Bureau
3 arrived to revoke their Provisional License. Moreover, Li was not truthful with the Bureau about
4 their operations during the investigation. There is no evidence to suggest that Harrens can be
5 trusted to properly perform testing on cannabis goods and accurately report those results. As
6 testing laboratories are the gatekeepers for ensuring cannabis goods available to the public at
7 licensed retailers meet California safety standards, the Bureau acted within its authority to ensure
8 public protection by revoking Petitioners' Provisional License.

9 **III. ARGUMENT**

10 **A. Petitioners Are Seeking to Change, Not Preserve the "Status Quo"**

11 Petitioners ask the Court to enjoin the Bureau from enforcing its already effective
12 revocation of the Provisional License, and "to reinstate, and recognize the ongoing validity of the
13 at-issue license." (Ex Parte Application, page 31.) Although Petitioners repeatedly assert that
14 they are seeking a prohibitory injunction that seeks to preserve the status quo (Ex Parte
15 Application, pages 10, 13, 28), they actually seek a mandatory injunction that would require the
16 Bureau to treat Petitioners as though they maintained an active and valid license pending trial.
17 (Ex Parte Application, page 31.) The requested injunction would change the status quo and
18 require the Bureau to affirmatively treat Petitioners in a way that is inconsistent with their current
19 revoked, unlicensed, status. "[T]he general rule is that an injunction is prohibitory if it requires a
20 person to refrain from a particular act and mandatory if it compels performance of an affirmative
21 act that changes the position of the parties." (*Davenport v. Blue Cross of Cal.* (1997) 52
22 Cal.App.4th 435, 446.) "The substance of the injunction, not the form, determines whether it is
23 mandatory or prohibitory." (*Id.* at p. 447.) "[A] preliminary mandatory injunction is rarely
24 granted, and is subject to stricter review on appeal. The granting of a mandatory injunction
25 pending trial is not permitted except in extreme cases where the right thereto is clearly
26 established." (*Teachers Ins. & Annuity Assn. v. Fulotti* (1999) 70 Cal.App.4th 1487, 1493.)

27 As shown below, this is not an "extreme" case that might warrant such a mandatory
28 injunction—the Bureau's is expressly authorized in statute to act in the manner it did here, and

Petitioners have not “clearly established” a right to the injunction. Consequently, the rule against mandatory injunctions should prevail and Petitioners’ request should be denied.

B. Petitioners Also Seek to Prevent (or Reverse) a Public Entity’s Execution of the Law for the Public Benefit

The preliminary injunction sought by Petitioners is highly disfavored for another reason. A preliminary injunction generally should not be used to prevent “execution of a public statute by officers of the law for the public benefit”; nor “the exercise of a public or private office, in a lawful manner by the person in possession.” (Code Civ. Proc., § 526, subd. (b)(4) & (6); Civ. Code, § 3423 subd. (d) & (f).) In *Cohen v. Board of Supervisors* (1986) 178 Cal.App.3d 447, the Court of Appeal in upholding the trial court’s denial of the preliminary injunction, stated:

Additionally, preliminary injunction is not an appropriate remedy ‘[t]o prevent the execution of a public statute, by officers of the law, for the public benefit’ or ‘[t]o prevent the exercise of a public or private office, in a lawful manner, by the person in possession.’ [Citations.] While these general strictures do not preclude the issuance of preliminary injunctive relief when the constitutionality of a statute or ordinance is challenged, nevertheless, ‘... **trial courts should be extremely cautious ... to enjoin law enforcement officials from enforcing an ordinance** obviously approved and adopted by duly elected representatives of the people for the purpose of promoting and protecting public morality prior to a trial on the merits.’ [Citations.] [emphasis added.]

(*Id.* at p. 453, 456.)

Here, the revocation of Petitioners’ Provisional License was an “execution of a public statute by officers of the law for the public benefit.” First, section 26050.2 is a “public statute” that permits provisional license revocation at the discretion of the Bureau at any time. Second, Harren’s Provisional License was revoked “by officers of the law for the public benefit.” A Bureau investigation found that Harrens had failed to comply with multiple provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), and the implementing regulations. (White Decl. ¶ 3.) Specifically, as previously delineated above, Petitioners’ violations were related to its important function to test cannabis goods intended for public consumption. (See, Opposition, page 6, lines 3-17.) Further, at the time the Notice of Revocation of the Provisional License was issued on February 4, 2021, the Bureau observed

1 ongoing and continuing violations of the laws, rules, and regulations governing commercial
2 cannabis testing laboratory licensees. (White Decl. ¶ 3.) (See, Opposition, page 7, lines 7-16.)
3 Hence, it is clear that Harrens did not intend to comply with the state law requirements to protect
4 the public safety, as they continued with similar conduct, even after their interactions with the
5 Bureau during the investigation. As such, the potential harm to the public continued until the
6 time of revocation. There is no reason to believe that if Petitioners are allowed to resume
7 operations pursuant to an injunction that they will comply with legal requirements this time. To
8 protect consumers from the danger created by Harrens' continued disregard for public health, it is
9 necessary for the revocation to remain in effect.

