

1 JEFF AUGUSTINI, SBN 178358  
2 LAW OFFICE OF JEFF AUGUSTINI  
3 20 Pacifica, Suite 255  
4 Irvine, California 92618  
5 Telephone: (949) 336-7847  
6 Facsimile: (949) 336-7851  
7 Email: [jeff@augustinilaw.com](mailto:jeff@augustinilaw.com)

8 Attorneys for Petitioner/Plaintiff  
9 HNHPC, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ORANGE

12 HNHPC, INC.,

13 Plaintiff,

14 vs.

15 THE DEPARTMENT OF CANNABIS  
16 CONTROL, AN ADMINISTRATIVE  
17 DEPARTMENT OF THE STATE OF  
18 CALIFORNIA; NICOLE ELLIOT, in her  
19 capacity as Director of the Department of  
20 Cannabis Control, and DOES 1-50, inclusive,

21 Respondents.

CASE NO. 30-2021-01221014-CU-WM-CJC

**FIRST AMENDED VERIFIED PETITION  
FOR WRIT OF MANDAMUS AND  
COMPLAINT FOR:**

- (1) PEREMPTORY WRIT OF MANDATE; AND
- (2) INJUNCTIVE RELIEF

**REQUEST FOR JURY TRIAL**

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23  
24 Petitioner HNHPC, INC., (“Plaintiff” or “HNHPC”), by and through its attorneys, hereby  
25 complains, alleges, and avers as follows against Respondents the DEPARTMENT OF CANNABIS  
26 CONTROL, AN ADMINISTRATIVE DEPARTMENT OF THE STATE OF CALIFORNIA (“DCC”),  
27 NICOLE ELLIOT, IN HER CAPACITY AS DIRECTOR OF THE DEPARTMENT OF CANNABIS  
28 CONTROL (“ELLIOT”), and Does 1-50 (collectively “Respondents”):

1  
2 **INTRODUCTION**

3 1. This action arises out of the failure of Respondents to perform their mandatory and/or to  
4 properly perform discretionary legal duties in implementing the provisions of the Medicinal and Adult-  
5 Use Cannabis Regulation and Safety Act (“MAUCRSA”), which is codified at Business and Professions  
6 Code (“B&P”) Sections 26000 et seq. B&P Section 26000 requires them to, among other things,  
7 “establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage,  
8 manufacturing, processing, and sale of cannabis and cannabis products. B&P Code § 26000(b). That  
9 directive includes the express requirement that DCC create and implement a system, known in the  
10 industry as “track and trace,” to track cannabis from the plant to end sale, and in the MAUCRSA DCC,  
11 a department within the Business, Consumer Services, and Housing Agency (the “Agency”) of the State,  
12 was given the “the power and duties” to “control[] and regulat[e]” the cannabis industry to ensure no  
13 unregulated and unchecked cannabis is cultivated, transported, manufactured, or ultimately sold in (or  
14 transported outside of) California. B&P §§ 26010, 26010.5.

15 2. Notably, the Legislature decreed that in performing their duties, “protection of the public  
16 shall be the highest priority for the [Respondents],” and where public protection is inconsistent with other  
17 interests sought to be promoted – including the collection of cultivation and excise taxes – it mandated  
18 “the protection of the public shall be paramount.” *Id.* at §26011.5. It is those very duties and obligations  
19 Respondents have failed to perform as required, leading to the need for HNHPC to initiate this lawsuit  
20 to *compel* them to perform such duties, since they inexplicably have opted to “look the other way” rather  
21 than protect the public and legal cannabis operators such as HNHPC from illegal black-market sales.

22 3. Simply put, Respondents’ failure to perform (or to properly perform as required) their  
23 legal duty to implement a system to properly track and flag irregularities and questionable transactions  
24 has led to the exponential rise of “burner distributors” (“Burner Distros”) that conceal and launder State-  
25 grown cannabis for delivery to illegal dispensaries and other unregulated markets within the State as well  
26 as for the illegal transport across state lines, all without paying significant legally mandated taxes (such  
27 as cultivation and excise taxes) that other law abiding cannabis licensees *such as HNHPC* are required  
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1 (directly or indirectly) to pay to the State. *See, e.g.*, B&P §26080 (licensees are not authorized to transport  
2 or distribute cannabis or cannabis products outside the state unless authorized by federal law, which is it  
3 not). The burgeoning use of Burner Distros, and their role in exponentially increasing the volume of  
4 illegal and untaxed cannabis and cannabis products sold in California, is greatly harming not only the  
5 public, but also licensed cannabis operators such as HNHPC who conduct their business *legally* and  
6 comply with their track and trace and taxation obligations, while at the same time Respondents are  
7 actively assisting “bad actor” Burner Distros in flouting those same requirements (resulting in Burner  
8 Distros “undercutting” legitimate distributors and dispensaries by selling cheaper yet unregulated and  
9 untaxed cannabis products).

