

FILED BY FAX
ALAMEDA COUNTY
February 26, 2021
**CLERK OF
THE SUPERIOR COURT**
By Lynn Wiley, Deputy
**CASE NUMBER:
RG21089893**

JAMES M. ANTHONY (203150)
James@anthonylaw.group
DREW M. SANCHEZ (277163)
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Attorneys for Petitioners

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, UNLIMITED JURISDICTION**

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

Petitioners,

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

Respondents.

Case No. _____

**DECLARATION OF JAMES ANTHONY
REGARDING NOTICE OF EX PARTE
APPLICATION FOR TEMPORARY
STAY ORDER AND ORDER TO SHOW
CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

Action Filed:
Trial Date:

Hearing Date: TBD
Reservation No.: N/A
Dept.: TBD
Time: TBD

I, James Anthony, declare as follows:

1. I am an attorney licensed to practice law in the State of California and currently serve as counsel to Plaintiff Harrens Lab Inc.
2. On February 25, 2021 at 12:56pm, I emailed Angela C. McIntire-Abbott, counsel for the Bureau of Cannabis Control ("BCC") to inform them that Petitioners, Harrens Lab Inc. will be applying through counsel for an Ex Parte Stay Order and Order to Show Cause Why Preliminary

Injunction Should Not Issue, pursuant to California Rule of Court 3.1203 and 3.1204.

3. I informed counsel for Respondents that pursuant to Emergency Rule 1.8a, the Ex Parte Application would be heard on a date to be determined in the Alameda County Superior Court, located at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612. I informed counsel for Respondents that my firm would be sending the ex parte papers to the presiding judge in Department 1 of the Court.

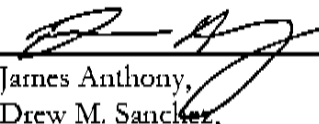
4. I stated with specificity the nature of the relief to be requested, and inquired whether they intend to appear to oppose the Application.

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

Respectfully submitted,

Date: February 25, 2021

ANTHONY LAW GROUP, PC



James Anthony,
Drew M. Sanchez,
Victoria Vertner,
Attorneys for Petitioners,
Harrens Lab Inc., and Ming Li, an individual.

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I, James Anthony, declare as follows:

1. I am an attorney licensed to practice law in the State of California and currently serve as counsel to Plaintiff Harrens Lab Inc. This declaration is submitted in support of the Plaintiff's Ex Parte Application for Temporary Stay Order and Order to Show Cause Why Preliminary Injunction Should Not Issue and Memorandum of Points and Authorities in Support Thereof.

2. The following facts are within my personal knowledge and, if called as a witness herein, I can and will competently testify thereto. This declaration is based on my own expert historical knowledge and my own ongoing research regarding the evolution of California cannabis law through voter initiatives, case law, and legislation. It is also based third party expert reports, and to that extent is made on information and belief.

3. The length of the Ex Parte Application for Temporary Stay Order and Order to Show Cause Why Preliminary Injunction Should Not Issue and Memorandum of Points and Authorities in Support Thereof is justified by the highly complex factual elements of the underlying dispute and the extensive legal issues present therein.

4. I have specialized exclusively in cannabis law since 2006. I have expert knowledge of the evolution of California cannabis law through voter initiatives, case law, and legislation. The history of California's regulation of the pre-existing multi-billion dollar cannabis industry since legalization in 2016 shows that the state is unable to timely issue permanent (so called "annual") licenses to the thousands of businesses that is has authorized to operate for going on four years, and which have collectively spent billions of dollars in reliance on "provisional" licenses.

5. In 1996, 56% of California voters approved Proposition 215 and legalized cannabis for medical purposes. In 2003, the state legislature created a loose expansion of the original proposition's narrow affirmative defense that allowed the development of a mostly unregulated, cultivation and retail sale, not-for-profit, medical cannabis movement. By 2016, that movement had become the California medical cannabis industry, and had grown to approximately \$2 billion in annual sales, subject to state and local sales tax, and to some special local taxes.

6. The California medical cannabis industry expanded for over 20 years to that substantial magnitude with almost no formal binding regulation at the state government level. The industry's only "regulation" stemmed from a sixty-three-word sentence containing an affirmative defense in the Health and Safety Code, a scattering of case law interpreting it, and two documents

from the state attorney general including an eleven-page set of “guidelines” and a three-and-a-half page letter to the legislature, neither of them binding law.

7. There was little to no regulation at the local government level either. Only a few dozen of California’s 548 local governments chose to regulate (and tax) storefront retail dispensaries—and no other part of the supply chain.

8. In 2015 the California state legislature created a state regulatory framework for the burgeoning medical cannabis industry. Before it could be fully implemented by the state agencies, it was caught in the tide of cannabis legalization for adult use.

9. In November 2016, 58% of California voters approved Proposition 64 and legalized cannabis for adult use (aka “recreational use”) as opposed to medical use, following the trend set by Colorado and Washington in 2012, and Oregon in 2014.

10. In 2017, three state agencies were charged with the authority to regulate and license commercial cannabis businesses in California. The Bureau of Cannabis Control (“BCC”) regulated licenses pertaining to retail, distribution, and laboratory testing. The California Department of Food and Agriculture (“CDFA”) regulated commercial cannabis cultivation. The California Department of Public Health (“CDPH”) regulated manufacturing activity.

11. The agencies rushed to meet their statutory mandate to promulgate emergency regulations. They created, at the instigation of the state legislature, a “temporary” licensing scheme pending the processing of the anticipated thousands of applications for “annual” licenses. For that reason, on January 1, 2018, an existing \$3 billion existing industry of thousands of businesses was suddenly regulated, and state licenses (and local permits too) were required to operate.

12. The BCC and the other state licensing agencies commenced to issue temporary licenses, in conjunction with temporary or permanent authorization from local governments, their partners in the state’s dual licensing system. Without these temporary arrangements, the state would have had to have shut down the entire existing multi-billion-dollar industry comprising cannabis

cultivation, manufacturing, testing, distribution, and retail.

13. In 2018 the licensing agencies initially issued temporary licenses valid only for a period of 120 days. They then gave 90-day extensions for temporary licensees that had submitted applications for annual licenses.

14. Annual licenses in this context are permanent licenses much like licenses issued by the Alcohol Beverages Control (“ABC”), and like those licenses also have rigorous and detailed due process rights and procedures.

15. The licensing agencies issued thousands of temporary licenses throughout 2018 pursuant to Bus. & Prof. Code § 26050.1, which sunsetted on December 31, 2018.

16. Effective January 1, 2019 the legislature replaced this temporary license system with a “provisional” license system for calendar year 2019 as identified in Cal. Bus. & Prof. Code § 26050.2.

17. The legislature then extended the provisional license system for another two years, scheduled to sunset at the end of this year, 2021, per Bus. & Prof. Code § 26050.2(i). However, the legislature is now considering SB 59, which would extend the provisional licensing system until 2028.

