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THE SUPERIOR COURT  
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CASE NUMBER:  
**RG21100222**

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

12 HARBOR CAREGIVERS, INC., DBA  
13 CANNASSEURS CLUB, a California  
14 corporation, and VRUIR SHAMIRYAN, an  
individual

15 Petitioners,

16 vs.

17 BUREAU OF CANNABIS CONTROL;  
18 TAMARA COLSON, in her official capacity  
as Acting Chief of the Bureau of Cannabis  
19 Control; and Does 1-10,

20 Respondents.  
21  
22

Case No. \_\_\_\_\_

**PETITIONERS' UNVERIFIED  
PETITION FOR WRIT OF  
TRADITIONAL MANDAMUS (CCP  
§1085)**

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Judge: \_\_\_\_\_

Dept.: \_\_\_\_\_

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**A. Petitioners are entitled to ordinary mandamus relief to compel Respondents to provide a fair and impartial hearing BEFORE revoking their license authorizing them to operate a cannabis microbusiness (a storefront dispensary, a small cultivation and manufacturing facility, a distributorship, and a delivery service) issued to them by the BCC two years ago—and to undo BCC’s purported revocation of 09/23/20, with which they have complied only under protest and duress..... 10**

**B. The Court has subject matter jurisdiction over the writ petition. .... 10**

**V. LEGAL ARGUMENT ..... 10**

**A. Under the Fourteenth Amendment to the U.S. Constitution, and under Article I, § 7(a) of the California Constitution, BCC is barred from depriving Petitioners Harbor Caregivers, Inc. and Mr. Vruir Shamiryan, an individual, of their property interest in the license, “without due process of law.” ..... 11**

**1. U.S. (and California) Supreme Court Case Law Recognizes Property Interests .... 11 in “Entitlements” that “are Created and... Defined by Existing Rules or..... 11 Understandings that Stem from an Independent Source such as State Law.” ..... 11**

**2. The State’s temporary licensing category, enacted in 2017, which also..... 15 contained the denial of notice, hearing, and appeal language like B & P § 26050.2, was originally supposed to last only 120 days, but the four-year backlog making 83% of the licenses “provisional” licenses lasting as long as or longer than annual licenses cannot deprive provisional license holders such as Petitioners of their due process rights..... 15**

**B. California’s due process protections are broader and more nuanced than their federal counterparts, recognizing property and liberty interests even where the government has “discretionary” powers, through a 4-part balancing test. .... 22**

**1. “the private interest that will be affected by the official action” ..... 23**

**2. “the risk of an erroneous deprivation of such interest through the..... 24 procedures used, and the probable value, if any, of additional or substitute procedural safeguards” ..... 24**

**3. “the dignitary interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official” ..... 24**

**4. the governmental interest, including the function involved and the fiscal and ..... 25 administrative burdens that the additional or substitute procedural requirement would entail. .... 25**

**C. Petitioners have no adequate remedy at law. .... 26**

**D. Balancing the equities reveals that risk of public harm is low while the risk of irreparable harm to Petitioners is high. .... 27**

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**COMES NOW PETITIONERS WHO ASSERT AND ARGUE AS FOLLOWS:**

1. Petitioners, HARBOR CAREGIVERS, INC., DBA CANNASSEURS CLUB, a California corporation (“Harbor Caregivers” or “HCI” or “Petitioner HCI”), and VRUIR SHAMIRYAN, an individual (“Mr. Shamiryan” or “Petitioner Shamiryan”), petition this Court for a writ of mandate under Code of Civil Procedure §1085, directed to Respondents and by this unverified petition allege as follows:

2. Petitioners, as lawful cannabis operators in the City of Los Angeles, are beneficially interested in the outcome of the questions of law presented in this petition. Respondents have a ministerial duty to follow the law and provide constitutionally mandated due process and give Petitioners an appeal hearing on the matters stated herein. Petitioners allege that there is no plain, speedy and adequate remedy at law for the matters alleged herein. Petitioners reserve the right to brief more fully the facts and law germane to this petition pursuant to the briefing schedule ordered by the court and/or stipulated to by the parties.

**I. INTRODUCTION & SUMMARY**

3. Petitioners have legally operated a legacy cannabis dispensary in Los Angeles since 2008, and with a microbusiness license from Respondent Bureau of Cannabis Control since June 25, 2019. Petitioners have invested and re-invested millions of dollars in the business venture. Respondents summarily revoked that “provisional” license on September 23, 2020 and claim that Petitioners are entitled to no due process whatsoever including no prior notice, no hearing, and no appeal pursuant to California Business and Professions Code. Over 8,200 such provisional licenses have been issued since January 1, 2018, to businesses that likewise have operated under them for years and have collectively invested billions of dollars in reliance on them. Those licenses are constitutionally protected property rights entitled to procedural due process. To the extent that the Business and Professions Code says otherwise, the Code is unconstitutional on its face, and as applied to Petitioners.

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**II. PARTIES**

4. Petitioner HARBOR CAREGIVERS, INC., is a California corporation operating a commercial cannabis microbusiness in North Hollywood, CA. Petitioner holds provisional license No. C12-0000096-LIC, which is the subject of this Petition.

5. Petitioner VRUIR SHAMIRYAN is an individual and the sole shareholder and CEO of HARBOR CAREGIVERS, INC.

6. Respondent BUREAU OF CANNABIS CONTROL (“BCC”) is an agency located with the California Department of Consumer Affairs. BCC has sole authority to license cannabis testing laboratories in the state of California.

7. Respondent TAMARA COLSON is the Acting Chief of the Bureau of Cannabis Control.

8. Respondent Does 1-10 are persons or entities whose true identities are unknown as of the time of the filing of this Petition.

9. At all times mentioned in this petition, the above Respondents have been the agencies and officials in charge of administering Petitioners’ provisional license to operate as a commercial cannabis laboratory in the state of California. Such agencies and officials also have the authority to grant or deny Petitioner’s underlying request for a hearing on Respondent’s putative revocation of Petitioner’s provisional license.

**III. FACTS**

10. Petitioner Harbor Caregivers, Inc. (“HCI”) is a long-standing City of Los Angeles (“LA”) cannabis dispensary. HCI was incorporated in California in 2008. It dates back to the earliest years of legal medical cannabis collective dispensaries before LA regulated them. As such, LA has long recognized its vested property right status. Petitioner Shamiryan became the sole shareholder of HCI in 2015. Mr. Shamiryan is a naturalized US citizen with national origin in Armenia, where he was

1 born, and is of Armenian descent. As a younger man, Mr. Shamiryan served in the United States  
2 Marine Corps.