10 Thus, Petitioners must show not only that this is such an extreme cause that a prohibitory
11 injunction is warranted; they also must overcome the even more extraordinary burden of showing
12 that a prohibitory injunction preventing (or reversing) the execution of a public statute by officers
13 of the law for the public benefit is justified.

14 **C. If the Court Finds That a Preliminary Injunction to Reverse Execution of a**
15 **Public Statute by Officers of the Law is Appropriate Here, then Petitioners**
16 **Still Cannot Meet the Preliminary Injunction Standard**

17 Petitioners do not even begin to overcome the extraordinary burden that they must satisfy
18 in seeking a mandatory injunction preventing the Bureau from enforcing measures designed to
19 protect public health. Indeed, Petitioners do not even satisfy the ordinary requirements for a
20 preliminary injunction. In determining whether a preliminary injunction is appropriate, Courts
21 must determine both whether Petitioners are likely to suffer greater injury from denial of the
22 injunction than Respondents are likely to suffer if it is granted (*Shoemaker v. County of Los*
23 *Angeles* (1995) 37 Cal.App.4th 618, 633.); and whether there is a reasonable probability that
24 Petitioners will prevail on the merits. (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 206.)
25 Petitioners' motion fails on both counts.

26 **1. Petitioners Cannot Establish Greater Injury**

27 "Public policy considerations come into play" when a preliminary injunction is sought
28 against a public agency or officer. (*Tahoe Keys Property Owners' Assn. v. State Water Resources*
Control Bd. (1994) 23 Cal.App.4th 1459, 1472.) In particular, courts must "bear in mind the

1 extent to which separation of powers principles may affect the propriety of injunctive relief
2 against state officials. In that context, our Supreme Court has emphasized that ‘principles of
3 comity and separation of powers place significant restraints on courts’ authority to order or ratify
4 acts normally committed to the discretion of other branches or officials.’” (*O’Connell v. Superior*
5 *Court* (2006) 141 Cal.App.4th 1452, 1464.) As a consequence, even absent execution of a public
6 statute for a public benefit, “[t]here is a general rule against enjoining public officers or agencies
7 from performing their duties.” (*Tahoe Keys, supra*, 23 Cal.App.4th at p. 1471; see also
8 *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401 [“The codes,
9 embodying a settled principle of equity jurisprudence, prohibit the granting of injunctive relief
10 [t]o prevent the execution of a public statute by officers of the law for the public benefit”].) “[T]o
11 support a request for such relief the plaintiff must make a *significant showing of irreparable*
12 *injury*.” (*Tahoe Keys, supra*, 23 Cal.App.4th at p. 1471, italics added.) Petitioners have not made
13 that showing.

14 **a. Petitioners’ Allege Only Unsupported Pecuniary Injury**

15 Petitioners assert several purely pecuniary injuries “(1) the loss of all cannabis business
16 revenue which last year amounted to some \$4 million dollars, (2) the inability to maintain
17 positive cash flow resulting in bankruptcy, (3) the unknowable damage to Applicant’s business
18 reputation, brand, and goodwill, (4) the incidental economic damage to the sudden and
19 unexpected termination of 18 full-time employees, and (5) the loss of business momentum.” (Ex
20 Parte Application, page 28, lines 1-6.) The only support that they offer for these assertions,
21 however, is a single conclusory paragraph with no evidence or explanation (Li Decl. ¶ 17), which
22 is plainly insufficient.

23 **b. The Public Interest Outweighs Any Pecuniary Injury to**
24 **Petitioners**

25 Even if Petitioners could prove the pecuniary injuries they assert, those injuries could not
26 outweigh the importance of protecting consumer safety and preserving the authority and
27 discretion of the public agency entrusted with that protection. The harm that may result if
28 Petitioners are allowed to operate while not complying with the laws and regulations that exist to

1 safeguard the public is significant. Testing laboratories perform the critical function of ensuring
2 that cannabis goods are free from a lengthy list of contaminants and do not contain toxic levels of
3 substances when ingested by consumers. In some instances, as we saw in the recent vaping crisis,
4 untested cannabis goods can lead to serious injury or death. To meet the public safety goals of
5 testing, it must be done properly and accurately. This means that the sample is from a specific
6 batch of cannabis goods and that the sample has not been tampered with; thus, strict adherence to
7 chain of custody protocols is necessary. Harrens was sending cannabis samples for testing
8 through private, unlicensed third-party couriers, including those that deliver packages to your
9 home, rather than maintaining custody of the sample and transporting it themselves. This practice
10 allows for tampering with the cannabis goods sample such that it could be contaminated or could
11 be substituted with a different sample from another batch. This also allows for diversion into the
12 illegal market. Additionally, for testing to protect consumers from toxic or harmful cannabis
13 goods, the person conducting the tests accurately report both the steps in the testing process and
14 the results. Harrens has provided dishonest information to the licensing agency and has not
15 demonstrated they can now be trusted to provide honest and accurate information regarding their
16 testing activities. The public interest weighs heavily in favor of a licensing agency's ability to
17 immediately stop the operation of a provisional license holder who intentionally deceives it and
18 fails to comply with applicable laws and regulations that are designed to protect public health and
19 safety.