18. Should it pass, as is expected, the system of “temporary” or “provisional” licenses upon which thousands of businesses have relied, and will continue to rely, by investing billions of dollars a year, will be authorized to last for a total of at least ten years.

19. Approximately 8,754 licenses are active in the BCC’s licensing apparatus. Approximately 1,661 such licenses are annual (permanent) licenses, and the remaining 7,093 licenses are “provisional” licenses. This information is based on my participation in ongoing research tracking license processing and issuance of all three licensing authorities. The figures are current as of October 15, 2020.

20. All stakeholders in the cannabis industry, including the California Government proceeded with hope that annual, or permanent, license applications would be swiftly and smoothly processed in the new system. This hope has been in vain. Instead, this awkward transition continues

through the present day.

2 21. The progress of the billions of dollars' worth of operating businesses, including once
3 largely underground and gray area medical-law operators, towards a fully and heavily regulated system
4 of state and local licensing and permitting has taken much longer than expected. This delay has only
5 been exacerbated by the COVID-19 pandemic.

6 22. On February 6, 2021, I communicated with the BCC by email, seeking to meet and
7 confer on an informal settlement process for any operational issues that BCC might have with
8 Harrens Lab. A true and correct copy of that email is attached as **Exhibit A**. In that email
9 correspondence, I responded point by point to the BCC letter's six generalized "factual" allegations
10 of regulatory compliance failures (without date or details), appealed the revocation and requested a
11 hearing and due process prior to the license revocation.

12 23. On February 9, 2021, six days after the abrupt closure of Petitioners' business, Angela
13 C. McIntire-Abbott, of the BCC, replied to me with an email, stating in its entirety, "Greetings Mr.
14 Anthony, Thank you for contacting the Bureau of Cannabis Control (Bureau). I just wanted to
15 confirm the Bureau's receipt of your February 5th email. The Bureau is currently in the process of
16 reviewing the information you have submitted regarding the above-titled matter." A true and correct
17 copy of that email is attached as **Exhibit B**.

18 24. On the morning of February 16, 2021, twelve full days since Petitioners' three-year-
19 old licensed business was abruptly terminated by BCC, I again emailed Ms. McIntire-Abbott and left
20 a voicemail requesting some kind of substantive communication responding to my email to BCC
21 Acting Chief Tamara Colson of February 5, 2021.

22 25. On the afternoon of Tuesday February 16, 2021, Ms. McIntire-Abbott called me and
23 we spoke for 12 minutes during which time she informed me that her client, the BCC, would have
24 some kind of written response to my urgent email of 11 days earlier by the end of the week.

25 26. On the morning of February 17, 2021, anticipating the worst case scenario, I emailed

Ms. McIntire-Abbott as a matter of professional courtesy, advising her that I would be preparing the instant writ petition and *ex parte* motion for a temporary stay and prohibitory preliminary injunction to preserve the *status quo ante*, and to inform her of certain details of emergency local rules related to *ex parte* requests and to request a stipulation for electronic service. A true and correct copy of that email is attached as **Exhibit ??**.

27. On the afternoon of February 17, 2021, two weeks after the “revocation”, Ms. McIntire-Abbott emailed to me a one-page letter, reiterating the BCC’s position that the license was revoked and that no appeal or hearing was available due to BPC § 26050.2. A true and correct copy of that email and letter is attached as **Exhibit ??**.

28. Petitioners had no other recourse than to seek the instant court process to vindicate their property interest in the three-year-old license, given to them by BCC, authorizing them to operate a cannabis testing laboratory, seeking only the process due for such property interest under the Constitutions of the United States and of the State of California.

29. A court has jurisdiction over a party from the time the summons is served on the party. (Cal. Code Civ. Proc. § 410.50). Counsel for BCC has stipulated to electronic service of all pleadings in this matter.

30. Effective, January 1, 2019, the state legislature created Cal. Bus. & Prof. Code § 26050.2, and its “provisional” licensing system. Originally intended to last for only a year, it was then extended through 2021, and the legislature is now considering a bill to extend it through 2027, which would make for a full decade of temporary and provisional licensing. Cannabis legalization created a difficult regulatory conundrum: shut down an existing multi-billion dollar legacy medical-use industry of thousands of operators and take years to license and re-open it, or allow it to continue operating while simultaneously licensing it (building the jet plane of regulation while flying it, as it were). Expiration of the “temporary” licenses, by rendering almost the entire industry illegal, would have collapsed the whole scheme.

31. 26050.2(a) grants “the licensing authority” (in this case, BCC) discretion to *issue* provisional licenses (or not). That was clearly necessary: without authorized licensed operators the entire \$3 billion legal cannabis market might have instead operated underground as did many operators at that time, and which still do today.

32. Current estimates are that the legal aboveground California cannabis industry has annual gross receipts of around \$3 Billion, while the underground market is almost triple that at an estimated \$8.7 Billion.

33. BCC’s practice as to the renewal process has been to make it a simple and straightforward “rubberstamping,” exactly as one would expect of a recognized entitlement. Typically, the annual renewal process takes about an hour online filling in the same basic information again and affirming that there have been no changes in operations. BCC then approves promptly and issues an invoice for the annual licensing fee (which is substantial). Once paid, the license is renewed as would be expected. The whole process takes a week or so, most of which is waiting time.

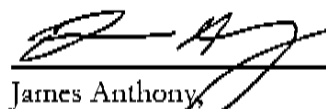
34. Inserting the word “sole” into the phrase “in its discretion” does not alter the Constitutions or the facts: the licensing authorities have issued 7,000 provisional licenses, including one to the Petitioners, with the clear understanding that the licensees would actually operate licensed businesses under them to further the government’s purpose of bringing cannabis into control and regulation, and that they would rely on them by investing significant sums of money and by employing workers. Petitioners, and all other provisional licensees, have a legitimate right to assume that barring any glaring unresolvable issues, their applications for “annual” (really permanent) licenses will be granted in due course, and that in the meantime, while waiting for the licensing authorities to process the 7,093 pending license applications, their provisional licenses will be renewed regularly in due course—as they were and have been.

35. BCC has a robust disciplinary and appeal hearing process with clear notice and hearing requirements following the Administrative Procedures Act. There is a 5-member Cannabis

Controls Appeals Panel that responds to due process requests in enforcement issues with the annual licensees, whose due process rights they recognize and provide for. If any modicum of that process were available to Petitioners they would be vastly better off. If BCC would even communicate with them, they are eager to find common ground and understand the agency's concerns (or the concerns of its investigators).

36. My firm is prepared to file a motion for preliminary injunction on the matters stated in the ex parte application in the event that the Court does not grant emergency relief. We are in a position to file that motion on short notice in the event that the Court shortens time thereon if emergency relief is not granted.