3           11. Respondents Bureau of Cannabis Control (“BCC”) and Tamara Colson, in her  
4 capacity as acting Chief of BCC (“Ms. Colson”), through her predecessor, Lori Ajax, issued  
5 Petitioners’ license C12-0000096-LIC to operate a cannabis microbusiness on June 25, 2019 at 11307  
6 Vanowen Street, Los Angeles, CA 91605. Under this license, Petitioners continued their longstanding  
7 storefront retail function, and they added retail delivery, distribution, and small-scale onsite  
8 cultivation and nonvolatile manufacturing.  
9

10           12. Over a year later, four law enforcement agents of the Respondents inspected the  
11 Petitioner’s premises on July 29, 2020. During that inspection law enforcement entered the premises  
12 at Mr. Shamiryan’s invitation and proceeded to his office to discuss their concerns. While two  
13 officers directed Mr. Shamiryan’s attention to the delivery records for the business on the computer,  
14 another officer discretely made his way into the secure vault, without notice or escort, and  
15 commenced recording the inside of the vault on what appeared to be a personal cell phone. Because  
16 this was during a time of civil disturbances, including armed robbery of many cannabis dispensaries,  
17 Mr. Shamiryan objected to this recording.  
18

19           13. Mr. Shamiryan then called his lawyer, Dana Cisneros. Speaking to the officers on  
20 speaker phone, Ms. Cisneros asked them under what authority they were recording sound and video.  
21 The officers gave Ms. Cisneros a cite to the section of the California Code of Regulations governing  
22 California licensed cannabis businesses, which Ms. Cisneros verified was inapplicable and did not  
23 authorize their recording activity, but merely allowed them access to the dispensary’s security camera  
24 footage and other records.  
25

26           14. The officers became visibly and audibly angry. The officers then announced that Mr.  
27 Shamiryan was “refusing access” to them and left hurriedly. As they pulled away in their car, they  
28

1 continued recording video of Mr. Shamiryan. The officers were laughing at Mr. Shamiryan as they  
2 left; one of them made a rude hand gesture at him.

3 15. During this brief exchange, both Mr. Shamiryan and Ms. Cisneros, on the speaker  
4 phone, insisted that the officers were welcome to remain and conduct their inspection of the  
5 premises and the dispensary's records, including the security camera footage, computer inventory  
6 records, and any other records that they were clearly entitled to inspect and even have copied. The  
7 officers refused to remain, and instead left with angry words, mockery, and gestures of grave  
8 disrespect to Mr. Shamiryan, a former member of the United States Marine Corps.  
9

10 16. On September 23, 2020, agents of the Respondents returned to Petitioners' premises  
11 with a search warrant based on a clumsily constructed affidavit of probable cause, based on  
12 superseded law, styled after the type of affidavit commonly produced by law enforcement to obtain a  
13 search warrant for a common criminal drug dealer. Nowhere does the affidavit aver that affiant had  
14 any expertise, training, or experience related to investigating licensed cannabis businesses regulated  
15 under the Business and Professions Code; rather it makes reference to outdated Health and Safety  
16 Code provisions superseded over the last five years by voter initiative, by legislative statute, and by  
17 administrative regulations, none of which were referenced therein. They did not serve this search  
18 warrant upon Entry. Upon challenge by attorney Dana Cisneros, they served the warrant as they left  
19 the premises.  
20

21 17. When he arrived on the premises that day, Mr. Shamiryan found his security guards in  
22 handcuffs and nine, armed, BCC agents inside. Mr. Shamiryan cooperated and was calm at all times  
23 during this raid on his licensed business. He again contacted his attorney, Ms. Cisneros, by phone.  
24 The agents informed her that the license was being revoked based on a one-page letter that they hand  
25 delivered. That letter baldly alleges, in the most conclusory possible terms, that Petitioners had  
26 violated applicable statutes and regulations in three ways with no specific details: (1) one sale of a  
27 single improper edible product, (2) one failure to check for proof of age, and (3) one "denial of  
28

1 access.” On the basis of the same, Respondents revoked the license pursuant to Business and  
2 Professions Code § 26050.2, under which there was to be no hearing or appeal of any kind.

3 18. When the agents indicated that they were seizing all the inventory and growing crops,  
4 Ms. Cisneros objected that such a seizure would require a warrant based on probable cause. They  
5 then proceeded to handcuff Mr. Sharniryan while they seized approximately \$2,500,000 in lawful  
6 inventory properly recorded in the state’s inventory tracking system (METRC) including the growing  
7 crops. Only as they left did they serve the warrant and a partial copy of the underlying affidavit of  
8 probable cause that was not fully disclosed for two months. Despite the affidavit containing an  
9 explicit “Anticipatory” clause restricting its execution to “**IF AND ONLY IF**” the agents were  
10 denied legal access, which they clearly were not, the agents acted on the warrant. Despite repeated  
11 inquiries, Petitioners were delayed by Respondents in obtaining the full search warrant supporting  
12 affidavit for over two months until November 25, 2020.

14 19. During this period after the September 23, 2020 raid and “revocation,” Petitioners  
15 repeatedly asked BCC if they should file a new license application. BCC insisted that Petitioners need  
16 not file a new application because BCC would process the existing one which if denied would be  
17 appealable. Then on December 17, 2020, BCC abruptly “withdrew” Petitioners’ then existing  
18 application for an annual license without Petitioners’ consent. Because of that unauthorized  
19 “withdrawal” BCC thwarted even the modicum of incorrectly calibrated due process that would have  
20 accompanied the denial of an allegedly discretionary application.

22 20. Following the December 17, 2020 “withdrawal” of its license application by BCC,  
23 Petitioners filed another license application on January 11, 2021. In the months following, BCC  
24 requested supplemental documentation which Petitioners provided. More recently, on Friday, May 7,  
25 2021, BCC notified Petitioners that the analyst processing that most recent application had  
26 completed his review and was forwarding it to his supervisor recommending approval for a new  
27 provisional license, “probably today but perhaps Monday.” But in the following weeks, the  
28



1 supervisor requested further documentation, including some related to retail delivery and  
2 manufacturing, neither of which were requested in the license application. Petitioners provided all  
3 relevant documents. BCC then referred the matter to the Department of Food and Agriculture to  
4 review the cultivation portion of the microbusiness license application, an unprecedented procedure  
5 given that BCC alone oversees the issuance of such microbusiness licenses.  
6

7 21. BCC has gone out of its way to bury its procedural malfeasance with act after act  
8 denying the fundamentals of due process before deprivation—notice and hearing—in an attempted  
9 coverup of its initial heavy-handed discriminatory over-reaction. Petitioners have no choice other  
10 than to bring this petition to vindicate their protected property interests.

#### 11 IV. LEGAL QUESTIONS AND STANDARD OF REVIEW

12 22. Petitioners allege and argue in the underlying writ petition that Petitioners possess a  
13 constitutionally protected property right which Respondents seek to revoke without affording  
14 constitutionally mandated due process of law. These arguments are meritorious and present  
15 important and undecided issues of law and fact.  
16

17 23. Petitioners, therefore, are entitled to a prohibitory injunction that prevents  
18 Respondents from taking action and preserves the *status quo ante* until the underlying controversy is  
19 resolved. This Court has subject matter jurisdiction over the controversy and personal jurisdiction  
20 over Respondents. Petitioners have standing to bring the underlying action.