20 Especially in light of Petitioners' failure to present any persuasive evidence of injury, the
21 balance of harm does not favor Petitioners, as there is significant public interest in ensuring that a
22 testing laboratory with a provisional license comply with applicable law, and in preserving the
23 authority and discretion of the Bureau to ensure that compliance.

24 **2. Petitioners' Have Not Shown A Probability of Prevailing On the** 25 **Merits**

26 Petitioners' motion for a preliminary injunction also should be denied for the separate and
27 independent reason that they have failed to show a likelihood of success on the merits.
28

1 **a. Petitioners Fail to Identify any Ministerial Duty to Compel**

2 As a threshold matter, Petitioners' motion fails because they have filed an Unverified Writ
3 of Mandate pursuant to Code of Civil Procedure section 1085. Ordinary mandamus *may be used*
4 *to compel the performance of a duty that is purely ministerial in nature* (*Terminal Plaza Corp. v.*
5 *City and County of San Francisco* (1986) 186 Cal.App.3d 814, 830) or to correct an abuse of
6 discretion (*Gordon v. Horsley* (2001) 86 Cal.App.4th 336, 350-351). Three elements must be
7 present for the issuance of a writ of mandate under Code of Civil Procedure section 1085: 1) a
8 beneficial interest or right of the petitioner; 2) a ministerial duty which may be compelled to
9 protect the beneficial interest or right, and 3) a showing that there is no plain adequate remedy at
10 law. (Code Civ. Proc., § 1085; *Orange Unified School Dist. v. Rancho Santiago Community*
11 *College Dist.* (1997) 54 Cal.App.4th 750, 765.) Petitioners cannot satisfy the second element: the
12 presence a ministerial duty.

13 “A ministerial duty is one that is required to be performed in a prescribed manner under
14 the mandate of legal authority without the exercise of discretion or judgment.’ [Citation.]” (*Cape*
15 *Concord Homeowners Assn. v. City of Escondido* (2017) 7 Cal.App.5th 180, 189.) “A ministerial
16 duty is an act that a public officer is obligated to perform in a prescribed manner required by law
17 when a given state of facts exists.” (*Alliance for a Better Downtown Millbrae v. Wade* (2003)
18 108 Cal.App.4th 123, 129.) Here, there is no ministerial duty. Instead, the authority and
19 discretion of the Bureau is clear: “It being a matter of statewide concern... the Bureau shall have
20 the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses for...
21 transportation, storage... distribution, testing and sale of cannabis and cannabis products
22 throughout the state.” (Bus. & Prof. Code, § 26012, subd. (a)(1).) In exercising its discretion,
23 “[t]he protection of the public shall be the highest propriety for all licensing authority in
24 exercising licensing, regulatory, and disciplinary functions under this division.” (Bus. & Prof.
25 Code, § 26011.5.) With respect to a revocation of provisional licenses held by applicants who are
26 operating without having yet completed the application process, “a licensing authority may, in its
27 sole discretion, revoke or suspend a provisional license.” (Bus. & Prof. Code, § 26050.2, subd.
28

1 (c.) Finally, “revocation or suspension by the licensing authority a license issued pursuant to this
2 section shall not entitle the applicant or licensee to a hearing or an appeal of the decision.” (Bus.
3 & Prof. Code, § 26050.2.)

4 Thus, revocation of a provisional license is a discretionary act that, under the section
5 26050.2, does not give rise to a right to hearing, and there is no ministerial duty to provide a
6 hearing to a provisionally licensed business whose annual license application is still under review.
7 For this reason alone, the petition fails.

8 **b. Legislative Enactments Are Presumed Valid**

9 Even if a petition for writ of mandate were a proper vehicle for challenging the revocation
10 of their provisional license, Petitioners’ challenge would still fail because section 26050.2 is
11 unambiguously antithetical to Petitioners’ arguments, and while they claim that this statute is
12 invalid under either or both the United States Constitution and/or the California Constitution,
13 Courts apply “‘a strong presumption of constitutionality [to the] Legislature’s acts.’” (*People v.*
14 *Lippert* (2020) 53 Cal.App.5th 304, 311 quoting *Amwest Surety Ins. Co. v. Wilson* (1995) 11
15 Cal.4th 1243, 1253, 1256; see also, *Pike v. Bruce Church Inc.* (1970) 397 US 137, 142.) The bar
16 for overcoming that presumption is exceptionally high: “The court cannot invalidate a statute
17 enacted pursuant to the state’s police power unless it has no reasonable relation to a legitimate
18 purpose accomplished by the enactment.” (*Bronco Wine Co. v. Jolly* (2005) 129 Cal.App.4th
19 988, 1024 (citing to *Sligh v. Kirkwood* (1915) 237 U.S. 52, 61).) As the following sections
20 demonstrate, Petitioners cannot overcome this presumption.