I declare under penalty of perjury under the laws of the State of California that the foregoing declaration is true and correct. Executed February 25, 2021, in Oakland, California.



James Anthony,
Attorneys for Petitioners,
Harrens Lab Inc., and Ming Li

EXHIBIT A



James Anthony <james@anthonylaw.group>

HARRENS LAB: 2/4/21 Revocation of License C8-0000021-LIC**James Anthony** <james@anthonylaw.group>

Sat, Feb 6, 2021 at 1:14 AM

To: "Colson, Tamara@DCA" <Tamara.Colson@dca.ca.gov>, bcc@dca.ca.gov, "BCC Licensing@DCA" <BCC Licensing@dca.ca.gov>, bcc@labs@dca.ca.gov

Cc: Juan.Ordaz@dca.ca.gov, Travis.White@dca.ca.gov, Zoe Schreiber <zoe@anthonylaw.group>, Hannah Young <hannah@anthonylaw.group>, Victoria Vertner <victoria@anthonylaw.group>, Drew Sanchez <drew.sanchez@anthonylaw.group>

Dear Acting Bureau Chief Colson,

I write in response to your letter of 2/4/21, referenced above (and attached), hand delivered by Supervising Special Investigator I Juan Ordaz and Special Investigator Travis White (both cc-ed here) on 2/4/21, while the agency team also removed all samples from the lab.

Harrens Lab has a history as an analytical laboratory pre-dating their cannabis quality testing business under license by BCC. Since 2014 they have worked under, and been fully compliant with, FDA and DEA regulations.

Their work includes testing imported and local foods in the stream of commerce to ensure consumer health and safety. They monitor environmental safety for consumer protection ensuring that food manufacturers in California and other states are free of E. Coli and other microbial dangers and potentially harmful contaminants. And they test drug evidence for law enforcement prosecution.

They also contribute to cannabis consumer safety in ways outside of the mandated testing. They test the safety of Vitamin E Acetate for cannabis concentrate manufacturers, implicated in vaping-associated pulmonary injury (VAPI). And they test for hop latent viroid, a plant disease, that can greatly reduce cannabis productivity and efficacy.

Since June 2018, Harrens Lab has been licensed by the BCC as a testing laboratory. Like others in the industry, they have continuously improved their compliance with a complex, changing regulatory system that involves multiple interactions with other licensees, the third-party METRC system, and their licensing agency and regulator, your Bureau of Cannabis Control.

I toured the laboratory Thursday afternoon (2/4/21) after the revocation was delivered. I spoke at length with the senior executives: CEO Ming Li, Operations VP Anthony Zhong, and Quality Assurance Manager Daniel Hess. I have reviewed a large amount of email correspondence with BCC going back two years.

I am the first to admit that there has been miscommunication between Harrens Lab and Bureau investigators, and a breakdown in trust last year, for which Harrens bears responsibility.

And it is also true that they are committed to full regulatory compliance and continuous improvement in the interest of consumer safety. In my sixteen years in California cannabis compliance law, I rank them amongst the most qualified industry participants. They are exactly the kind of testing lab operators that California cannabis needs.

As to the six alleged grounds for revocation cited in your revocation letter, they are not specific enough to be responded to except in this general way:

1) *[alleged] inability to take accurate representative samples of cannabis goods harvest batches;*

Harrens Lab has corrected any sampling issues previously addressed with the Bureau investigators, is unaware of any existing issues, and is willing and able to address any that actually exist.

2) *[alleged] inability to satisfy laboratory transportation and chain of custody requirements by using third-party courier services to ship cannabis goods samples;*

Harrens Lab has corrected any previous transportation and chain of custody issues, and pursuant to regulation and Bureau agreement does not use third parties to transport samples.

3) *[alleged] failing to generate shipping manifests prior to transportation of cannabis goods;*

Harrens Lab consistently complies with all regulatory requirements related to shipping manifests.

4) *[alleged] transporting cannabis samples without affixing METRC identification labels to cannabis sample packaging;*

Harrens Lab consistently complies with all regulatory requirements related to METRC labeling of samples.

5) *[alleged] making premises modifications without seeking prior Bureau approval; and*

Harrens Lab will not expand or modify the commercial cannabis activity premises without required prior Bureau approval.

6) *[alleged] failing to run and maintain a video surveillance system.*

Harrens Lab has corrected any previous issues related to video surveillance and consistently complies with all related regulatory requirements and Bureau agreement.

As indicated, the alleged grounds for revocation are either previously abated issues, or ones that can be promptly resolved if currently at issue.

I will also add that there may be some cross-cultural miscommunication here. Whereas I would have advised Harrens to proactively stay in touch with the Bureau investigators after their initial communications, frequently informing them of the lab's responses to the concerns they raised, they did not do so. Instead, they chose to "not bother" the investigators with their own initiated communications and questions—or at least to sharply limit them—as they considered polite and respectful. I have advised them that open communication with the Bureau is critical to healing this breach in the regulatory relationship.

Harrens Labs now proposes an informal settlement of this matter resulting in restoration of the provisional license to operate in full compliance with all regulations. I am here to facilitate settlement communication with BCC starting with this email.

Harrens is willing to submit to whatever terms the Bureau might reasonably provide, including: notice to comply; a compliance plan with monitoring and fee payment to cover the agency's costs (probation with conditions); citation and order of abatement; investigation and enforcement cost recovery; and payment of some monetary administrative fine. Alternatively, a suspension measured in days would be (and is now) severely punishing for them as it would be (and is) damaging to their cash flow and reputation and employee relations.

Please let me know with whom at BCC I might discuss this matter most appropriately.

If you are not open to such an informal discussion, and regardless, as an additional procedural precaution, please consider this email to be a formal appeal and request for hearing under applicable state law and constitutional requirements of due process, on the grounds cited above in response to the six alleged grounds for revocation, and as argued below.

The Bureau granted Harrans Lab a temporary license in June 2018. The Bureau has continuously renewed that license ever since—for close to three full years of operation in reliance thereon. In that time Harrens Labs has invested millions of dollars in the business in reliance on that license, has paid significant licensing fees and taxes, and has employed 18 full time individual staff with families, who stand to suffer grave and irreparable harm by this revocation, as does Harrans. Therefore, Harrans Lab has a property right in the license that requires due process before revocation (and certainly after).

I hope that it is not necessary to seek a court order to obtain that due process from the Bureau which I know is well able to provide either informal resolution or an independent hearing.

I ask that you kindly acknowledge receipt of this email, and I look forward to hearing from your offices.

Be well.