10 4. The prevalence of Burner Distros (unfortunately) has become the worst kept secret in the  
11 industry, and is well known to Respondents (about which they clearly have decided to do nothing).  
12 HNHPC is informed Burner Distros generally operate as follows. Operators (usually legal cannabis  
13 operators) purchase or obtain distribution licenses in various local jurisdictions, often where cultivation  
14 operations are prevalent and/or where such licenses are relatively easy and/or cheap to obtain or acquire.  
15 Often, an operator will procure multiple local licenses by using an array of different “front men” who  
16 agree to attach their names to the licenses (which is significant, since Respondents’ lack of enforcement  
17 or ability to flag irregular activities has made serving as a straw man for a Burner Distro an incredibly  
18 high yield, low risk endeavor). Once licensed, the Burner Distros purchase large quantities of cannabis  
19 from cultivators within the State. In connection with those purchases, the Burner Distros (which by law  
20 are responsible for collecting and paying all legally mandated cultivation and excise taxes) may or may  
21 not pay the “cultivation tax” to the State (via payment to the California Department of Tax and Fee  
22 Administration (“CDTFA”)). The extent to which Burner Distros in fact pay cultivation taxes on their  
23 excessive cannabis purchases will be the subject of discovery herein.

24 5. Once the cannabis reaches the Burner Distros, however, the DCC effectively ceases  
25 regulating or even monitoring what happens to that cannabis, and instead relies heavily, if not exclusively,  
26 on *public tips or complaints* to instigate investigations or enforcement proceedings. As a result, Burner  
27 Distros evade payment of the 15% excise tax (which in practice amounts to a 27% tax levied on the  
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1 wholesale price based on the State’s required “markup” rate) owed to the State by distributors. As of the  
2 date of this Petition, HNHPC is informed and believes the amount of excise taxes evaded by Burner  
3 Distros total *hundreds of millions of dollars* per year on billions of dollars’ worth of cannabis and  
4 cannabis products, while legitimate distributors are required to pay the excise tax. The cost savings  
5 achieved by Burner Distros through the evasion of the excise taxes alone allows illegal dispensaries and  
6 other unregulated markets to purchase *largely if not entirely unregulated* cannabis from Burner Distros  
7 at a steep discount, which they in turn sell at prices far lower than legal dispensaries can sell comparable  
8 *regulated* cannabis products. In essence, by refusing to perform its ministerial duty to flag irregularities  
9 within the track and trace system, Respondents have *significantly bolstered* the illegal black market in  
10 California and have greatly encouraged the illegal export of cannabis across state lines.

11 6. By *knowingly fueling* the illegal sale of cannabis in the State, which fundamentally  
12 undermines its primary delegated mission of public protection, and by refusing to perform its legally  
13 mandated function of creating a track and trace system that flags irregularities for further investigation,  
14 Respondents also have substantially undermined the competitiveness and financial success of operators  
15 such as HNHPC who “play by the rules,” and have encouraged ever-increasing numbers of illegal  
16 dispensaries and black market sellers who can, because they do not follow the law, sell cannabis illegally  
17 “on the street” at significantly lower prices than law abiding dispensaries such as HNHPC. This places  
18 *legal* operators in an untenable “Catch-22” situation, so many decide to “play the same game” and utilize  
19 Burner Distros themselves just to survive and/or to make up losses caused by Respondents’ knowing  
20 indifference to the mess they created and now stubbornly refuse to fix.

21 7. If Respondents know this is all going on – and they do – it begs the obvious question:  
22 why don’t they do something about it? HNHPC believes the answer is two-fold. First, HNHPC is  
23 informed and believes (and is confident discovery will show) that the State (via the CDTFA) is collecting  
24 substantial “cultivation taxes” from Burner Distros, and it wants that tax revenue to continue flowing  
25 despite knowing the State is collecting cultivation taxes on far more cannabis than is being sold in  
26 licensed dispensaries (i.e., Respondents know or should know that a significant amount of cannabis is  
27 being diverted by distributors to the black market or is being transported out of state). Second,  
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1 Respondents knows their track and trace system is an abject failure, know Burner Distros are failing to  
2 pay hundreds of millions of dollars in taxes on *billions of dollars* of cannabis and cannabis products per  
3 year, but do not want to publicly admit the system is a failure or that as designed and implemented it  
4 neither protects the public (its primary mission) nor results in the payment of even a substantial portion  
5 of the taxes actually due. So instead, Respondents have opted to “stick their proverbial head in the sand”  
6 and to rely *not* on its track and trace system to flag irregularities and identify offenders (as required), but  
7 instead to rely solely on *tips and complaints it receives from the public*. Stated differently, Respondents  
8 know their track and trace system is garbage, but rather than fix it they instead have decided to ignore  
9 the fatal flaws in the system and instead to only investigate people who are reported by others (which of  
10 course causes other problems, such as false information and/or wrongly motivated “tips” or complaints  
11 designed to cause DCC to investigate the “tipster’s” competitors or industry rivals).