21 **c. Petitioners’ Due Process Claims Fail Because No Legally**
22 **Cognizable Property Right or Liberty Interest of the Petitioner**
is Implicated Under the Facts of this Case

23 Petitioners’ claim, notwithstanding the unambiguous language of section 26050.2, that
24 they have “a constitutionally protected property right” that cannot be revoked “without affording
25 constitutionally mandated due process of law.” (Ex Parte Application, page 10, lines 22-23).
26 However, the law is clear that there is no *federally* protected right to engage in any commercial
27 activity involving cannabis. Additionally, no provision of the California Constitution dictates that
28 a property interest in a provisional license or any other entitlement accrues as a consequence of

1 detrimental reliance or because of a licensee's subjective, unilateral understanding of the nature
2 of the right or privilege conferred by a statute. As such, no colorable argument can be made that
3 Petitioners' have a right to a hearing prior to revocation of their Provisional License or that the
4 revocation itself resulted from, or amounts to, a violation of any provision of either the United
5 States or California Constitution.

6 **(1) Petitioners Have No Protected Property Interest or Due**
7 **Process Right Under the Federal Constitution**

8 While California has legalized commercial cannabis activity, these activities remain
9 illegal under federal law. (*Gonzales v. Raich* (2005) 545 U.S. 1.) Because cannabis, or
10 "marijuana" as it is referred to in federal statutes, is classified "as [a] Schedule I drug . . . the
11 manufacture, distribution, or possession of marijuana became a criminal offense." (*Id.* at p. 14
12 (citing 21 U.S.C. §§ 823(f), 841(a)(1), and 844(a)).) Despite state legalization, there is no federal
13 constitutional right to engage in any commercial cannabis activity. (*See, Kent v. Cty. of Yolo*, 411
14 F.Supp.3d 1118, 1123 (E.D. Cal. 2019) (citing *Cook v. City of Cal. City*, 2017 WL 1348951, at *4
15 (E.D. Cal. Apr. 12, 2017)); *see also, Raley v. Williams*, No. 2:14-cv-2652-JAM-CMK, 2018 WL
16 4027020, at *6 (E.D. Cal. Aug. 23, 2018).) Even where commercial cannabis activity is legal
17 under state law, it is not recognized as a protected property interest under the U.S. Constitution.
18 (*Kent, supra*, 411 F.Supp.3d at 1123.)

19 To the extent that Petitioners wish to argue that seizure of the samples by enforcement
20 staff constitutes a violation of their constitutional rights under the Federal Constitution, they "face
21 the insurmountable hurdle that federal law does not recognize any protectable liberty or property
22 interest in the cultivation, ownership, or sale of marijuana." (*Borge v. County of Mendocino*
23 (2020) (N.D. Cal. Dec. 13, 2020) 2020 WL 7342682 at * 6 quoting *Citizens Against Corruption*
24 *v. County of Kern*, 2019 WL 1979921, at *3 (E.D. Cal. May 3, 2019) and citing *Brady v. Gebbie*
25 (1998) 859 F.2d 1543, 1548.) Federal courts have repeatedly found that there is no cognizable
26 property interest in cannabis and have repeatedly granted motions to dismiss under Federal Rules
27 of Civil Procedure, rule 12(b)(6), based upon findings that no person can have a legally protected
28 interest in contraband per se. (*Lull v. County of Placer*, 2018 WL 4335572, at *3 (E.D. Cal.

1 September 11, 2018); *Schmidt v. County of Nevada*, 2011 WL 2967786, at *5 (E.D. Cal. July 19,
2 2011).³ For these reasons the Court should disregard all arguments and authorities cited by
3 Petitioners which contemplate any property interest or substantive or procedural due process right
4 under the Federal Constitution.

5 Even if it were possible that there could be a federally protected interest in the operation
6 of a commercial cannabis business, Petitioners fail to make the case that any violation could have
7 occurred in this matter. Petitioners rely significantly on the *Board of Regents v. Roth* (1972) 408
8 U.S. 564, a case in which the Court ruled that the beneficial interest at the heart of the matter *was*
9 *not* a property interest sufficient to require a hearing. The Court wrote “To have a property
10 interest in a benefit, a person must have more than an abstract need or desire for it or a unilateral
11 expectation of it, and he must have a legitimate claim of entitlement to it.” (*Id.* at p. 577.)

12 Petitioners, like the appellant in the *Board of Regent* case, have never been given any
13 reason to believe that they are entitled to a hearing. In a passage quoted by Petitioners, the Court
14 wrote that property rights are “created and their dimensions are defined by existing rules or
15 understandings that stem from an independent source,” such as state law. (*Ibid.*) Petitioners then
16 state that the “independent source” of their right to a hearing is Section 26050.2 (Ex Parte
17 Application, page 16, lines 4-6), the very statute that expressly states that they are “not entitle[d] .
18 . . to a hearing.” (Bus. & Prof. Code, § 26050.2, subd. (h).) Petitioners in this matter cannot
19 identify any statutory right to a hearing or identify any federally protected right that exists.