Yours very truly,

James Anthony



ANTHONY LAW GROUP

James Anthony

PRINCIPAL

(510) 842-3553 *office*

(510) 207-6243 *cell*

james@anthonylaw.group



21-02-04 BCC Revocation.pdf

418K

EXHIBIT B



James Anthony <james@anthonylaw.group>

HARRENS LAB: 2/4/21 Revocation of License C8-0000021-LIC

McIntire, Angela@DCA <Angela.McIntire@dca.ca.gov>

Tue, Feb 9, 2021 at 6:52 PM

To: James Anthony <james@anthonylaw.group>

Cc: Zoe Schreiber <zoe@anthonylaw.group>, Hannah Young <hannah@anthonylaw.group>, Victoria Vertner <victoria@anthonylaw.group>, Drew Sanchez <drew.sanchez@anthonylaw.group>

Greetings Mr. Anthony,

Thank you for contacting the Bureau of Cannabis Control (Bureau). I just wanted to confirm the Bureau's receipt of your February 5th email. The Bureau is currently in the process of reviewing the information you have submitted regarding the above-titled matter.

Regards,



Angela C. McIntire-Abbott

Attorney III

(916) 465-9037

www.bcc.ca.gov

<https://cannabis.ca.gov>



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We encourage you to check out our "Your Questions Answered" database page containing over 130 answers to the most commonly-asked questions: https://bcc.ca.gov/about_us/your_questions_answered.html.

From: James Anthony <james@anthonylaw.group>

Sent: Friday, February 5, 2021 10:15 PM

To: Colson, Tamara@DCA <Tamara.Colson@dca.ca.gov>; DCA, BCC@DCA <BCC@dca.ca.gov>; BCC Licensing@DCA <BCC Licensing@dca.ca.gov>; BCC Labs@DCA <BCC Labs@dca.ca.gov>

Cc: Ordaz, Juan@DCA <Juan.Ordaz@dca.ca.gov>; White, Travis@DCA <Travis.White@dca.ca.gov>; Zoe Schreiber <zoe@anthonylaw.group>; Hannah Young <hannah@anthonylaw.group>; Victoria Vertner

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Dept.: TBD

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I, Ming Li, declare as follows:

1. I am the Chief Executive Officer of Harrens Lab Inc. This declaration is submitted in support of the Plaintiff's Ex Parte Application for Temporary Stay Order and Order to Show Cause Why Preliminary Injunction Should Not Issue and Memorandum of Points and Authorities in Support Thereof.

2. The following facts are within my personal knowledge and, if called as a witness herein, I can and will competently testify thereto.

3. In December 2014 Harrens Lab began operating as an analytical laboratory (pre-dating our cannabis quality testing business under license by BCC), and I became the first CEO. Since then, we have worked under, and been fully compliant with, various FDA and DEA regulations. I have now lost my position as CEO of Harrens Lab due to the events of this matter, and have suffered personal losses and damages.

4. Harrens Lab tests imported and local foods in the stream of commerce to ensure consumer health and safety. We monitor environmental safety for consumer protection ensuring that food manufacturers in California and other states are free of E. Coli and other microbial dangers and potentially harmful contaminants. We also test drug evidence for law enforcement prosecution.

5. We contribute to cannabis consumer safety in ways outside of the mandated testing: we test the safety of Vitamin E Acetate for cannabis concentrate manufacturers, implicated in vaping-associated pulmonary injury (VAPI); and we test for hop latent viroid, a plant disease, that can greatly reduce cannabis productivity and efficacy.

6. Since June 2018, Harrens Lab has been licensed by the BCC as a testing laboratory. We have continuously improved our compliance with a complex, changing regulatory system that involves multiple interactions with other licensees, the third-party METRC system, and our licensing agency and regulator, the BCC.

7. On January 8, 2018, Harrens Lab and myself, an individual, an immigrant US citizen, and CEO of Harrens Lab, first applied to the BCC, a division of the California Department of Consumer Affairs, for a license to operate a cannabis testing laboratory. On June 25, 2018, BCC issued a "temporary" license to us, authorizing us to lawfully engage in commercial cannabis activity. We then began operating a cannabis testing laboratory in accordance with the theretofore recently promulgated applicable emergency administrative regulations.

8. On June 22, 2018 we submitted the required annual license application to BCC. On October 18, 2018, BCC marked the application "Accepted" and then qualified us for a provisional license to follow our temporary license, thus authorizing our continuous licensed operation.

9. Specifically, BCC reviewed the documents that we had submitted in June 2018. BCC then requested and reviewed 58 additional highly technical documents submitted in October 2018 and in March and May of 2019. At that time, the BCC found we qualified for a provisional license.

10. On May 29, 2019, BCC issued that provisional license to us, which was due to expire 5/25/20.

11. On April 30, 2020, BCC renewed and re-issued that provisional license, due to expire three months from now on May 28, 2021.

12. Since BCC first gave us a license authorizing us to operate a cannabis testing laboratory in June 2018, we have navigated BCC's complex license application system for approximately four years and have operated a fully legal "provisionally" licensed cannabis testing laboratory for 2 years and 8 months, invested over \$5 million in reliance on that license, and employed 18 full time staff members. We anticipated operating indefinitely.

13. Notwithstanding our reliance on the provisional license, including the substantial sums expended thereon, on February 4, 2021, BCC entered the premises of Harrens Lab with 12 armed investigators and hand delivered to me a one-page letter of revocation of that date addressed to me and signed by Respondent Tamara Colson in her capacity as Acting Chief of the BCC. A true and correct copy of that February 4, 2021 letter from the BCC is attached as **Exhibit A**.

14. The BCC then proceeded to seize from the premises all the cannabis samples collected by Harrens Lab from other licensees for cannabis lab testing services.

15. By the terms of the BCC letter, the purported revocation of the license was effective immediately and Harrens Lab and myself were prohibited from engaging in any commercial cannabis activity. Since that time, we have refrained from such activity under explicit protest and duress.

16. We have spent over five million dollars on the development of our business over the last three years.

17. We are suffering widespread financial devastation since ceasing operations on February 4, 2021, including, among other things, (1) the loss of all cannabis business revenue which last year amounted to some \$4 million dollars, (2) the inability to maintain positive cash flow resulting in bankruptcy, (3) the unknowable damage to our business reputation, brand, and goodwill, (4) the incidental economic damage to the sudden and unexpected termination of 18 full-time employees, and (5) the loss of business momentum.

18. The private interest affected by the BCC letter and forcible deprivation of the right to engage in cannabis economic activity has a monetary value of approximately \$20 Million dollars, the estimated market value of Harrens Labs before revocation. 18 full-time employees' livelihoods are at stake, as is my personal and professional reputation, standing, position, and business interests.

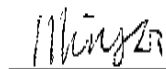
19. For both Harrens Lab Inc., and for me as an individual, this revocation has deep wounding significance. I am mystified as to what we did to deserve the swift death sentence without notice or warning. We have been subjected to an abrupt and egregious violation of the norms of fairness. Our public reputation is in ruins and our treatment by BCC in this case has violated our dignitary interests in a substantial and demonstrable way. I have been humiliated before my majority business partner and my employees.