21 24. Petitioners assert that Respondents failed to provide Petitioners due process for the  
22 revocation of Petitioners' cannabis cultivation license previously conferred by Respondents on  
23 Petitioners. That issue, and statutory interpretation, are both legal issues reviewed de novo. *Tafti v.*  
24 *County of Tulare* (2011) 198 Cal.App,4<sup>th</sup> 891, 896.  
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1 **A. Petitioners are entitled to ordinary mandamus relief to compel Respondents to provide a**  
2 **fair and impartial hearing BEFORE revoking their license authorizing them to operate a**  
3 **cannabis microbusiness (a storefront dispensary, a small cultivation and manufacturing**  
4 **facility, a distributorship, and a delivery service) issued to them by the BCC two years ago—**  
5 **and to undo BCC’s purported revocation of 09/23/20,’ with which they have complied only**  
6 **under protest and duress.**

7  
8 25. Petitioners allege and argue that Petitioners possess a constitutionally protected  
9 property right which Respondents seek to revoke without affording constitutionally mandated due  
10 process of law.

11 **B. The Court has subject matter jurisdiction over the writ petition.**

12 26. California Code of Civil Procedure § 1085 states in pertinent part:

13 “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,  
14 or person, to compel the performance of an act which the law specially enjoins, as a duty  
15 resulting from an office, trust, or station, or to compel the admission of a party to the use and  
16 enjoyment of a right or office to which the party is entitled, and from which the party is  
17 unlawfully precluded by that inferior tribunal, corporation, board, or person.”

18 27. Petitioners request in the underlying writ petition that this Court issue a writ  
19 compelling BCC to take an act required by law *vis* the affording of constitutional procedural due  
20 process to Petitioners as relates to their constitutionally protected property right. The Superior Court  
21 of Alameda County has authority over the BCC in this context. Given the parameters of the relief  
22 that Petitioners seek herein, that is, that the BCC provide it due process of law, this Court has subject  
23 matter jurisdiction over Respondents.

24 **V. LEGAL ARGUMENT**

25 28. In revoking Petitioners’ license without any hearing or opportunity to appeal,  
26 Respondents cited B & P § 26050.2.<sup>1</sup> B & P § 26050.2 provides in pertinent part as follows:

27 (a) A licensing authority may, in its sole discretion, issue a provisional license to an  
28 applicant if the applicant has submitted a completed license application to the  
licensing authority....

\_\_\_\_\_   
<sup>1</sup> All further references to California’s Business & Professions Code shall be to “B & P.”

1 (b) A provisional license issued pursuant to this section shall be valid for no more  
 2 than 12 months from the date it was issued. If the licensing authority issues or renews  
 a provisional license, they shall include the outstanding items needed to qualify for an  
 3 annual license specific to the licensee ....

4 (l) Except as specified in this section, the provisions of this division shall apply to a  
 provisional license in the same manner as to an annual license....

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

9 Subdivision (h) denies holders of provisional licenses the right to a hearing on, or an appeal of a  
 10 decision to revoke or suspend that license. Subdivision (l) provides that aside from the limitations  
 11 set forth in § 26050.02, which includes subdivision (h)'s denial of due process rights, the provisions  
 12 in Division 10, commencing with B & P §§ 26000 *et seq.*, apply in the same manner to a  
 13 provisional license as they do to an annual license. *On its face* B & P § 26050.2 deprived  
 14 Petitioners of their due process rights to an evidentiary hearing and an appeal in revoking Petitioners'  
 15 provisional license.

16  
 17 **A. Under the Fourteenth Amendment to the U.S. Constitution, and under Article I, § 7(a) of**  
 18 **the California Constitution, BCC is barred from depriving Petitioners Harbor Caregivers,**  
**Inc. and Mr. Vruir Shamiryan, an individual, of their property interest in the license,**  
**“without due process of law.”**

19  
 20 **1. U.S. (and California) Supreme Court Case Law Recognizes Property Interests**  
**in “Entitlements” that “are Created and... Defined by Existing Rules or**  
**Understandings that Stem from an Independent Source such as State Law.”**

21  
 22 29. Once the state government authorizes, or “licenses,” a person to engage in a business  
 23 or profession, it has created an entitlement property interest protected from arbitrary deprivation by  
 24 both the Fourteenth Amendment to the U.S. Constitution and Article I, §7(a) of the California  
 25 Constitution (collectively, “the Constitutions”). Such property interests are entitled to procedural due  
 26 process before deprivation: specifically, detailed notice of the grounds for the deprivation and an  
 27 opportunity to be heard. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Perry v. Sinderman* (1972) 408  
 28

1 U.S. 593, 601; *Goldberg v. Kelly*, 397 U.S. 254, 263 n.8; 264 (1970); *Saleeby v. State Bar* (1985) 39 Cal.3d  
2 547, 564-65.

3           30.       The threshold issue before this Court is whether Petitioners have a property interest  
4 in their cannabis microbusiness “provisional” license that BCC issued to them two years ago  
5 authorizing them to engage in commercial cannabis activity. This issue is also dispositive. If there is a  
6 property interest, then such property interest is entitled to due process before deprivation. BCC  
7 claims that the license can be revoked without due process implying that Petitioners do not have a  
8 property interest. BCC’s repeated justification for this position is that B & P § 26050.2(h) states that  
9 no due process is required for the revocation of a provisional license. Section 26050.2(h) cannot  
10 preempt the Federal or State constitutions. The State Legislature does not have the authority to  
11 legislate away the constitutional protections of a property interest. This rule dates back almost to the  
12 dawn of our Republic:

13  
14           “It is emphatically the province and duty of the judicial department to say what the  
15 law is....

16           ...If then the courts are to regard the constitution; and the constitution is superior to  
17 any ordinary act of the legislature; the constitution, and not such ordinary act, must  
18 govern the case to which they both apply.”

19           (*Marbury v. Madison* (1803) 5 U.S. 137, 177-178.)

20           31.       U.S. Supreme Court case law recognizes property interests in “entitlements” that “are  
21 created and... defined by existing rules or **understandings that stem from an independent source**  
22 such as state law.” (*Board of Regents v. Roth* (1972) 408 U.S. 564, 577 (emphasis added.) Here, that  
23 “understanding” stems from B & P § 26050.2(a), which creates entitlements by issuing “provisional”  
24 licenses identical in every way to permanent (annual) licenses, save for their purported lack of due  
25 process protections asserted in subsections (c), (d), (e), and (h). Subsection (l) explicitly states that in  
26 all other respects the license types are identical.