20 **(2) Petitioners Have No Protected Right or Property Interest**
21 **in Their Provisional License Under State Law**

22 Petitioners also claim that their right to a hearing prior to revocation of their provisional
23 cannabis license finds support under the due process clause of the California Constitution. (Cal
24 Const. Art. 1 § 7.) They are mistaken. Section 26050.2 provides that provisional licenses may be
25 issued to applicants whose annual license applications are under review. The purpose of this

26
27 ³ Under “federal law, marijuana is contraband per se, which means no person can have a
28 cognizable legal interest in it.” (*Id.*) Thus, “courts in this district have dismissed ‘marijuana as
property’ cases brought under the Fourteenth Amendment.” (*Torres v. County of Calaveras*,
2018 WL 1763245, at *2 (E.D. Cal. Apr. 12, 2018).)

1 provision is to allow commercial cannabis businesses to begin operation or continue operating
2 within the legal market to facilitate the growth of a lawful industry, and ensure access to safe,
3 tested cannabis, and cannabis products. It is important to note that, pursuant to Section
4 26050.2(e), a provisional license is cancelled once a determination is made regarding the annual
5 license application. If the annual license application is denied, there is no provision allowing the
6 continued operation of the business after the cancellation of the provisional license until a hearing
7 is held regarding the denial. These licenses are designed to be transitional and temporary in
8 nature, and are subject to lesser protections than annual licenses. If the provisional license carried
9 the same rights as an annual license, this would effectively change the annual license
10 requirements; the only difference between the provisional and annual license would be that the
11 applicant does not have to meet the annual license requirements to receive a provisional license,
12 thus, there would be no need for both types of licenses.

13 Provisional licenses can, under the express terms of the statute which authorizes their
14 issuance, be revoked without hearing or an opportunity to appeal. (Bus. & Prof Code, § 26050.2,
15 subd. (h).) Thus, Petitioners have no statutory right to a hearing.

16 This is fatal to Petitioners' claims. To show that there has been a violation of substantive
17 or procedural due process rights, Petitioners must, as a preliminary matter identify the property or
18 liberty interest at issue and demonstrate that the right was arbitrarily denied or revoked in a
19 manner that does not serve any legitimate state interest or that the identified interest warrants
20 greater procedural protections than were afforded it, prior to or after its denial or revocation. (See
21 *Ryan v. California Interscholastic Federation – San Diego Section* (2001) 94 Cal.App.4th 1048,
22 1071 (citing *People v. Ramirez* (1979) 25 Cal.3d 260, 267); *Clark v. City of Hermosa Beach*,
23 (1996) 48 Cal.App.4th 1152, 1184.) Even though Petitioners were on notice of the conditional
24 nature of the privilege that was conferred upon them by the Bureau in accordance with section
25 26050.2, Petitioners argue that a property right in their license somehow accrues on vague
26 estoppel grounds. The argument appears to be that Petitioners invested money in detrimental
27 reliance. (Ex Parte Application, page 8, lines 18-19.) This reliance appears to be based upon
28 their unilateral belief that their Provisional License would last for an interminable period

1 regardless of whether or not Petitioners made any effort to comply with applicable law. This
2 belief does not create any property right protected by due process.

3 A provisional license holder may operate until the provisional license expires, is revoked,
4 or when the annual license application is granted or denied. (Bus. & Prof. Code, §26050.2 subds
5 (d), (e), and (h).) In order to ascertain whether there has been a due process violation in this case,
6 the Court would have to determine whether, as the Petitioners' claim, issuance of a provisional
7 license creates a protected property interest. "In determining whether permits or licenses are
8 property, the courts consider whether the permit or license is transferrable, the extent to which the
9 government has the right to regulate the underlying activity or to revoke, suspend or modify the
10 permit or license and whether there has been a legislative or regulatory expression that issuance
11 of a permit does not create a property right." (*Bronco Wine Co. v. Jolly, supra*, 129 Cal.App.4th
12 at p. 1031 citing *American Pelagic Fishing Co. LP v. US* (2004) 379 F.3d 1363.)

13 Each of these factors weight against Petitioners. Here, the commercial cannabis industry
14 is highly regulated, licensees are subject to strict oversight, and the statute indicates that
15 provisional licenses are subject to revocation without a hearing. In addition, Petitioners were on
16 notice of the nature of the license and scope of their right that had been conferred by the Bureau
17 and it is not reasonable to expect that a *provisional* license confers any permanent entitlement.
18 Moreover, Petitioners were not required to accept a provisional license if the lack of hearing
19 rights were of concern to them. Any subjective unilateral belief Petitioners had about the nature
20 of their rights under a provisional license is not supported in statute and unreasonable. "[T]o be a
21 protectable property interest, the interest must be more substantial than a mere unilateral
22 expectation of continued rights or benefits." (*San Diego Metropolitan Transit Development*
23 *Board v. Handlery Hotel Inc.* (1999) 73 Cal.App.4th 517, 532 (citing *Ruckleshaus v. Monsanto*
24 *Co.* 467 U.S. 986, 1005).) Neither unilateral expectations nor detrimental reliance determine the
25 scope of the rights or privileges which attend a provisional license, especially in the face of the
26 express disclaimer of any such rights in section 26050.2.