20. The BCC has alleged no public harm at any point in the factual record. The BCC letter generally alleges, without any specific facts, details, dates, or circumstances, six general types of regulatory violations as grounds for revocation in a conclusory fashion. None of these include any allegation that Harrens Lab in any way threatens the public health and safety through alleged deficiencies in process or inaccurate testing protocols or results.

21. None of the general allegations in the February 4, 2021 BCC letter impugn the quality of Harrens Lab's science which serves the public interest by screening out contaminated products

and offering accurate analyses of active components in the cannabis tested for consumer
information, convenience, and protection. Harrens Lab refutes each of the BCC's allegations as
either being false, too vague to be admitted or denied, previously cured, or easily cured if given
specific details of violation actually occurring.

I declare under penalty of perjury under the laws of the State of California that the foregoing
declaration is true and correct. Executed February 23, 2021, in Oakland, California.



Ming Li
CEO of Harrens Lab
Plaintiff

EXHIBIT A



**BUREAU of
CANNABIS
CONTROL**
CALIFORNIA

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
Bureau of Cannabis Control
2920 Kilgore Road, Rancho Cordova, CA 95670
P (833) 768-5880 | www.bcc.ca.gov



February 4, 2021

Via Hand Delivery

Ming Li
HARRENS LAB, INC.
3507 Breakwater Avenue
Hayward, CA 94545

RE: Revocation of License Number C8-0000021-LIC

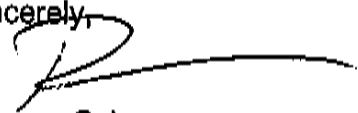
Dear Mr. Li:

The Bureau of Cannabis Control (Bureau) hereby revokes the provisional license, license number C8-0000021-LIC, issued to HARRENS LAB, INC. for the licensed premises located at 3507 Breakwater Avenue, Hayward, California 94545.

The license has been revoked for failure to comply with the provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and its implementing regulations, a cause for discipline under Business and Professions Code section 26030. Specifically, violations include, but are not limited to: inability to take accurate representative samples of cannabis goods harvest batches; inability to satisfy laboratory transportation and chain of custody requirements by using third-party courier services to ship cannabis goods samples; failing to generate shipping manifests prior to transportation of cannabis goods; transporting cannabis samples without affixing METRC identification labels to cannabis sample packaging; making premises modifications without seeking prior Bureau approval; and failing to run and maintain a video surveillance system. (See Cal. Code Regs., tit. 16, §§ 5027, 5044, 5049, 5705, 5706, 5707, 5709.)

This revocation is effective immediately and you may no longer engage in any commercial cannabis activity under this license. Pursuant to Business and Professions Code section 26050.2 subdivision (h), you are not entitled to a hearing or appeal of this decision. If you engage in commercial cannabis activity without a valid license, the Bureau may initiate further action against your business for unlicensed activity.

Sincerely,


Tamara Colson
Acting Chief, Bureau of Cannabis Control

FILED BY FAX
ALAMEDA COUNTY
February 26, 2021
**CLERK OF
THE SUPERIOR COURT**
By Lynn Wiley, Deputy
**CASE NUMBER:
RG21089893**

JAMES M. ANTHONY (203150)
James@anthonylaw.group
DREW M. SANCHEZ (277163)
Drew.Sanchez@anthonylaw.group
VICTORIA VERTNER (290017)
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(t): 510-283-0186

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

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

Petitioners,

vs.

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

Respondents.

Case No. _____

PROOF OF SERVICE

Action Filed:

Trial Date:

Hearing Date: TBD

Reservation No.: N/A

Dept.: TBD

Time: TBD

I, Hannah K. Young declare: I am over the age of 18 years, and am not a party to this action.

On February 25, 2021, I served the following documents:

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

2 **DECLARATION OF JAMES ANTHONY REGARDING NOTICE OF EX PARTE**
3 **APPLICATION FOR TEMPORARY STAY ORDER AND ORDER TO SHOW**
4 **CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE;**

5 **DECLARATION OF JAMES ANTHONY IN SUPPORT OF EX PARTE**
6 **APPLICATION FOR TEMPORARY STAY ORDER AND ORDER TO SHOW**
7 **CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE; and**

8 **DECLARATION OF MING LI IN SUPPORT OF EX PARTE APPLICATION**
9 **FOR TEMPORARY STAY ORDER AND ORDER TO SHOW CAUSE WHY**
10 **PRELIMINARY INJUNCTION SHOULD NOT ISSUE.**

11 ☐ **VIA U.S. MAIL** – CCP § 1013(a) I caused the above documents to be placed in an
12 envelope with postage thereon fully prepared to be placed in the United States Postal Service with
13 postage fully prepaid and addressed to Plaintiff's counsel; and

14 ☒ **VIA ELECTRONIC MAIL** The documents were transmitted in PDF format to each of
15 the email addresses as indicated on the service list.

16 The Bureau of Cannabis Control
17 **C/O Angela McIntire**
18 2920 Kilgore Road
19 Rancho Cordova, CA 95670-6157
20 angela.mcintire@dca.ca.gov

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

23 Executed on February 25, 2021 at Oakland, California.

24 

25 _____
26 Hannah K. Young

FILED BY FAX
ALAMEDA COUNTY
February 26, 2021
**CLERK OF
THE SUPERIOR COURT**
By Lynn Wiley, Deputy
**CASE NUMBER:
RG21089893**

JAMES M. ANTHONY (203150)
James@anthonylaw.group
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

HARRENS LAB INC., a California
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vs.

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

Case No. _____

**EX PARTE APPLICATION FOR
TEMPORARY STAY ORDER AND
ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Action Filed:

Trial Date:

Hearing Date: TBD

Reservation No.: N/A

Dept.: TBD

Time: TBD

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II. FACTUAL TIMELINE & CONTEXTUAL BACKGROUND 3

A. THE HISTORY OF THE STATE’S EVOLVING REGULATION OF THE PRE-EXISTING MULTI-BILLION-DOLLAR CANNABIS INDUSTRY, SINCE LEGALIZATION IN NOVEMBER 2016, SHOWS THAT THE STATE IS UNABLE TO TIMELY ISSUE PERMANENT (COMMONLY CALLED, “ANNUAL”) LICENSES TO THE THOUSANDS OF BUSINESSES THAT IT HAS AUTHORIZED TO OPERATE FOR GOING ON FOUR YEARS AND WHICH HAVE COLLECTIVELY SPENT BILLIONS OF DOLLARS IN RELIANCE ON “PROVISIONAL” LICENSES. 3

B. HARRENS LAB AND MING LI, AN INDIVIDUAL AND ITS CEO, HAVE NAVIGATED THE BCC’S COMPLEX LICENSE APPLICATION SYSTEM FOR APPROXIMATELY FOUR YEARS NOW, AND HAVE OPERATED A FULLY LEGAL “PROVISIONALLY” LICENSED CANNABIS TESTING LABORATORY FOR 2 YEARS AND 8 MONTHS, INVESTED OVER \$5 MILLION IN RELIANCE ON THAT LICENSE, AND EMPLOY 18 FULL TIME STAFF MEMBERS. 6