1           32.       Authorization to operate, and to continue operating while meeting evolving  
2 regulatory requirements in this regulatory *milieu*, is no different from the entitlement in any other  
3 professional or business license that might be nominally “renewable,” but belongs to the individual  
4 or business absent some egregious incurable violation. In *Goldsmith v. Bd. of Tax Appeals*, 270 U.S.  
5 117 (1926), cited by the Court in *Board of Regents v. Roth*, *supra*, 408 U.S. at 576, n. 15, the Court  
6 addressed the U.S. Board’s discretion, set forth in its rules, to deny applicants admission to practice  
7 before it “in its discretion” and to subsequently suspend or disbar admittees. In discussing a  
8 “discretionary” denial of an admission application, the *Goldsmith* decision stated that the board’s  
9 discretionary power “must be construed to mean the exercise of a discretion to be exercised after fair  
10 investigation, with such a notice, hearing and opportunity to answer for the applicant as would  
11 constitute due process.” *Goldsmith*, 270 U.S. at 123.<sup>2</sup>

12  
13           33.       As in *Goldsmith*, B & P § 26050.2(c) and (d) provide a licensing authority with the  
14 “sole discretion” to renew, revoke, or suspend provisional licenses. As in *Goldsmith*, BCC’s discretion  
15 may only be exercised “after fair investigation, with such a notice, hearing and opportunity to answer  
16 for the applicant as would constitute due process.” *Goldsmith*, 270 U.S. at 123.

17  
18           34.       California provides comparable, if not more, protection to applicants like Petitioners.  
19 In *Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, Trans-Union’s predecessor  
20 obtained an oil lease on which Trans-Oceanic operated seven wells, then applied for a permit to  
21 operate an 8th well on the lease. The City granted the permit in June 1941. Trans-Oceanic incurred  
22 \$4,500 in expenses to build “substantial concrete foundations for a derrick, erected an oil derrick, dug  
23 a sump hole, erected a powerhouse, moved boilers into place, and laid necessary pipelines to the  
24 site.” *Trans-Oceanic*, 85 Cal.App.2d at 780. A few months later, the United States entered World War  
25

26  
27 \_\_\_\_\_  
28 <sup>2</sup> The Court in *Goldsmith* denied the applicant’s petition for writ of mandate because the applicant failed to request a hearing on his denial of admittance to practice in that court, and instead sought summarily admittance to practice. *Goldsmith*, 270 U.S. at 123-124. Here by contrast, Petitioners merely seek due process rights to notice and a hearing.

1 II after the attack on Pearl Harbor. The U.S. Army soon thereafter took possession of the entire well  
2 area until early 1945, by which time the oil derrick was destroyed, leaving Trans-Oceanic's other  
3 buildouts in place. *Trans-Oceanic, supra*.

4 35. In March 1946 the City instituted an oil drilling ban within the City, except for  
5 industrial areas. The City rezoned the parcel where Trans-Oil's wells were located into a residential  
6 area. The City did not act to revoke Trans-Oil's permit on Well No. 8 until April 1947, soon after  
7 Trans-Oceanic began drilling again. Trans-Oceanic could not resume drilling operations until March  
8 1947 due to a shortage of labor, materials, and drilling equipment. *Ibid.*, 85 Cal.App.2d at 771.

9 36. In April 1947 the City revoked Trans-Oceanic's permit as to Well No. 8 without  
10 notice or hearing. *Trans-Oceanic, supra*. The Trial Court denied mandate to Trans-Oceanic and the  
11 appellate court reversed. The Court in *Trans-Oceanic* reversed and held that:

12  
13 If a permittee has acquired a vested property right under a permit, the permit cannot  
14 be revoked. The principle is stated in 9 American Jurisprudence, section 8, page 204:  
15 "By the weight of authority, a municipal building permit or license may not arbitrarily  
16 be revoked by municipal authorities, particularly where, on the faith of it, the owner  
17 has incurred material expense. Such a permit has been declared to be more than a  
18 mere license revocable at the will of the licensor. When, in reliance thereon, work  
upon the building is actually commenced and liabilities are incurred for work and  
material, the owner acquires a vested property right to the protection of which he is  
entitled." *Trans-Oceanic*, 85 Cal.App.2d at 784.

19 The Court in *Trans-Oceanic* further held that:

20 A permit may not be revoked arbitrarily "without cause." (53 C.J.S. § 44, p. 651.) It is  
21 conceded that in revoking the permit granted to appellant, the City Council of Santa  
22 Barbara did so without prior notice to appellant, without a hearing, and without  
23 evidence. In determining that a permit, validly issued, should be revoked, the  
24 governing body of a municipality acts in a quasi-judicial capacity. In revoking a permit  
lawfully granted, due process requires that it act only upon notice to the permittee,  
upon a hearing, and upon evidence substantially supporting a finding of  
revocation. *Trans-Oceanic*, 85 Cal.App.2d at 795.

25 Trans-Oceanic expended \$4,500 to set up its drilling operations on Well No. 8, and after the  
26 war, spent another \$5,600 to move equipment to and from the property, and incurred  
27 \$360/day standby costs for crew and equipment, reduced to \$193/day after the purported  
28

1 revocation. *Trans-Oceanic*, 85 Cal.App.2d at 780, 781. The Court held in *Trans-Oceanic* that:

2 “The resolution of revocation in the instant case, adopted without notice or hearing or  
3 reception of competent evidence, was inoperative and of no legal force.” *Ibid.* at 797.

4 37. Here Petitioners invested and re-invested approximately \$2,000,000 or more in the  
5 business venture. If \$10,100 in 1940’s dollars in *Trans-Oceanic* comprise substantial expenses, then  
6 \$2,000,000 would surely comprise substantial sums today.  
7

8 **2. The State’s temporary licensing category, enacted in 2017, which also**  
9 **contained the denial of notice, hearing, and appeal language like B & P §**  
10 **26050.2, was originally supposed to last only 120 days, but the four-year**  
11 **backlog making 83% of the licenses “provisional” licenses lasting as long as or**  
12 **longer than annual licenses cannot deprive provisional license holders such as**  
13 **Petitioners of their due process rights.**

14 38. As in *Trans-Oceanic*, Petitioners and thousands of other applicants who applied  
15 for annual cannabis licenses with state licensing authorities like BCC, but who have  
16 provisional licenses while they work through their huge backlog, are being deprived of their  
17 due process rights through delays not of their own making. In *Trans-Oceanic* the 4-5 year  
18 delay in which the company was prevented from operating the oil well in question was due to  
19 the outbreak of World War II and when their property was returned to them near the end of  
20 the war, they faced labor, material and equipment shortages. *Trans-Oceanic*, 85 Cal.App.2d at  
21 770-771. Here, Petitioners and others similarly situated have faced lengthy delays following  
22 the passage of Proposition 64 in 2016 and the Legislature’s on-going struggle to fuse together  
23 the existing medical cannabis system with a brand-new regulatory scheme for adult use and  
24 medical-use cannabis.

25 39. Following the passage of Proposition 64 in 2016, in which the voters of this  
26 State elected to legalize adult recreational use of cannabis, the Legislature made its initial  
27 attempt to regulate both the existing medical marijuana use and the newly approved adult use.  
28 The result was SB 94. Section 1(d) of SB 94 provided in pertinent part that:

1           The intent of Proposition 64 and MCRSA was to ensure a comprehensive regulatory  
2           system that takes production and sales of cannabis away from an illegal market and  
          curtails the illegal diversion of cannabis from California into other states or countries.