27 ///

28 ///

d. **Even If Petitioners Had a Protected Interest, They Have Received Adequate Process**

As shown above, Petitioners' procedural due process claims fails because there is no federally protected property or liberty interest, and under California law, the legislature has already defined the scope of the right to hold a provisional license and determined that no hearing shall be required prior to its revocation. Nonetheless, if the Court finds that a due process analysis is triggered under the facts alleged under this case then, "under the California Constitution, the extent to which procedural due process is available depends on weighing of private and governmental interests involved." (*Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, 390 (quoting *Rodriguez v. Department of Real Estate* (1996) 51 Cal.App.4th 1289, 1297).) Here, again, the balance weighs heavily in favor of the governmental interest in protecting public health and safety and against any right to a hearing prior to revocation of a provisional cannabis license. .

The Legislature enacted a statute allowing for the issuance of provisional licenses while annual licenses were being processed. In doing so, it defined the scope of Petitioners' beneficial interest in their provisional license. Petitioners assert that a provisional license is "identical to a slightly different named [annual] license." (Ex Parte Application. Page 22, lines 6-7.) That is wrong. The privilege to operate while one's license application is being processed is very different than the right conferred after full review of an application and issuance of an annual license. The State has adopted a two-tiered system that serves the policy goal of providing cannabis operators an avenue to engage in the legal market, while aiding in the development of a comprehensive state wide program. Because provisional licenses can be issued based merely on the submittal of an annual license application and a demonstration that compliance with local and state law is underway, and because Section 26050.2 warns that provisional licenses may be revoked without a hearing or appeal, the interest of provisional license holders in their licenses is far less substantial than the interest of annual license holders in their licenses. By contrast, the public interest in being able to revoke provisional licensees without holding a hearing is far more substantial because, in contrast to annual license holders, provisional license holders have never

1 made a showing that they are in compliance with state and local law, which in turn creates a need
2 to be able to revoke provisional licenses once it is determined that they cannot or will not comply
3 with those requirements. As such, due process does not require a hearing prior to revocation of a
4 provisional license under section 26050.2.⁴

5 Petitioners' benefited financially from the privilege of holding a provisional license while
6 their annual license application was pending. Petitioners' inability to perform the responsibilities
7 that came with the privilege, even after being put on notice and being provided the opportunity to
8 correct the violations by complying with legal requirements left the Bureau with no choice but to
9 revoke the provisional license. Public protection mandated the Bureau do so. Moreover,
10 Petitioners received more than adequate process. They were notified of the issues being reviewed
11 by the Bureau, and they had the opportunity to provide relevant information in response to the
12 Bureau's inquiries. In addition, because a provisional license holder is also an annual license
13 applicant, they still have an application pending and are entitled to a full hearing pursuant to the
14 Administrative Procedure Act if that application is denied. (Bus & Prof. Code, § 26058.) Due
15 process does not require that they also receive a formal hearing prior to the revocation of the
16 privilege to operate that they received prior to proving that they are able to do so in compliance
17 with state and local requirements.

18 For the reasons given above, the Petitioners in this matter will be unable to demonstrate
19 that a property or liberty interest has been revoked or is being denied in violation of their
20 substantive due process rights or in violation of the applicable requirements of procedural due
21 process.

22
23 ⁴ Petitioners state they "are entitled to ordinary mandamus relief to compel Respondents to
24 provide a fair and impartial hearing before an independent hearing officer (i) **before revocation**
25 of their license authorizing them to operate a cannabis testing laboratory..." (Ex Parte
26 Application, page 11, lines 16-19 [emphasis added].) However, a hearing **before revocation**
27 would raise public safety issues of permitting a cannabis testing laboratory that has been found to
28 be in violation of cannabis regulations by the Bureau to continue to operate while the hearing was
pending. The public interest weighs heavily in favor of a licensing agency's ability to halt the
operation of a business with a provisional license that has failed to comply with applicable
regulations, as the period between the citation of the violations and the hearing would permit
cannabis that was not tested in accordance with the required regulations, by a laboratory with a
provisional license, to enter the lawful chain of commerce.-

1 **IV. PETITIONERS SHOULD BE REQUIRED TO POST A BOND**

2 If the Court were to issue a preliminary injunction, it must require an undertaking or cash
3 deposit in lieu of an undertaking. (Code. Civ. Proc., §§ 529, 995.710.) The bond should be
4 sufficient to cover any injury to the public or damage to the Bureau caused by a wrongly issued
5 injunction. (*Id.*, § 529.) The bond amount should take into account all reasonably foreseeable
6 costs resulting from the injunction, including the costs of Respondents' defense in this action.
7 (*ABBA Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14-15.) The potential harm is
8 potentially significant. While it is hard to predict all the potential adverse consequences of a
9 preliminary injunction and ensuing damages, plainly a substantial bond, to secure the many
10 millions of dollars at risk, is warranted here.

11 **V. CONCLUSION**

12 The Ex Parte Application for stay order and request for a preliminary injunction should be
13 denied.

14 Dated: March 3, 2021

Respectfully Submitted,

15
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19
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

15 **HARRENS LAB INC., a California**
16 **corporation, and MING LI, an individual**

17 Petitioners,

18 v.