III. LEGAL ARGUMENT 10

A. PETITIONERS ARE ENTITLED TO ORDINARY MANDAMUS RELIEF TO COMPEL RESPONDENTS TO PROVIDE A FAIR AND IMPARTIAL HEARING BEFORE AN INDEPENDENT HEARING OFFICER BEFORE REVOKING THEIR LICENSE AUTHORIZING THEM TO OPERATE A CANNABIS TESTING LABORATORY GIVEN TO THEM BY THE BCC THREE YEARS AGO—AND TO UNDO BCC’S PURPORTED REVOCATION OF 2/4/21 WITH WHICH THEY HAVE COMPLIED ONLY UNDER PROTEST AND DURESS. 11

B. PETITIONERS ARE ENTITLED TO A TEMPORARY PROTECTIVE ORDER AGAINST RESPONDENTS AS RELATES TO THE PURPORTED REVOCATION WITH ZERO DUE PROCESS OF FEBRUARY 4, 2021. 11

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

2. *The Court has personal jurisdiction over BCC* 12

3. *Petitioners have standing to request a temporary protective order.* 12

4. *Petitioners are entitled to a prohibitory preliminary injunction preventing Respondents from revoking their license as a property right without due process of law, and thus maintaining the status quo ante until resolution of the underlying writ petition.* 13

a) There is no statutory mechanism for a protective order under CCP 1085 and equitable relief is therefore properly requested. 14

b) Petitioners are likely to prevail on the merits of the writ petition because under the Due Process Clauses of both the Constitutions of the United States and of the State of California, they have a property interest in the license—that BCC purports to have revoked with zero due process because Business & Professions Code §26050.2 says that it can. 14

(1) Under the Fourteenth Amendment to the U.S. Constitution, and under Article I, § 7(a) of the California Constitution, BCC is barred from depriving Harrens Lab Inc. and Ming Li, an individual, of their property interest in the license, “*without due process of law.*” 14

(2) U.S. 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.” 16

(3) Business & Professions Code §26050.2 is unconstitutional on its face, and as applied to Petitioners, because it purports to grant to the cannabis licensing authorities two

irreconcilable powers: 1) the power of the agencies to exercise their discretion to issue “provisional” licenses that authorize licensees to engage in commercial cannabis activity; and 2) the power subsequently to revoke or suspend those entitlements in their “sole discretion” without notice and hearing. 18

(4) Unlike the U.S. Constitution’s “entitlement” approach to determining the existence of a property interest, California Constitutional due process protections are broader and more nuanced, recognizing property and liberty interests even where the government has “discretionary” powers, through a 4-part balancing test that also recognizes a dignitary interest, under which Petitioners are clearly entitled to due process before revocation of their authorization and license to engage in commercial cannabis activity. 23

c) The harm faced by Petitioners if the TRO is not granted greatly outweighs any harm to Respondents. 27

d) Petitioners have no adequate remedy at law. 28

e) An analysis of the public interest and balance of the equities demonstrates that risk of public harm is low (having never been alleged) while the risk of irreparable harm to Petitioners is high. 29

C. APPLICANTS ARE ENTITLED TO EMERGENCY RELIEF UNDER THE CIRCUMSTANCES AS THEY MADE AN AFFIRMATIVE FACTUAL SHOWING THAT IRREPARABLE HARM AND IMMEDIATE DANGER EXISTS FOR THEM IF EMERGENCY RELIEF IS NOT GRANTED. 30

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2 **TO THE COURT AND TO RESPONDENTS AND THEIR ATTORNEY OF**
3 **RECORD:**

4 Petitioners HARRENS LAB INC. ("Harrens Lab"), a California corporation, and MING LI,
5 an individual, hereby apply *ex parte* for a temporary protective order pursuant to California Rules of
6 Court § 3.1200. Petitioners request that:

7 1. Respondents BUREAU OF CANNABIS CONTROL ("BCC") and TAMARA
8 COLSON ("Colson"), in her official capacity as Acting Chief of BCC, be prohibited from acting
9 upon Respondents' "revocation" letter issued on February 4, 2021, purporting to revoke Petitioners'
10 three-year-old commercial cannabis license to lawfully operate a cannabis testing laboratory, without
11 notice or an opportunity to be heard, either before or after its alleged immediate effectiveness, and

12 2. Respondents be ordered to reinstate, and recognize the ongoing validity of the at-issue
13 license; and

14 3. The Court issue an order to show cause, with a hearing date and a briefing schedule, as to
15 why a prohibitory preliminary injunction preserving the *status quo ante* should not be issued against
16 Respondents until resolution of Petitioners' underlying writ petition.

17 4. Alternatively, if the Court does not grant emergency relief as requested in 1-3 above,
18 Petitioners request that the Court issue an order shortening time on Petitioners motion for
19 preliminary injunction enjoining Respondents from acting on the purported revocation of the BCC
20 license.
21

22 This application is based upon this Application, the Memorandum of Points and Authorities
23 herein, the Declaration of James Anthony in support of the Application, the Declaration of Ming Li
24 in support of the Application, the Requests for Notice, other materials and evidence in the record
25 that the Court may consider, and [Proposed] Order filed in support hereof.
26

27 The length of the present memorandum is justified by the highly complex factual elements of
28 the underlying dispute and the extensive legal issues presented herein. (Dec. of Anthony ¶ 3.) To the

2 extent that permission is required under Cal. Rule of Court § 3.1113 to file a memorandum in excess
3 of twenty pages in support of the present ex parte application, such permission is hereby requested.
4 (Dec. of Anthony ¶ 3.)

5 I. INTRODUCTION & SUMMARY

6 Petitioners Harrens Lab Inc., a California General Law Corporation, and Ming Li, an
7 individual, have legally operated a cannabis scientific analytical testing laboratory for more than 4
8 years. Petitioners have held a BCC-issued “provisional” license for almost three years. Petitioners
9 invested over \$5 million in the business venture and employ 18 full time workers. Respondents
10 summarily revoked that license on February 4, 2021 and claim that Petitioners are entitled to no due
11 process of any kind including (1) no prior notice, (2) no hearing, and (3) no appeal pursuant to
12 California Business and Professions Code. Over 7,000 provisional licenses have been issued since
13 January 1, 2018, to businesses that likewise have operated under such licenses for years and have
14 collectively invested billions of dollars in reliance on them. Those licenses are constitutionally
15 protected property rights entitled to procedural due process. To the extent that the Business and
16 Professions Code says otherwise, the Code is unconstitutional generally, and as applied to Petitioners.
17

18 II. FACTUAL TIMELINE & CONTEXTUAL BACKGROUND

19 **A. The history of the state’s evolving regulation of the pre-existing multi-billion-dollar**
20 **cannabis industry, since legalization in November 2016, shows that the state is unable**
21 **to timely issue permanent (commonly called “annual”) licenses to the thousands of**
22 **businesses that it has authorized to operate for going on four years and which have**
23 **collectively spent billions of dollars in reliance on “provisional” licenses.**

24 In 1996, 56% of California voters approved Proposition 215 and legalized cannabis for
25 medical purposes. (Dec. of Anthony ¶ 5.) In 2003, the state legislature created a very loose expansion
26 of the original proposition’s narrow affirmative defense that allowed the development of a mostly
27 unregulated cultivation and retail sale not-for-profit medical cannabis movement. (Dec. of Anthony ¶
28 5.) By 2016, that movement had become the California medical cannabis industry, and had grown to

approximately \$2 billion in annual sales, subject to state and local taxes. Including sales taxes, excise tax, local business tax, and other taxes. (Dec. of Anthony ¶ 5.)