3           Newly-amended B & P § 26050(a) created twenty different license categories depending on  
4           whether the licensee was a cultivator (including size, indoor/outdoor lighting), retailer, tester,  
5           distributor, or microbusiness. Subdivision (c) made these licenses 12 months long, renewable  
6           annually.  
7

8           40.       Section 26050 created temporary licenses, good for 120 days, renewable for  
9           no more than 90 additional days. While § 26050.1(b)(3) provided no opportunity for notice  
10          and hearing for the licensing authority's refusal to issue or renew a temporary license and §  
11          26050.1(b)(4) states that a temporary license grants no vested rights in the temporary license,  
12          § 26050.1 provided for issuance of the temporary licenses if the applicant made a written  
13          request to the licensing authority, the licensing fee, and "A copy of a valid license, permit, or  
14          other authorization, issued by a local jurisdiction, that enables the applicant to conduct  
15          commercial cannabis activity at the location requested for the temporary license." B & P §  
16          26050.1(a)(2). The temporary license promulgated in SB 94 **contemplated that the**  
17          **applicant already had a business license, which presumably created its own due**  
18          **process rights.** In that context due process rights in a temporary license would have been  
19          duplicative and their short duration under § 26050.1(b)(3), (4) might make spending  
20          considerable amounts in that time period more unlikely, as these businesses were on-going  
21          concerns and not start-ups.  
22

23          41.       Effective January 1, 2019, the state legislature created, via B & P § 26050.2, its  
24          "provisional" licensing system. Section 26050.1, including its provision for issuance of a  
25          temporary license based in large part on an existing license was repealed by its own terms  
26          effective January 1, 2019. B & P § 26050.1(c). Unfortunately, the language stating that  
27          temporary licenses would have no due process rights carried over to § 26050.2(h). Originally  
28



1 intended to last for only a year, § 26050.2 was then extended through 2021. Over 9,720 such  
2 licenses have been issued since January 1, 2018. As of March 2021, 83% of all licenses are  
3 provisional. These businesses, the great bulk of the entire legal cannabis industry, have  
4 operated under their licenses for years and have collectively invested billions of dollars in  
5 reliance on them. The legislature is now considering a bill to extend it through 2027, *or*  
6 *perhaps indefinitely* (to give the agencies as much time as needed to process the huge backlog of  
7 applications), marking at least a full decade of temporary and provisional licensing.  
8

9 42. Cannabis legalization created a difficult regulatory conundrum: shut down an  
10 existing multi-billion-dollar legacy medical-use industry of thousands of operators and take  
11 years to license and re-open it or allow it to continue operating while simultaneously licensing  
12 it. The §26050.2 system is the solution the legislature devised to that problem.

13 43. SB 1459, the senate bill that created §26050.2 justified its “urgency” status as follows:

14  
15 SEC. 4. This act is an urgency statute necessary **for the immediate preservation of the**  
16 **public peace, health, or safety** within the meaning of Article IV of the California  
17 Constitution and **shall go into immediate effect**. The facts constituting the necessity are:  
18 **The significant number of cultivation license applications pending** with local authorities  
19 that do not have adequate resources to process these applications before the applicants’  
20 temporary licenses expire on January 1, 2019, **threatens to create a major disruption in the**  
21 **commercial cannabis marketplace**. (Stats. 2018, Chapter 857, Section 4, emphases added.)

22 44. Expiration of the previous “temporary” licenses (issued starting at the beginning of  
23 regulation, January 1, 2018), would have rendered almost the entire industry illegal and collapsed the  
24 entire regulatory scheme.

25 45. A year later, AB 97 extended the provisional licensing workaround for two more  
26 years, through the end of 2021. Its urgency clause put the matter even more bluntly:

27 In order to have a thriving and legal cannabis market in California, it is necessary that this  
28 act take effect immediately. (Stats. 2019, Chapter 40, Section 20, emphasis added.)

46. § 26050.2(a) grants “the licensing authority” (here, BCC) discretion to issue  
provisional licenses (or not). That was clearly necessary. Without authorized licensed operators the

1 entire \$3.5 billion legal cannabis market would have instead operated underground, as many  
2 unlicensed operators did at that time, and still do today. Current estimates are that the legal  
3 aboveground California cannabis industry has annual gross receipts of around \$3.5 billion. The  
4 underground market is almost triple that at an estimated \$8.7 billion as of 2019.

5  
6 47. No legal marketplace of thousands of businesses is possible without authorizing them  
7 to legally engage in “commercial cannabis activity,” as the code defines it at B & P § 26001(k). They  
8 must be authorized, legal, and entitled to continue operating—otherwise “the immediate preservation  
9 of the public peace, health, or safety” is threatened (SB 1459 (Stats. 2018, Chapter 857, Section 4),  
10 *supra*), and California is in danger of having no “legal cannabis market.” AB 97. (Stats. 2019, Chapter  
11 40, Section 20, emphasis added.), *supra*).

12  
13 48. That is the only logical way of understanding the provisional system created by SB  
14 1459 and extended by AB 97: it must be swift and sustainable, and it must authorize and license  
15 businesses to operate legally and in compliance with all applicable regulations, or face enforcement  
16 measures coupled with due process protections, like any other licensed business. Otherwise, the  
17 system cannot work as intended by B & P § 26050.2(a). Unfortunately, B & P § 26050.2(h) contains  
18 an unconstitutional flaw that impacts Petitioners and many, if not all, of the thousands of businesses  
19 that hold provisional licenses while waiting for approval of their applications for annual licenses.  
20 Under §26050.2, the government authorizes, licenses, entitles, and encourages businesses to operate  
21 in the legal aboveground industry to save it from “major disruption”—*but it would prefer not to give them*  
22 *any due process rights*. (Stats. 2018, Chapter 857, Section 4), *supra*.) That preference is impermissible  
23 under the Due Process Clauses of the federal and state Constitutions and is an unconstitutional  
24 attempt to evade judicial review. *Marbury*, *supra*, 5 U.S. at 147-48.

25  
26 49. Under California constitutional law, even an “expectancy is entitled to some modicum  
27 of due process protection” with required “findings” to ensure that the government acts in a  
28 nondiscriminatory and nonarbitrary manner.” *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 564, 566-68.

1 The BCC's position is that not a shred of process is due before the deprivation of this valuable  
2 license, which has been substantially relied on, and into which significant capital investment has been  
3 made. That position is no different than that held in *Trans-Oceanic*.

4           50.     B & P § 26050.2 is unconstitutional on its face, and as applied to Petitioners. It  
5 purports to grant to the cannabis licensing authorities two irreconcilable powers: (1) the power of the  
6 agencies to exercise their discretion to issue "provisional" licenses that authorize licensees to engage  
7 in commercial cannabis activity; and (2) the power subsequently to revoke or suspend those  
8 entitlements in their "sole discretion" without notice and hearing.

9  
10           52.     In the BCC letter of September 23, the agency claims that its revocation is effective  
11 immediately, and that pursuant to BPC §26050.2, Petitioners are "not entitled to a hearing or appeal  
12 of this decision."