19 **BUREAU OF CANNABIS CONTROL**
20 **(BCC); TAMARA COLSON, in her official**
21 **capacity as Acting Chief of the Bureau of**
Cannabis Control; and DOES 1-10,

22 Respondents.

Case No. RG21089893

**DECLARATION OF TRAVIS WHITE IN
SUPPORT OF OPPOSITION TO EX
PARTE APPLICATION FOR
TEMPORARY STAY ORDER AND
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

**[Filed Concurrently with Opposition to Ex
Parte Application for Temporary Stay
Order and Order to Show Cause Why
Preliminary Injunction Should Not Issue]**

Date: March 4, 2021
Time: 3:30 p.m.
Dept: 17
Judge: Hon. Frank Roesch
Trial Date: None yet
Action Filed: February 25, 2021

1 I, Travis White, declare:

2 1. I am a Special Investigator with the Bureau of Cannabis Control within the
3 Department of Consumer Affairs, for the State of California. My duties include quality assurance
4 and monitoring of commercial cannabis business license holders to ensure compliance with the
5 laws, rules, and regulations governing licensed commercial cannabis businesses. I have personal
6 knowledge of the information set forth herein below, all of which is true and correct of my own
7 personal knowledge, and if called upon to testify, I could and would competently testify thereto.

8 2. Beginning in April, 2020, and continuing into 2021, the Department of Consumer
9 Affairs, Bureau of Cannabis Control received complaints against Harrens Lab Inc., located at
10 3507 Breakwater Avenue, Hayward, CA, a testing laboratory holding a provisional license
11 through the Bureau of Cannabis Control.

12 3. On April 25, 2020, following receipt of the first complaint, I was assigned to
13 investigate allegations of misconduct by Harren Labs Inc., which included the following:
14 shipping cannabis samples using a third-party courier services and improper testing protocols.
15 During the course of several months, I exchanged emails and communications with Ming Li,
16 Chief Operating Officer, regarding Harrens Lab Inc.'s operations and practices, to determine its
17 compliance with testing laboratory laws, rules, and regulations. Based on these communications,
18 Ming Li was asked about instances of non-compliance with testing laboratory laws, rules and
19 regulations by Harrens Lab Inc. and its staff. When discussing certain violations, including
20 improperly sampling cannabis products for regulatory testing, Ming Li provided conflicting
21 responses. As an example, when asked about sending cannabis and cannabis products through
22 third party couriers and any knowledge of this, Ming Li initially denied that cannabis and
23 cannabis products were being sent through third party couriers and any knowledge of it.
24 Subsequently, he indicated it had happened only once, then later he admitted that it had been
25 going on for part of 2019 and all of 2020, and also confirmed that he himself had knowledge of,
26 participated in, and instructed his employee to, receive and send cannabis samples from a third-
27 party courier.

28 ///

1 4. At the conclusion of the investigation, I submitted the findings for review and a
2 decision regarding the license. The findings were that Harrens Lab Inc. had failed to comply with
3 the provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)
4 and its implementing regulations, causes for discipline under Business and Professions Code
5 section 26030. Specifically, violations included, but were not limited to, violations of California
6 Code of Regulations, Title 16, sections 5027, 5044, 5049, 5705, 5706, 5707, and 5709, for:

- 7 • An inability to take accurate representative samples of cannabis goods harvest
8 batches;
- 9 • An inability to satisfy laboratory transportation and chain of custody requirements
10 by using third-party courier services to ship cannabis goods samples;
- 11 • Failing to generate shipping manifests prior to transportation to cannabis goods;
- 12 • Transporting cannabis samples without affixing METRC identification labels to
13 cannabis sample packaging;
- 14 • Making premises modifications without seeking prior Bureau of Cannabis Control
15 approval; and
- 16 • Failing to run and maintain a video surveillance system.

17 5. On February 4, 2021, I along with other Bureau of Cannabis Control staff,
18 including Special Investigators and Detectives with the Bureau of Cannabis Control's Cannabis
19 Enforcement Unit, went to Harrens Lab Inc. to serve a Notice of Revocation of License. While
20 serving the revocation notice, ongoing and continuing violations of the laws, rules, and
21 regulations governing commercial cannabis testing laboratory licensees were either observed or
22 described by witnesses present. Specifically, these violations included, but were not limited to,

- 23 • Cannabis goods stored in an unlicensed premises;
- 24 • Cannabis waste not being properly discarded;
- 25 • Cannabis samples not properly labeled;
- 26 • A third-party courier service was still being used to transport cannabis samples;
- 27 and,
- 28 • Improper testing protocols.

1 I declare under penalty of perjury under the laws of the State of California, that the
2 foregoing is true and correct.

3 Executed on March 1, 2021, at Rancho Conejo, California.
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5
6 TRAVIS WHITE

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10 *Attorneys for Respondents*
Bureau of Cannabis Control and
11 *Tamara Colson, Acting Chief*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

15 **HARRENS LAB INC., a California**
16 **corporation, and MING LI, an individual**

17 Petitioners,

18 v.