12 8. By this lawsuit, HNHPC seeks to *compel* Respondents to actually perform their mandatory  
13 and/or discretionary legal duties, including public protection and the creation and operation of a track  
14 and trace system that *in fact* is designed to track and trace cannabis throughout the entire process, and to  
15 identify and flag irregularities and questionable transactions for further – something it does not do now.  
16 Respondents know they have failed in such duties, have been told they both can and need to make critical  
17 changes and upgrades to its system in order to satisfy its mandated duties, but to date they have refused  
18 to so. And in the meantime, Burner Distros are selling *untold millions of pounds of untaxed* and largely  
19 unregulated State-grown cannabis to illegal dispensaries, in the black market, and/or to out of state  
20 customers, in the process undercutting legal dispensary pricing and threatening the integrity of the entire  
21 system established by the Legislature in the MAUCRA. Yet because Respondents have determined it is  
22 in the State’s *financial and political interest* to look the other way, and in their political interest, they  
23 have permitted hundreds of millions of dollars (and counting) in excise taxes go uncollected and for  
24 Burner Distros and illegal dispensaries and black market sellers to flourish while expending virtually no  
25 effort to even try to stop it.

**PARTIES AND VENUE**

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2           9.       Plaintiff HNHPC is and at all relevant times was a corporation formed and operating under  
3 the laws of the State of California. HNHPC operates a State and locally licensed dispensary at 2400  
4 Pullman Street, Santa Ana, California 92705. HNHPC is licensed by both the State and the City of Santa  
5 Ana (the “City”) to operate a cannabis dispensary at the above location.

6           10.       The DCC is a Department of the State, and falls within the division of the Agency. At all  
7 relevant times, the DCC (or its predecessor) was and is responsible for, among other things, establishing,  
8 implementing, maintaining, and enforcing a “track and trace program for reporting the movement of  
9 cannabis products throughout the distribution chain,” which was expressly mandated to include a  
10 “database” that “shall be designed to flag irregularities for the department to investigate.” B&P §26067.  
11 Co-Respondent ELLIOT is the Director of the DCC.

12           11.       HNHPC is ignorant of the true names and capacities of the Respondents sued herein as  
13 DOES 1 through 50, inclusive, and therefore sues such Respondents by fictitious names. HNHPC will  
14 amend its claims to allege the true names and capacities of DOES 1-50 when they have been ascertained.  
15 HNHPC is informed and believes and on that basis alleges each of the fictitiously named Respondents is  
16 responsible in some manner for the acts, omissions, events and occurrences herein alleged.

17           12.       HNHPC further is informed and believes and on that basis alleges that, at all times herein  
18 mentioned, each of the Respondents was the agent, employee, employer, alter ego, joint venturer, partner,  
19 co-tortfeasor, co-conspirator and/or legal representative of the other Defendants, including the DOE  
20 Defendants, and, in doing the things herein alleged, was acting within the course and scope of such  
21 relationships in connection with the events and allegations set forth herein and, thus, each can and should  
22 be held jointly and severally responsible for the damages and the other relief requested herein.

23           13.       Jurisdiction and venue are proper in this Court. HNHPC’s cannabis dispensary is licensed  
24 by, and operates in, the city of Santa Ana, California, and the adverse impact of DCC’s actions and  
25 omissions as alleged herein has negatively impacted and continues to negatively impact HNHPC’s  
26 business in Santa Ana, California.

**FACTS RELEVANT TO ALL CAUSES OF ACTION**

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2           14.     As noted above, as part of its legal duty to regulate and “control” the commercial cannabis  
3 industry as well as the movement of cannabis through all stages of the process – cultivation, distribution,  
4 transport, storage, manufacturing, processing, and ultimate sale of cannabis and cannabis products -- the  
5 DCC was *required* by the Legislature to create a track and trace system that “*shall* be designed to flag  
6 irregularities for the department to investigate,” all with the overarching intent of protecting the public  
7 from the ills of illegal cannabis sales and activity. B&P §26067 (emphasis added).