13           53.     While B & P §26050.2(a) creates the only possible system that can work in the  
14 circumstances recognized by the legislature in its stated findings of urgency and necessity, B & P §  
15 26050.2(h) purports to deny legally operating licensees the same procedural due process afforded  
16 other business entitlements: notice and an opportunity to be heard before revocation. *Goldberg*, 397  
17 U.S. at 262 (privilege/right distinction no bar to due process); *Goldsmith*, 270 U.S. at 123-124.

18  
19           54.     Both subsections (c) and (d) use the phrase "in its sole discretion" in authorizing a  
20 licensing agency to suspend or revoke the "provisional" licenses (subsection (d)), and to renew them  
21 until they issue or deny the licensee's "annual" license (subsection (c)). However, as shown above,  
22 *Goldsmith* stated that a licensing board's discretionary power "must be construed to mean the exercise  
23 of a discretion to be exercised after fair investigation, with such a notice, hearing and opportunity to  
24 answer for the applicant as would constitute due process." *Goldsmith*, 270 U.S. at 123.

25  
26           55.     The only difference between a provisional license and an annual license is the denial  
27 of due process found throughout B & P §26050.2. B & P §26050.2(l) states: "Except as specified in  
28 this section, the provisions of this division shall apply to a provisional license in the same manner as

1 to an annual license.” A provisional licensee is fully authorized to engage in commercial cannabis  
2 activity and is required to follow the hundreds of pages of applicable statute and regulations as an  
3 annual licensee. B & P. § 26050.2(l). The annual license is a permanent license that the Bus. & Prof.  
4 Code, and the agencies in their regulations, concede is a property interest entitled to notice and  
5 hearing before deprivation. Of the approximately 9,950 licenses issued by the state since January  
6 2018, approximately 8,280 licenses (or 83% of the licenses) are “provisional”. These “provisionally”  
7 licensed businesses currently make up the bulk of the multi-billion dollar California cannabis  
8 industry, representing that much in investment and in annual gross receipts, and employing many  
9 thousands of Californians. They cultivate, manufacture, test, distribute, and sell cannabis—subject to  
10 hundreds of pages of administrative regulation.

11  
12 56. Statutory authorization to act “in its sole discretion” does not authorize an agency to  
13 deprive any person of their property without due process of law. U.S. Const., XIV Am.; Cal. Const.  
14 Art. I, §7(a). In *Board of Regents v. Roth*, the U.S. Supreme Court cited *Goldsmith, supra*, in which the  
15 U.S. Board of Tax Appeals’ rules allowed it to deny applicants admission to practice before it “in its  
16 discretion” and to likewise subsequently suspend or disbar admittees. In discussing “discretionary”  
17 denial of an admission application, *Goldsmith* holds that the board’s discretionary power “must be  
18 construed to mean the exercise of a discretion to be exercised after fair investigation, with such a  
19 notice, hearing and opportunity to answer for the applicant as would constitute due process.” (*Board*  
20 *of Regents, supra*, 408 U.S at 577, n15.)

21  
22 57. Given that due process is required in the context of an *application* for a “discretionary”  
23 reimbursement award, logically, due process is certainly required for the *revocation* of a license issued  
24 and relied on for almost two years with a multi-million investment. *Saleeby, supra*, 562-68.

25  
26 58. The BCC’s practice as to the renewal process has been to make it a simple and  
27 straightforward *pro forma* “rubberstamping,” exactly as one would expect of a recognized entitlement.  
28 The annual renewal process typically takes about an hour online filling in the same basic information

1 and affirming that there have been no changes in operations. BCC then approves promptly and  
2 issues an invoice for the substantial annual licensing fee. Once paid, the license is renewed, as  
3 expected. The whole process takes a week or so, most of which is waiting time. Counsel for  
4 Petitioners recently had a revoked provisional license restored by *ex parte* order of the Alameda  
5 County Superior Court. That license, near expiration, was renewed within 48 hours, *over a weekend*.

6  
7 59. Inserting the word “sole” into the phrase “in its discretion” does not alter the  
8 protections long set forth in the Constitutions. The licensing authorities have issued 8,280  
9 provisional licenses (out of 9,950 total licenses, the rest are annual licenses) as of March 4, 2021—  
10 over three years after commencing the licensing process. The government issued these licenses with  
11 the clear understanding that the licensees would actually operate licensed businesses thereunder to  
12 further the government’s purpose of bringing cannabis into control and regulation, and that they  
13 would rely on them by investing significant sums of money and by employing workers.

14  
15 60. Petitioners, and all other provisional licensees, have a legitimate right to assume that,  
16 barring any glaring unresolvable issues, their applications for “annual” (i.e., permanent) licenses will  
17 be granted in due course, and that in the meantime, while waiting for the licensing authorities to  
18 process the 8,000-plus pending license applications,<sup>3</sup> their provisional licenses will be renewed  
19 regularly in due course—as they are and have been. If Respondents take issue with any provisional  
20 licensee’s compliance with the statutes and regulations, they are free to take disciplinary action against  
21 them provided that they first provide notice and a hearing.

22  
23 61. The plain language of B & P §26050.2(f) makes the case for due process, save for the  
24 initial phrase, “Except as specified in this section.” That phrase purports to deny due process  
25 through other sub-sections and, on that basis, must be held unconstitutional for the reasons given.

26  
27  
28 

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<sup>3</sup> Under the terms of §26050.2(a), to obtain a provisional license the licensee must have a complete application for an annual license pending.

1           62.     B & P §26050.2(h) is the crux of the matter. The statute is invalid as to the purported  
2 revocation of a license to operate a business granted and relied on. § 26050.2(h) is two sentences  
3 long. The first states that revocation or suspension of a provisional license “shall not entitle the  
4 applicant or licensee to a hearing or an appeal of the decision.” The second sentence specifies four B  
5 & P sections that shall not apply to provisional licenses—all related to due process, thus the denial  
6 thereof. To the extent that § 26050.2(h) allows deprivation of the property interest in the provisional  
7 license through revocation without prior notice and hearing, it offends the due process clauses of the  
8 Constitutions and is impermissible.

10           63.     These licensed businesses and individuals who have staked liberty (time) and treasure  
11 (property) in carrying out the state’s mandate to rescue the “commercial cannabis marketplace” from  
12 “major disruption,” earned the due process rights that come with that authorization. No businesses  
13 will invest capital in a system that gives them authorization and a license, lures them into detrimental  
14 reliance at grand scale, and then pulls the plug at its “discretion.” This is neither the object nor  
15 purpose of government.

17           64.     Such a result would destroy the very goal sought by the legislation enacted on this  
18 topic since 2017: The creation and encouragement of an aboveground, regulated California cannabis  
19 market. Rather, the logical understanding that stems from the provisional licensing system is that  
20 licensed legally operating cannabis businesses merit the same measure of well-settled constitutional  
21 due process protection as everyone else like situated. *Board of Regents v. Roth, supra* at 577; *Perry v.*  
22 *Sinderman, supra* at 601; *Goldberg v. Kelly, supra* at 263 n.8; 264; *Goldsmith*, 270 U.S. at 123-124; *Saleeby v.*  
23 *State Bar, supra* at 564-65; *Trans-Oceanic*, 85 Cal.App.2d at 795, 796-797.