The California medical cannabis industry expanded for over twenty years to that substantial magnitude with almost no formal binding regulation at the state government level. (Dec. of Anthony ¶ 6.) The industry's only "regulation" stemmed from a sixty-three-word sentence containing an affirmative defense in the Health and Safety Code¹, a scattering of case law interpreting it, and two documents from the state attorney general including an eleven-page set of "guidelines" and a three-and-a-half-page letter to the legislature, neither of them binding law. (Dec. of Anthony ¶ 6, Ex. A.)

And there was little to no regulation at the local government level either. Only a few dozen of California's 548 local governments chose to regulate (and tax) storefront retail dispensaries—and no other part of the supply chain. (Dec. of Anthony ¶ 7.)

In 2015 the California state legislature at long last created an actual statewide regulatory framework for the burgeoning medical cannabis industry. But before it could be fully implemented by the state agencies, it was caught in the tide of cannabis legalization for adult use. (Dec. of Anthony ¶ 8.)

In November 2016, 58% of California voters approved Proposition 64 and legalized cannabis for adult use (aka "recreational use") as opposed to medical use, following the trend set by Colorado and Washington in 2012, and Oregon in 2014. (Dec. of Anthony ¶ 9.)

In 2017, three state agencies were charged with the authority to regulate and license commercial cannabis businesses in California. The BCC regulated licenses pertaining to retail, distribution, and laboratory testing. The California Department of Food and Agriculture ("CDFA")

¹ Then (now sunset-ed as of 2019) Health and Safety Code § 11362.775: "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570."

regulated commercial cannabis cultivation. The California Department of Public Health (“CDPH”) regulated manufacturing activity. (Dec. of Anthony ¶ 10.)

The agencies rushed to meet their statutory mandate to promulgate emergency regulations. They created, at the instigation of the state legislature, a “temporary” licensing scheme pending the processing of the anticipated thousands of applications for “annual” licenses. (Dec. of Anthony ¶ 11.)

For that reason, on January 1, 2018, an existing \$3 billion industry of thousands of businesses was suddenly regulated, and state licenses (and local permits too) were required to operate. (Dec. of Anthony ¶ 11.) The BCC and the other state licensing agencies commenced to issue temporary licenses, in conjunction with temporary or permanent authorization from local governments, their partners in the state’s dual licensing system. (Dec. of Anthony ¶ 12.) Without these temporary arrangements, the state would have had to have shut down the entire existing multi-billion-dollar industry comprising cannabis cultivation, manufacturing, testing, distribution, and retail. (Dec. of Anthony ¶ 12.)

In 2018, the licensing agencies initially issued temporary licenses valid only for a period of 120 days. (Dec. of Anthony ¶ 13.) They then gave 90-day extensions for temporary licensees that had submitted applications for annual licenses. (Dec. of Anthony ¶ 13.) Annual licenses in this context are permanent licenses much like licenses issued by the Alcohol Beverages Control (“ABC”), and like those also have rigorous and detailed due process rights and procedures. (Dec. of Anthony ¶ 14.) The licensing agencies issued thousands of temporary licenses throughout 2018 pursuant to Bus. & Prof. Code § 26050.1 which sunsetted on December 31, 2018. (Dec. of Anthony ¶ 15.)

Effective January 1, 2019 the legislature replaced this temporary license system with a “provisional” license system for calendar year 2019 as identified in Cal. Bus. & Prof. Code § 26050.2. (Dec. of Anthony ¶ 16.) The legislature then extended the provisional license system for another two years, scheduled to sunset at the end of calendar year 2021 per Bus. & Prof. Code § 26050.2(i). (Dec.

of Anthony ¶ 17.) However, the legislature is currently considering SB 59 which would extend the provisional licensing system until 2028. (Dec. of Anthony ¶ 17.) Should it pass, as is expected, the system of “temporary” or “provisional” licenses upon which thousands of businesses have relied, and will continue to rely, by investing billions of dollars a year, will be authorized to last for a total of at least ten years. (Dec. of Anthony ¶ 18.)

Approximately 8,754 licenses are active in the BCC’s licensing apparatus. (Dec. of Anthony ¶ 19.) Approximately 1,661 such licenses are annual (permanent) licenses, and the remaining 7,093 licenses are “provisional” licenses. (Dec. of Anthony ¶ 19—based on his participation in ongoing research tracking license processing and issuance of all three licensing authorities. These figures are current as of October 15, 2020.)

All stakeholders in the cannabis industry, including the California Government proceeded with hope that annual, or permanent, license applications would be swiftly and smoothly processed in the new system. This hope has been in vain. (Dec. of Anthony ¶ 20.) Instead, this awkward transition continues through the present day. (Dec. of Anthony ¶ 20.) The progress of the billions of dollars’ worth of operating businesses, including once largely underground and gray area medical-law operators, towards a fully and heavily regulated system of state and local licensing and permitting has taken much longer than expected. (Dec. of Anthony ¶ 21.) This delay has only been exacerbated by the COVID-19 pandemic. (Dec. of Anthony ¶ 21.)

B. Harrens Lab and Ming Li, an individual and its former CEO, have navigated the BCC’s complex license application system for approximately four years now, and have operated a fully legal “provisionally” licensed cannabis testing laboratory for 2 years and 8 months, invested over \$5 million in reliance on that license, and employ 18 full time staff members.

In December 2014 Harrens Lab began operating as an analytical laboratory (pre-dating their cannabis quality testing business under license by BCC), and Ming Li, an owner, became the first CEO. (Dec. of Li ¶ 3.) Since then, they have worked under, and been fully compliant with, various

FDA and DEA regulations. (Dec. of Li ¶ 3.) Ming Li has now lost his position as CEO of Harrens Lab due to the events of this matter and has suffered personal losses and damages. (Dec. of Li ¶ 3.)