8           15.     While the track and trace system DCC ultimately created/implemented, called “METRC,”  
9 at present does not flag for “irregularities,” including those transactions described above relating to  
10 Burner Distros, HNHPC is informed and believes the system *can be designed or modified/upgraded* to  
11 flag such irregularities and to easily identify Burner Distros, but it would require the State to amend its  
12 agreement with the developer of METRC to authorize the work necessary to do so. Despite Respondents’  
13 knowledge of the issues and despite being provided with a relatively simple and cost-effective solution,  
14 they to date have refused to authorize fixes to, or augmentation of, the track and trace system to comply  
15 with the law and its mandatory duties. More specifically, HNHPC has learned DCC was notified of the  
16 issues with Burner Distros and their evasion of substantial cannabis taxes, was told the current track and  
17 trace system does not currently flag irregularities but can be modified or upgraded to do so, and that in  
18 response Respondents have refused to authorize such modifications to the system.

19           16.     The rhetorical question is this: why are Respondents refusing to perform that necessary  
20 work? The answer is simple. The State is collecting cultivation taxes from Burner Distros on volumes  
21 of cultivated cannabis they know, or should know, far exceed the amount ultimately sold in licensed  
22 dispensaries, so DCC and the State have made a conscious and legally improper choice to *turn a blind*  
23 *eye* to illegal Burner Distros to *keep that excess cultivation tax money flowing*; and (2) for political  
24 reasons Respondents do not want to admit the system they created for public protection and revenue  
25 collection is an *abject failure* which neither protects the public nor ensures payment of all taxes owed.

26           17.     The following is an illustration of how HNHPC believes Burner Distros generally operate,  
27 and more specifically how they evade the current track and trace system and the payment of hundreds of  
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1 millions per year in excise taxes on billions of dollars' worth of cannabis and cannabis products. It starts  
2 as a locally licensed distributor that is either created as a Burner Distro or purchased for such purpose.  
3 Often they operate out of small commercial or industrial spaces that are physically capable of storing or  
4 handling only a fraction of the volume of cannabis they in fact "distribute," which is one relatively easy  
5 way DCC could (but does not) modify its track and trace system to "flag" the most egregious Burner  
6 Distros (the State has all floor plans, and if a Burner Distro operates from a 800 SF location but routinely  
7 purchase thousands of pounds of cannabis, that is a tell-tale sign of a Burner Distro). And they usually  
8 are "owned" or operated by a straw-man who is paid by the true owner to put his/her name on the license  
9 so that in the event of an enforcement action, the real owner/operator remains protected and can continue  
10 the scheme using other entities (HNHPC is informed and believes DCC has never shut down a single  
11 Burner Distro or subjected a listed owner of a Burner Distro to discipline, license suspension or  
12 revocation, or initiated either criminal or civil actions against a distributor or owner thereof for being part  
13 of a "Burner Distro").

14 18. Once up and running, Burner Distros then purchase a significant amount of cannabis from  
15 one or more cultivators. HNHPC currently believes many but not all Burner Distros may enter those  
16 purchases in the METRC system and pay the cultivation tax (cultivation taxes range from \$1.35 per ounce  
17 of fresh plant, \$2.87 per ounce of leaves, and \$9.65 per ounce of flower). The percentage of all cultivated  
18 cannabis actually entered into the METRC system will be the subject of discovery. But then they  
19 distribute the cannabis to black market sellers or illegal dispensaries (or ship it out of state), and do *not*  
20 pay the 15% "excise tax" thereon (based on the State's formula amounts to a 27% tax on the wholesale  
21 product of the products) that they are required to collect and pay to the State. And because DCC's track  
22 and trace system does not flag for irregular activity – including but not limited to small footprint  
23 distributors purchasing unreasonably large amounts of cannabis, unreasonably long periods of time where  
24 the distributor claims it is "holding" purchased cannabis in its facility, and/or discrepancies between the  
25 amount of cannabis purchased and the amount recorded as being sold to licensed retail dispensaries --  
26 once the cannabis reaches the Burner Distros, DCC effectively lacks the capacity (via METRC) to ferret  
27 out or flag questionable transactions or irregularities or the failure to pay all required taxes. Instead, the  
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1 DCC (and CDTFA, which oversees tax payments) are relegated to relying solely on tip or complaint-  
2 based investigations, which means if no one complains, Burner Distros potentially can operate  
3 indefinitely without any reasonable fear of detection or enforcement, and without paying all of the  
4 required taxes that licensed dispensaries must pay to legitimate distributors for cannabis products.