25           **B. California’s due process protections are broader and more nuanced than their federal**  
26 **counterparts, recognizing property and liberty interests even where the government has**  
**“discretionary” powers, through a 4-part balancing test.**

27           65.     In *Saleeby v. State Bar*, 39 Cal.3d 547 (Cal. 1985) the California Supreme Court applied  
28 procedural due process requirements to the exercise of discretionary decision-making powers granted

1 to the State Bar by the legislature in statute, similarly to that discretion facially apparent in B & P §  
2 26050.2. The Court found that the California Constitution required that they:

3 “inquire whether the present procedures adequately assure that the bar, having elected to  
4 exercise the discretion conferred upon it by the Legislature, will exercise that discretion in a  
5 nonarbitrary, nondiscriminatory fashion. We conclude that in order to comport with due  
6 process requirements applicants must be afforded an opportunity to be heard and respond to  
7 the bar's determinations and the bar must issue sufficient findings to afford review.”

8 *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 565.

9 66. The Court even mentioned, in contrast to federal law, that even an “expectancy is  
10 entitled to some modicum of due process protection.” *Id.* at 564. Under these standards, Petitioners  
11 property interest and due process rights are even clearer. The BCC on behalf of the state used its  
12 “discretion” in a manner so general and vague as to fail to give notice even of what specific violations  
13 from what time period were the grounds for the revocation, let alone opportunity to be heard and  
14 respond in even the most informal and settlement-oriented manner. Such slipshod practice does not  
15 pass muster under California law as detailed below. The *Saleeby* Court set forth the 4-part balancing  
16 test used not only to determine the type of due process required in each situation, but also to  
17 determine if a property or liberty interest is implicated in the government action. *Id.* at 565.

18 **1. “the private interest that will be affected by the official action”**

19 67. The private interest affected by the BCC letter and forcible deprivation of the right to  
20 engage in cannabis economic activity has a monetary value of approximately \$24 Million dollars, the  
21 estimated market value before revocation. Mr. Shamiryan’s personal and professional reputation is at  
22 stake, as is his standing, his position, and his business interests. The September 23 letter accuses Mr.  
23 Shamiryan of deceit, concealment, and failure to cooperate with the BCC in allegedly “denying full  
24 and immediate access” in violation of law. Even at the federal level, such accusations trigger due  
25 process protection:  
26

27 The State, in declining to rehire the respondent, did not make any charge against him  
28 that might seriously damage his standing and associations in his community. It did  
not base the nonrenewal of his contract on a charge, for example, that he had been

1 guilty of dishonesty, or immorality. Had it done so, this would be a different case. For  
2 '(w)here a person's good name, reputation, honor, or integrity is at stake because of  
3 what the government is doing to him, notice and an opportunity to be heard are  
4 essential.'

5 *Roth*, 408 U.S. at 573. (Citations omitted.)

6 The property interest at stake is highly significant on several different levels. Petitioners meet this  
7 part of the *Saleeby* test and are entitled to due process under the California Constitution.

8 **2. "the risk of an erroneous deprivation of such interest through the  
9 procedures used, and the probable value, if any, of additional or substitute  
10 procedural safeguards"**

11 68. BCC's September 23 letter offered one short paragraph of conclusory allegations with  
12 a blunt assertion that no due process applied per the untested language of B & P §26050.2. Without  
13 any due process "procedures used" whatsoever, any additional "safeguards" would be hugely  
14 valuable. As it is, the risk of erroneous deprivation has zero checks and balances on it. BCC offered  
15 no specific factual findings nor conclusions of law. None. The allegations might be entirely arbitrary  
16 and capricious and there would be no way to know, and even if known, there would be no way to  
17 challenge capricious or inadvertent error by state actors and agents.

18 69. BCC has a robust disciplinary and appeal hearing process with clear notice and  
19 hearing requirements under the Administrative Procedures Act. B & P §§ 26031, 26040. If any  
20 modicum of that process were available to Petitioners, they would be vastly better off.<sup>4</sup> Petitioners  
21 also meet this part of the *Saleeby* test and are entitled to due process under California's Constitution.

22 **3. "the dignitary interest in informing individuals of the nature, grounds and  
23 consequences of the action and in enabling them to present their side of the  
24 story before a responsible governmental official"**

25 70. For both HCI and for Mr. Sharniryan as an individual, this revocation has deep  
26 wounding significance. They are mystified as to what they did to deserve the swift death sentence

---

27 <sup>4</sup> If BCC would even communicate with Petitioners, they are eager to find common ground and understand the agency's  
28 concerns (or the concerns of its investigators).



1 without notice or warning. Petitioners have been subjected to an abrupt and egregious violation of  
2 the norms of fairness. Their public reputations have been harmed and their treatment by BCC in this  
3 case has violated their dignitary interests in a substantial and demonstrable way. This alone triggers  
4 due process rights. *Roth*, 408 U.S. at 573. For Mr. Sharniryan in particular, there are free speech  
5 issues. He exercised those rights by questioning the authority of BCC agents to record video and  
6 audio without his consent at their July 29, 2020 inspection for which the September 23 raid (for that  
7 is all it can be called) is clearly retaliatory.

9         71.         Additionally, there is the issue of discrimination based on national origin. As a  
10 naturalized citizen of the U.S., born in Armenia, Mr. Sharniryan attributes some of the agents' animus  
11 and hostility to his national origin. He has previously been subjected to this kind of discrimination by  
12 local law enforcement. Both of these fundamental rights issue give rise to further concern for due  
13 process under both the federal and state constitutions. Even if, arguably, there were no "right" to a  
14 provisional license, the government cannot revoke it for impermissible reasons: interference with  
15 constitutional rights, especially free speech, or discrimination based on suspect classification such as  
16 national origin; due process must therefore be provided. *Perry v. Sinderman* (1972) 408 U.S. 593, 596-  
17 98. BCC humiliated Mr. Sharniryan before his peers by placing him in handcuffs during the raid  
18 which was predicated on impermissible reasons. The agency utterly disregarded his dignity in its  
19 callous, abusive, unilateral "revocation" without notice and hearing. The free speech and national  
20 origin issues are deeply disturbing. Petitioners meet this part of the *Saleeby* test and are entitled to due  
21 process under the California Constitution.