19 **BUREAU OF CANNABIS CONTROL**
20 **(BCC); TAMARA COLSON, in her official**
21 **capacity as Acting Chief of the Bureau of**
Cannabis Control; and DOES 1-10,

22 Respondents.

Case No. RG21089893

**DECLARATION OF JUAN ORDAZ IN
SUUPORT OF OPPOSITION TO EX
PARTE APPLICATION FOR
TEMPORARY STAY ORDER AND
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

**[Filed Concurrently with Opposition to Ex
Parte Application for Temporary Stay
Order and Order to Show Cause Why
Preliminary Injunction Should Not Issue]**

Date: March 4, 2021
Time: 3:30 p.m.
Dept: 17
Judge: Hon. Frank Roesch
Trial Date: None yet
Action Filed: February 25, 2021

1 I, Juan Ordaz, declare:

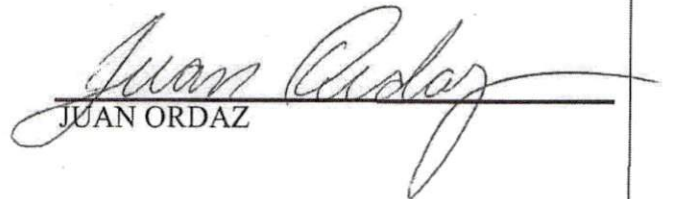
2 1. I am a Supervising Special Investigator II with the Bureau of Cannabis Control within
3 the Department of Consumer Affairs, for the State of California. My duties include overseeing
4 investigations of complaints regarding commercial cannabis business license holders and alleged
5 non-compliance with the laws, rules, and regulations governing licensed commercial cannabis
6 businesses. I have personal knowledge of the information set forth herein below, all of which is
7 true and correct of my own personal knowledge, and if called upon to testify, I could and would
8 competently testify thereto.

9 2. On February 4, 2021, I accompanied other Bureau of Cannabis Control staff,
10 including Special Investigators and Detectives with the Cannabis Enforcement Unit, to Harrens
11 Lab Inc., to serve a Notice of Revocation of License. At that time, I met with Ming Li and
12 provided my business card to him, at his request.

13 3. On February 5, 2021, I received an email from Daniel R. Hess, Quality Assurance
14 Manager with Harrens Lab Inc., stating that Harrens Lab Inc., understood why its Testing Lab
15 Provisional License was revoked. Attached hereto as Exhibit A is a true and correct copy of
16 the email from Daniel R. Hess dated February 5, 2021.

17 I declare under penalty of perjury under the laws of the State of California, that the
18 foregoing is true and correct.

19 Executed on MARCH 1, 2021, at RANCHO CORDOVA, California.

20
21 
22 JUAN ORDAZ

23 SD2021800410
24 Superior Court Pleading (2 Party) no cover.docx
25
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EXHIBIT A

From: daniel@harrenslab.com <daniel@harrenslab.com>

Sent: Friday, February 5, 2021 3:51 PM

To: BCC Labs@DCA <BCCLabs@dca.ca.gov>

Cc: Ordaz, Juan@DCA <Juan.Ordaz@dca.ca.gov>

Subject: Request for Clarification

[EXTERNAL]: daniel@harrenslab.com

CAUTION: THIS EMAIL ORIGINATED OUTSIDE THE DEPARTMENT OF CONSUMER AFFAIRS!

DO NOT: click links or open attachments unless you know the content is safe.

NEVER: provide credentials on websites via a clicked link in an Email.

Greetings Bureau,

I am writing you today in order to seek clarification on whether or not we may test schedule I control substance (including Marijuana) products under our DEA Registration Number

RH0490805 for quality assurance purposes. We understand why our provisional license, license number C8-0000021-LIC, was revoked and intend to fully cooperate with the Bureau concerning all matters of business.

I have attached a copy of our DEA Registration.

Regards,

Daniel R. Hess, M.Sc.
Quality Assurance Manager
Harrens Lab Inc.
3507 Breakwater Ave.
Hayward, CA 94545
O: 510-319-3636 C: 573-823-0971
<http://www.HarrensLab.com>
ISO/IEC 17025 Accredited by A2LA
Certificate Number: 4074.01 & 4074.02

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Harrens Lab Inc v. Bureau of Cannabis Control et al.**
No.: **RG21089893**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On March 3, 2021, I served the attached:

**OPPOSITION TO EX PARTE APPLICATION FOR TEMPORARY STAY ORDER
AND ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD
NOT ISSUE;**

**DECLARATION OF TRAVIS WHITE IN SUPPORT OF OPPOSITION TO EX
PARTE APPLICATION FOR TEMPORARY STAY ORDER AND ORDER TO
SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND**

**DECLARATION OF JUAN ORDAZ IN SUPPORT OF OPPOSITION TO EX PARTE
APPLICATION FOR TEMPORARY STAY ORDER AND ORDER TO SHOW
CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

by transmitting a true copy via electronic mail, addressed as follows:

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3542 Fruitvale Avenue, #224
Oakland, CA 94602

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James M. Anthony
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Oakland, CA 94602

E-mail Address:

james@anthonylaw.group

Counsel for Petitioners

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 3, 2021, at San Diego, California.

Elsa Olguin
Declarant


Signature