5 19. As noted above, because the system essentially *fails to track* the cannabis once it reaches  
6 the Burner Distros, and also fails to flag irregularities based on information inputted into the system,  
7 Respondents cannot assure products reaching unlicensed dispensaries and the black market – which are  
8 then sold to the public -- are safe or comply with all applicable legal, quality or testing requirements, let  
9 alone that the State is receiving all applicable taxes. This leads to two inevitable and ultimately  
10 devastating consequences for legal operators as well as for the State: (1) free from having to pay hefty  
11 excise and other taxes, Burner Distros sell *cheap and mostly unregulated cannabis* to black market and  
12 illegal sellers, who in turn sell it cheaper than HNHPC can at its dispensary – causing a significant loss  
13 in business and revenue by HNHPC and other legal operators; and (2) the State (and its citizens) are  
14 deprived of hundreds in millions in tax revenues per year on *billions of dollars* in cannabis and cannabis  
15 products, and are not assured the cannabis they purchase is safe and meets all applicable requirements.  
16 DCC and the CDTFA both are well aware this is going on; they just *refuse to do anything about it*.  
17 HNHPC avers this injustice immediately could be stopped or substantially reduced if DCC simply  
18 *complied with its legal duty* to create and implement a track and trace system that actually *flags* these  
19 types of transactions and irregularities for further investigation.

20 20. In its Demurrer, the DCC alleged that it did design (or at least planned to design) the track  
21 and trace system to flag irregularities. Notably, nowhere in its Demurrer does DCC demonstrate or even  
22 contend its system *in fact* is designed to flag or does flag irregularities for further investigation, let alone  
23 identify any irregularities the system in fact flags. To be clear, it is HNHPC's contention that the METRC  
24 system in fact is *not designed* to flag irregularities, and would have to be upgraded or altered in order to  
25 do so. So it is not a case, as DCC falsely claims, that HNHPC merely is taking issue with how it exercised  
26 its purported discretion to determine which irregularities DCC would and would not flag in the system.

1           21.     Also in its Demurrer, DCC takes issue with HNHPC’s Petition by postulating that even if  
2 the METRC systems *was* designed to flag irregularities for further investigation as required, it would not  
3 require DCC to actually conduct a further investigation into any flagged transactions. Again, DCC  
4 entirely misses the point. First, DCC is legally required to design a system that in fact flags irregularities  
5 for further investigation. HNHPC’s allegation is that *it does not do so*. As a licensed cannabis business,  
6 HNHPC has an ample beneficial interest in ensuring Respondents comply with the law, particularly since  
7 their failure to perform mandatory duties has spawned the very Burner Distro issue that has harmed  
8 HNHPC and its business. Second, it also is HNHPC’s contention that flagging irregular transactions in  
9 the track and trace system, *standing alone*, would significantly decrease the activities of Burner Distros,  
10 as those entities would then know their activities easily could be discovered without having to rely (as  
11 DCC now does) on public complaints and tips to trigger investigations. Indeed, owners of Burner Distros  
12 are well aware the METRC system presently lacks the ability to flag their illegal conduct, and also is  
13 aware DCC has not yet shut down a single Burner Distro based on flagged information inputted in the  
14 METRC system. Knowledge the system in fact flags illegal or irregular transactions itself will go a long  
15 way to addressing the Burner Distro issue, even if the DCC (as it suggested) never actively investigates  
16 any flagged transactions for further investigation or enforcement. HNHPC alleges the system itself will  
17 act as a deterrent to illegal activity, even if DCC does nothing with the flagged information it receives.

18           22.     DCC also argued in its Demurrer that HNHPC’s allegations constitute improper  
19 speculation and legal contention. Again, not true. HNHPC has alleged ultimate facts, which is all it  
20 legally must plead. Ironically, DCC complained HNHPC did not cite evidentiary facts in its Petition;  
21 although as it should know, evidentiary facts are neither required nor generally permitted. And ironically,  
22 the “evidence” DCC claims HNHPC has failed to cite is the very evidence has refused to provide – i.e.,  
23 it makes the circular argument that the Petition should fail because HNHPC has failed to cite evidence  
24 DCC has steadfastly refused to provide – going so far as to refuse to produce a any PMK witness or to  
25 produce any requested documents bearing on the capacity of the METRC system to flag irregularities or  
26 HNHPC’s claims regarding the extent of the delta between cultivated cannabis and end sales thereof.  
27 Stated simply, the DCC apparently does not understand the difference between ultimate fact pleading  
28