22  
23         **4.         the governmental interest, including the function involved and the fiscal and**  
24         **administrative burdens that the additional or substitute procedural**  
25         **requirement would entail.**

26         72.         The government has an interest in licensing and regulation, enforcing regulations, and  
27 in successfully implementing the legal cannabis system. The underground market is still three times  
28

1 larger than the aboveground market. The government function is critical. Petitioners support it and  
2 wish to contribute to its success. This relationship can be collaborative. It need not be adversarial. As  
3 for fiscal and administrative burdens, BCC already has a whole division committed to enforcement,  
4 discipline, appeals, hearings, and due process, with many pages of specific regulation, and of course  
5 the Administrative Procedures Act. See, B & P Chapter 2 (commencing with Section 480) of  
6 Division 1.5, Chapter 4 (commencing with Section 26040) of Division 10, and Sections 26031 and  
7 26058. BCC bears no additional burden in affording Petitioners with reasonable notice and an appeal  
8 hearing. That is all that Petitioners ask: the basic level of respect and due process for a government-  
9 authorized-and-licensed professional organization and for a Petitioner who has served the country in  
10 the military. Petitioners meet this part of the *Saleeby* test and are entitled to due process under the  
11 California Constitution.  
12

13           73. Petitioners meet the 4-part test set forth in *Saleeby* and have both property and liberty  
14 (including individual dignitary) interests at stake. Petitioners must therefore be extended the basic  
15 elements of due process: notice and hearing prior to revocation.  
16

17           74. The question before the court is not whether such a property right might be revoked  
18 in the course of such due process, only whether due process is required. Petitioners will likely prevail  
19 on this question based on the clear, extensive law that government deprivation of a property right  
20 necessarily requires procedural due process under both the State and Federal constitutions.  
21

### 22 **C. Petitioners have no adequate remedy at law.**

23           75. Injunctive relief is available when future pecuniary compensation would not provide  
24 adequate relief or it would be difficult to ascertain such damages. (Cal. Code Civ. Proc. § 526(a)(4)-  
25 (5); *Dodge, Warren & Peters Ins. Servs. V. Riley* (2003) 105 CA4th 1414). In the present case, it is unclear  
26 whether the legal remedy sought even provides Petitioners with an avenue to recover damages, and  
27 on this basis alone, injunctive relief is proper. Even if Petitioners were entitled to pecuniary relief,  
28

1 many of the elements of the harm they face, such as loss of long-term contracts, are impossible to  
2 meaningfully quantify in advance. Even if the government ultimately had to pay the \$24 million  
3 market value of the business prior to the illegal revocation, Petitioners do not want to sell their  
4 business. Nor has the government followed the proper procedures to exercise eminent domain,  
5 condemn, appraise, and purchase the business at fair market value. On the basis that the harm faced  
6 is difficult or impossible to monetarily quantify, Petitioners are entitled to injunctive relief.  
7

8 **D. Balancing the equities reveals that risk of public harm is low while the risk of irreparable  
9 harm to Petitioners is high.**

10 76. Respondents have alleged no public harm at any point in the factual record. The BCC  
11 letter generally alleges, without any specific facts as to details, dates, persons involved, number of  
12 occurrences, or any other circumstances, three general types of regulatory violations as grounds for  
13 revocation in a conclusory fashion. None of these include any allegation that HCI in any way  
14 threatens the public health and safety through alleged deficiencies in ongoing practices.

15 77. The alleged grounds for revocation include only the following three, from the second  
16 paragraph of the three-paragraph BCC letter here numbered, listed, and with clarifying explications,  
17 but otherwise quoted verbatim:

- 18 [1. *alleged*] an individual was sold a cannabis infused edible with a THC limit of 1,000  
19 mg, which is 10 times over the legal limit of 100mg per edible [sic; and person  
20 who allegedly made the sale not identified];
- 21 [2. *alleged*] [unidentified] employee failed to perform age verification on the individual  
22 purchasing the cannabis goods;
- 23 [3. *alleged*] failed to cooperate with and participate in a Bureau investigation by denying  
24 full and immediate access of the licensed premises to Bureau representatives  
25 in violation of Business and Professions Code Section 26160 subdivision (e);

26 78. None of these general allegations impugn the overall compliance and safety of HCI's  
27 operations as a licensed and regulated cannabis retailer, cultivator, and distributor. At most they  
28 hazily allege two violations by a disgruntled employee on a frolic and a lark their own (since  
dismissed) and a dispute between the licensee and BCC agents as to their authorization to make

1 unconsented video and audio recordings (nowhere specified in the statute or regulations, including  
2 the ones they cited).

3           79. HCI refutes each of these allegations as either being false, too vague to be admitted  
4 or denied, previously cured, or easily cured if given specific details of violation actually occurring.  
5 And this refutation is not relevant to the immediate issue of whether there is any imminent harm to  
6 Respondents or the public in maintaining the *status quo ante* while the Court determines if Respondent  
7 must allow Petitioners an opportunity to have these issues heard by an impartial decision maker prior  
8 to revocation of their valuable license and the execution of the death sentence on their corporate  
9 business entity and their individual professional reputation, standing, position, and salary.

11           80. Vested property rights have value at least in part because of the confidence  
12 among the people that such rights will be protected by the government, not taken by the  
13 government without due process. Due process rights serve *both* the accused and the public,  
14 on whose behalf the regulatory authority purports to act:

16           Professor Gellhorn put the argument well: 'In my judgment, there is no basic division  
17 of interest between the citizenry on the one hand and officialdom on the other. Both  
18 should be interested equally in the quest for procedural safeguards. I echo the late  
19 Justice Jackson in saying: 'Let it not be overlooked that due process of law is not for  
20 the sole benefit of an accused. It is the best insurance for the Government itself  
21 against those blunders which leave lasting stains on a system of justice'—blunders  
22 which are likely to occur when reasons need not be given and when the  
23 reasonableness and indeed legality of judgments need not be subjected to any  
24 appraisal other than one's own....' Summary of Colloquy on Administrative Law, 6 J.  
25 Soc. Pub. Teachers of Law, 70, 73 (1961)." *Board of Regents*, 408 U.S. at 592 (Douglas,  
26 J., dissenting.)

27           81. Allowing Petitioners to continue their operations, while their writ petition is properly  
28 heard and decided, poses no public harm. Petitioners have operated with a license for almost two  
years with no such allegation.

**WHEREFORE, PETITIONERS PRAY FOR RELIEF AS FOLLOWS:**

1. A peremptory writ of mandate be issued ordering Respondents to provide Petitioners with an administrative hearing for the purposes of hearing Petitioners' appeal of

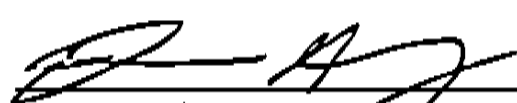
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- Respondents' revocation letter;
2. And that such writ further order Respondents to return Petitioners' property improperly and unlawfully seized without due process of law;
  3. An *ex parte* order (application filed, or to be filed, under separate cover) be issued providing a stay of enforcement against Petitioners to preserve the *status quo ante* on the basis of the arguments therein and that such stay be in effect until final disposition of this petition for writ of mandate and any timelines for appeal thereof have elapsed;
  4. Renewal of Petitioners' Provisional Cannabis Microbusiness License # C12-0000096-LIC, currently set to expire on June 24, 2021;
  5. Petitioners recover their costs in this action, including attorney fees according to law; and
  6. Such other relief be granted that the Court considers proper.

**Respectfully submitted,**

Date: May 26, 2021

**ANTHONY LAW GROUP, PC**

  
\_\_\_\_\_  
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