1 and legal contention or conclusions. *See Peerless Ins. & Brokerage Co. v. Dwyer Equip. Co.*, 78 Cal.  
2 App. 141, 144 (1926) (“It is a cardinal principle in pleading that ultimate and not probative facts are to  
3 be pleaded” – i.e., ultimate facts); *Quinn v. Reilly*, 198 Cal. 465, 468 (1926) (“Ultimate facts only need  
4 to be pleaded”); *Estate of Lind*, 209 Cal. App. 3d 1424, 1434 (1989) (“It is well established that a  
5 contestant should plead ultimate facts, rather than evidentiary facts or conclusions of law” – while noting  
6 that “the distinctions among ultimate facts, evidentiary facts, and conclusions of law are, at best,  
7 blurred”); *Norman v. Burks*, 93 Cal. App. 2d 687, 691 (1949) (finding ultimate facts sufficient even if  
8 the complaint is ambiguous or uncertain, or contains conflicting statements”); *Doheny Park Terrance*  
9 *Homeowners Assn., Inc. v. Truck Ins. Ins. Exchange*, 132 Cal App. 4<sup>th</sup> 1076, 1098 (2005) (ultimate fact  
10 pleading was acceptable – must accept ultimate facts as true; whether plaintiff “can produce . . . evidence  
11 that will in fact support all or any of those allegations . . . is another matter”); *Birke v. Oakwood*  
12 *Worldwide*, 169 Cal. App. 4<sup>th</sup> 1540, 1548-49 (2009) (only general allegation of ultimate fact is required;  
13 “A plaintiff need not plead evidentiary facts supporting the allegation of ultimate fact”; “The pleading is  
14 adequate so long as it apprises the defendant of the factual basis for the claim”).

15       23. The true gist of DCC’s demurrer is that it disagrees with the substance of HNHPC’s  
16 allegations, and claims it has indeed designed the METRC system to flag unspecified irregularities. The  
17 ultimate fact allegation that *it did not do so* must be assumed true for purposes of DCC’s pleading  
18 challenge, and when reviewing the legal adequacy of the Petition, a court does not consider the plaintiff’s  
19 difficulty in later proving the truth of its allegations. *See Doheney, supra; Di Salvo v. Bank of California*  
20 *Nat. Ass’n*, 274 Cal. App. 2d 351, 356 (1969) (on demurrer, a court “is not concerned with proof”).

21       24. As a fallback argument, DCC argued in its demurrer that the choices it made in designing the  
22 METRC system amounted to a series of discretionary decisions the Court cannot second guess and that  
23 must be upheld unless arbitrary, capricious, or lacking in evidentiary support. As noted above, HNHPC  
24 has directly alleged several “common sense” types of irregularities and suspicious transactions that the  
25 system, to be effective at all, should be designed to flag but does not flag. To the extent discovery later  
26 demonstrates the METRC system in fact does “flag” one or more irregularities for further investigation,  
27 then to the extent they had discretion in determining which irregularities to flag or not flag, Respondents  
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1 acted arbitrarily, capriciously, and in a manner not supported by the evidence – since any reasonable  
2 exercise of discretion *would not have excluded* among the easiest and most obvious ways to try to evade  
3 the regulatory and taxation system under the MAUCRSA. Notably, in its demurer, DCC did not identify  
4 (in a judicially noticeable way or otherwise) any irregularities the METRC system in fact flags, further  
5 bolstering HNHPC’s allegations herein. Nor did it attach any correspondence with the developer of  
6 METRC addressing the system’s current flagging capabilities (if any) or proposals for establishing,  
7 upgrading or augmenting such capabilities.<sup>1</sup>

8 **FIRST CAUSE OF ACTION**  
9 **PETITION FOR PEREMPTORY WRIT OF MANDATE**  
10 **(AGAINST ALL RESPONDENTS)**

11 25. HNHPC incorporates as though set forth herein in full the allegations contained in  
12 Paragraphs 1-24 above.

13 26. The Respondents had and have a legal duty to adhere to, follow and comply the  
14 applicable law. Here, as set forth above, the Respondents violated, *inter alia*, both their ministerial  
15 duties and the express provisions of the MAUCRA by failing to create a track and trace system that  
16 designed to flag, is capable of identifying and flagging, irregularities and/or questionable transactions  
17 for further investigation, as mandated by the Legislature in B&P Section 26067, and by disregarding  
18 their duty to protect the public from harms such as Burner Distros whose activities could be, but  
19 currently are not being, flagged. *See also* B&P §§26010, 26010.5, 26011.5, 26080.

20 27. HNHPC is informed and believes and based thereon alleges Respondents were informed  
21 (prior to this lawsuit) and are well aware that the track and trace system they designed and implemented  
22 cannot and is not flagging irregularities and questionable information that would, *inter alia*, reveal  
23 unlawful conduct such as that engaged in by Burner Distros, and further that the developer of METRC  
24 has informed Respondents the system *can be* upgraded/modified/augmented to flag such irregularities  
25 and information, subject only to DCC’s and/or the State’s agreement to amend the agreement to

26 \_\_\_\_\_  
27 <sup>1</sup> HNHPC added Paragraphs 20-24, and added material in Paragraphs 28-30 and 33 below, specifically to  
28 address DCC’s claimed deficiencies in the original Petition, and hopefully to demonstrate to DCC that its  
efforts to attack the legal sufficiency of HNHPC’s mandamus claim is misguided, so that the parties can move  
on to addressing the substantive factual merits of HNHPC’s claims.

1 authorize that additional work. HNHPC is further informed and believes and on that basis alleges the  
2 cost of such additional work would be relatively nominal, but that the DCC/State is refusing to  
3 authorize that work (1) because of fear it would reduce the amount of cultivation tax it presently  
4 collects; and/or (2) it does not want to admit its present system is an abject failure and does not work as  
5 has been falsely represented or portrayed to both the public and to licensees like HNHPC. o as a  
6 factual matter, HNHPC alleges: (1) the METRC system is not designed to, and does not, flag  
7 irregularities for further investigation; (2) DCC in fact is not investigating any irregularities, and  
8 instead relies entirely on public complaints and tips; and (3) the METRC system *can* be modified to  
9 flag irregularities, but Respondents have refused to authorize the work necessary for that to happen.

10 28. To the extent Respondents claim they had or have discretion in the creation,  
11 implementation, and/or operation of the track and trace system, and specifically what elements are or  
12 should be flagged or not flagged for further investigation, HNHPC contends they abused their  
13 discretion, that their actions and determinations on such matters were/are arbitrary, capricious, unfair,  
14 unlawful, corrupt, and against the overwhelming weight of facts and evidence available to them at the  
15 time, and/or were the result of “unreasonable” policies and procedures that are not permitted. *See*  
16 *Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 442 (1989) (“Mandamus may issue, however, to  
17 compel an official both to exercise discretion (if he is required by law to do so) and to exercise it under  
18 a proper interpretation of the applicable law”); *Anderson v. Philips*, 13 Cal. 3d 733, 737 (1975) (where  
19 mandamus respondent refuses to act based on interpretation of law, “the writ will lie if that  
20 determination is erroneous”); *Inglin v. Hoppin*, 156 Cal. 483, 491 (1909) (mandamus “will lie to correct  
21 abuses of discretion, and will lie to force a particular action by the inferior tribunal or officer, when the  
22 law clearly establishes the petitioner’s right to such action”).

23 29. Specifically, the failure to track *basic* irregularities such as the three identified above  
24 raises fundamental questions regarding the alleged exercise of discretion by Respondents, which of  
25 course they cannot exercise in violation of the governing statute. *Ellena v. Department of Ins.* 230 Cal.  
26 App. 4th 198, 205 (2014) (where an ordinance defines the specific duties or course of conduct that a  
27 governing body must take, that course of conduct becomes mandatory and eliminates any element of  
28

1 discretion); *Alameda County Deputy Sheriff's Assn v. Alameda County Employees' Retirement Assn*, 9 Cal.  
2 5th 1032, 1060 (2020) (agencies have “no authority to act inconsistently” with governing legislation or to  
3 pursue a practice contrary to such legislation).

4 30. There is no plain, speedy or adequate remedy in the ordinary course of law available to  
5 HNHPC, it has a substantial and direct beneficial interest in enforcing Respondents' mandatory and/or  
6 discretionary duties and/or correcting its abuses of discretion as it has been directly harmed by the  
7 offending conduct alleged herein, and HNHPC legally is entitled to performance by the Respondents of  
8 such duties and/or to the proper exercise of discretion under the correct legal interpretation of the  
9 MAUCRA. *See* Cal. Civ. Proc. Code §§1085(a), 1086; *Save the Plastic Bag Coalition v. City of*  
10 *Manhattan Beach*, 52 Cal. 4th 155, 165 (2011) (“one who is in fact adversely affected by governmental  
11 action should have standing to challenge that action if it is reviewable”); *Braude v. City of Los Angeles*,  
12 226 Cal. App. 3d 83, 87-88 (1990) (beneficial interest is assessed on a “common sense rather than a  
13 merely technical approach,” and requires only that the petitioner have a “substantial interest” in the  
14 outcome of the proceeding). On these issues, the notion HNHPC would not directly and substantially  
15 benefit from a ruling requiring DCC to design its track and trace system to flag irregularities and  
16 transactions that violate both pillars of the MAUCRA legislation is frankly nonsensical. And contrary  
17 to DCC's demurrer argument, to demonstrate a beneficial interest, HNHPC does not have to  
18 demonstrate that prevailing herein would “directly benefit HNHPC economically” – an argument that  
19 HNHPC notes was devoid of any supporting legal authorities. HNHPC also notes that its Petition  
20 raises an issue of public concern, as it is clear that the DCC is not following the Legislature's  
21 mandatory requirements, to the detriment of public safety and critical revenue collection.

22 **SECOND CAUSE OF ACTION**  
23 **INJUNCTIVE RELIEF**  
24 **(AGAINST ALL DEFENDANTS)**

25 31. HNHPC incorporates as though set forth herein in full the allegations contained in  
26 Paragraphs 1-30 above.

27 32. HNHPC seeks an injunction compelling Respondents to comply with their mandatory  
28 and/or discretionary legal duties vis-à-vis the track and trace system and their enforcement obligations

1 under State law, and mandating that they create and maintain a track and trace system that is capable of  
2 identifying and flagging for further investigation questionable transactions and information HNHPC  
3 believes would, if instituted, ferret out and ultimately stop or at least greatly reduce the illegal actions  
4 of Burner Distros and also assist in identifying and shutting down illegal and unregulated dispensaries  
5 and illegal black market sellers of cannabis products – all while significantly increasing revenue to the  
6 State from the payment of proper excise and/or cultivation taxes by distributors operating in the State.

7 33. In its Demurrer, DCC argued HNHPC is required to demonstrate irreparable harm or  
8 injury. The case cited by DCC for that argument addressed a preliminary injunction. As noted in the  
9 case law, “[t]o qualify for a permanent injunction, the plaintiff must prove (1) the elements of a cause  
10 of action involving the wrongful act sought to be enjoined . . . and (2) the grounds for equitable relief.”  
11 *San Diego Unified Port Dist. v. Gallagher*, 62 Cal. App. 4<sup>th</sup> 501, 503-504 (1998); *Christopher v. Jones*,  
12 231 Cal. App. 2d 408, 416 (1964) (“the right to injunctive relief exists in some cases irrespective of  
13 damage and regardless of whether or not the injury is shown to be irreparable”); Cal. Civ. Proc. Code  
14 §§526(a)(1), (a)4), (a)(5) (no reference to irreparable harm as requirement for injunctive relief).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, based on the foregoing, HNHPC prays for the following relief:

17 **First Cause of Action**

- 18 1. For the granting of its petition for mandamus as set forth above;  
19 2. For the recovery of costs and/or attorneys’ fees, to the extent permitted by law;  
20 3. For such other or different relief as deemed necessary or appropriate by the Court.

21 **Second Cause of Action**

- 22 1. For the granting of injunctive relief as requested above;  
23 2. For the recovery of costs and/or attorneys’ fees, to the extent permitted by law; and  
24 3. For such other or different relief as deemed necessary or appropriate by the Court.

**REQUEST FOR JURY TRIAL**

HNHPC requests a jury trial on all matters properly triable to a jury:

DATED: November 11, 2021

LAW OFFICE OF JEFF AUGUSTINI

By: *Jeff Augustini*  
JEFF AUGUSTINI  
Attorneys for Petitioner HNHPC, INC.

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VERIFICATION

State of California, County of Los Angeles

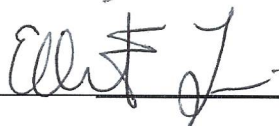
I have read the foregoing **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR: (1) PEREMPTORY WRIT OF MANDAMUS; AND (2) INJUNCTIVE RELIEF;** and know its contents.

I have been authorized by Petitioner HNHPC, INC. to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that basis allege that the claims, allegations and averments stated in the foregoing document are true based upon the information reasonably available to me.

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

Executed on November 11, 2021, at Long Beach, California.

  
\_\_\_\_\_  
ELLIOT LEWIS

## CERTIFICATE OF SERVICE

I, [Jeff Augustini](#), declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 9160 Irvine Center Drive, Suite 200, Irvine, California 92618, in said County and State. On [November 12, 2021](#), I served the following document(s): **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR: (1) PEREMPTORY WRIT OF MANDATE; AND (2) INJUNCTIVE RELIEF**

**on the following parties:**

Harinder Kapur  
Ethan Turner  
California Department of Justice  
Cannabis Control Section  
1300 I Street. 1620-18  
Sacramento, CA 95814  
[Harinder.kapur@doj.ca.gov](mailto:Harinder.kapur@doj.ca.gov)  
[ethan.turner@doj.ca.gov](mailto:ethan.turner@doj.ca.gov)

**by the following means of service:**

- BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE:** I emailed a true copy of this document to a messenger with instructions to personally deliver it to each person[s] named at the address[es] shown before 5:00 p.m. on the above-mentioned date.
- BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by FedEx or delivered same to an authorized courier or driver authorized by FedEx to receive documents.
- BY ELECTRONIC SERVICE:** On the above-mentioned date, I caused each such document to be transmitted by electronically mailing a true and correct copy through One Legal's electronic service function to the e-mail address(s) set forth above.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [November 12, 2021](#), at Irvine, California.



[Jeff Augustini](#)