Their work includes testing imported and local foods in the stream of commerce to ensure consumer health and safety. (Dec. of Li ¶ 4.) They monitor environmental safety for consumer protection ensuring that food manufacturers in California and other states are free of E. Coli and other microbial dangers and potentially harmful contaminants. (Dec. of Li ¶ 4.) And they test drug evidence for law enforcement prosecution. (Dec. of Li ¶ 4.)

They also contribute to cannabis consumer safety in ways outside of the mandated testing: they test the safety of Vitamin E Acetate for cannabis concentrate manufacturers, implicated in vaping-associated pulmonary injury (VAPI); and they test for hop latent viroid, a plant disease, that can greatly reduce cannabis productivity and efficacy. (Dec. of Li ¶ 5.)

Since June 2018, Harrens Lab has been licensed by the BCC as a testing laboratory. (Dec. of Li ¶ 6.) Like others in the industry, they have continuously improved their compliance with a complex, changing regulatory system that involves multiple interactions with other licensees, the third-party METRC system, and their licensing agency and regulator, the BCC. (Dec. of Li ¶ 6.)

On January 8, 2018, Petitioners Harrens Lab and Ming Li, an individual, an immigrant US citizen, and former CEO of Harrens Lab first applied to the (BCC), a division of the California Department of Consumer Affairs, for a license to operate a cannabis testing laboratory. (Dec. of Li ¶ 7.) On June 25, 2018, BCC issued a “temporary” license to Harrens Lab and Ming Li authorizing them to lawfully engage in commercial cannabis activity. (Dec. of Li ¶ 7.) Harrens Lab and Ming Li then began operating a cannabis testing laboratory in accordance with the theretofore recently promulgated applicable emergency administrative regulations. (Dec. of Li ¶ 7.)

On June 22, 2018, Petitioners Harrens Lab and Ming Li submitted the required annual license application to BCC. (Dec. of Li ¶ 8.) On October 18, 2018, BCC marked the application “Accepted” and then qualified them for a provisional license to follow their temporary license, thus authorizing

their continuous licensed operation. (Dec. of Li ¶ 8.) Specifically, BCC reviewed the documents that Harrens Lab and Ming Li had submitted in June 2018. (Dec. of Li ¶ 9.) BCC then requested and reviewed 58 additional highly technical documents submitted in October 2018 and in March and May of 2019. (Dec. of Li ¶ 9.) And only at that time did BCC find Harrens Lab and Ming Li qualified for a provisional license. (Dec. of Li ¶ 9.)

On May 29, 2019, BCC issued that provisional license to Harrens Lab and Ming Li, which was due to expire 5/25/20. (Dec. of Li ¶ 10.)

On April 30, 2020, BCC renewed and re-issued that provisional license, due to expire three months from now on May 28, 2021. (Dec. of Li ¶ 11.)

Since BCC first gave Petitioners Harrens Lab and Ming Li a license authorizing them to operate a cannabis testing laboratory in June 2018, they have navigated BCC's complex license application system for approximately four years and have operated a fully legal "provisionally" licensed cannabis testing laboratory for 2 years and 8 months, invested over \$5 million in reliance on that license, and employed 18 full time staff members. (Dec. of Li ¶ 12.) Harrens Lab and Ming Li anticipated operating indefinitely. (Dec. of Li ¶ 12.)

Notwithstanding Harrens Lab and Ming Li's reliance on the provisional license, including the substantial sums expended thereon, on February 4, 2021, BCC entered the premises of Harrens Lab with 12 armed investigators and hand delivered to Petitioner Ming Li a one-page letter of revocation of that date addressed to him and signed by Respondent Tamara Colson in her capacity as Acting Chief of the BCC. (Decl. of Ming Li ¶ 13, Ex. A, "the BCC letter"). BCC then proceeded to seize from the premises all the cannabis samples collected by Harrens Lab from other licensees for cannabis lab testing services. (Dec. of Li ¶ 14.)

By the terms of the BCC letter, the purported revocation of the license was effective immediately and Harrens Lab and Ming Li were prohibited from engaging in any commercial

cannabis activity. (Dec. of Li ¶ 15). Since that time Harrens Lab and Ming Li have refrained from such activity under explicit protest and duress. (Dec. of Li ¶ 15.)

On February 6, 2021, James Anthony, counsel for Petitioners, communicated with the BCC by email, seeking to meet and confer on an informal settlement process for any operational issues that BCC might have with Harrens Lab. (Dec. of Anthony ¶ 22, Ex. A). In that email correspondence, Petitioners' counsel responded point by point to the BCC letter's six generalized "factual" allegations of regulatory compliance failures (without date or details), appealed the revocation, and requested a hearing and due process preferably prior to the license revocation. (Dec. of Anthony ¶ 22.)

On February 9, 2021, after six days of the abrupt closure of Petitioners' business, Angela C. McIntire-Abbott, of BCC, replied to Mr. Anthony with an email, stating in its entirety, "Greetings Mr. Anthony, Thank you for contacting the Bureau of Cannabis Control (Bureau). I just wanted to confirm the Bureau's receipt of your February 5th email. The Bureau is currently in the process of reviewing the information you have submitted regarding the above-titled matter." (Dec. of Anthony ¶ 23, Ex. B)

On the morning of February 16, 2021, twelve full days since Petitioners' three-year-old licensed business was abruptly terminated by BCC, Petitioners' counsel again emailed Ms. McIntire-Abbott and left a voicemail requesting some kind of substantive communication responding to his email to BCC Acting Chief Tamara Colson of February 5, 2021. (Dec. of Anthony ¶ 24.)

On the afternoon of Tuesday February 16, 2021, Ms. McIntire-Abbott called Petitioners' counsel and they spoke for 12 minutes during which time she informed him that her client, BCC, would have some kind of written response to his urgent email of 11 days earlier by the end of the week. (Dec. of Anthony ¶ 25.)

On the morning of February 17, 2021, anticipating the worst case scenario, Petitioners' counsel, as a matter of professional courtesy, emailed Ms. McIntire-Abbott that he would be

preparing the instant writ petition and *ex parte* motion for a temporary stay and prohibitory preliminary injunction to preserve the *status quo ante*, and to inform her of certain details of emergency local rules related to *ex parte* requests and to request a stipulation for electronic service. (Dec. of Anthony ¶ 26).

On the afternoon of February 17, 2021, two weeks after the “revocation,” Ms. McIntire-Abbott emailed Petitioners’ counsel a one-page letter, reiterating the BCC’s position that the license was revoked and that no appeal or hearing was available due to BPC § 26050.2. (Dec. of Anthony ¶ 27.)

Whereupon Petitioners had no other recourse than to seek the instant court process to vindicate their property interest in their three-year-old license, given to them by BCC, authorizing them to operate a cannabis testing laboratory, seeking only the process due for such property interest under the Constitutions of the United States and of the State of California. (Dec. of Anthony ¶ 28.)

Petitioners’ counsel is prepared to file a motion for preliminary injunction on the matters stated herein in the event that the Court does not grant emergency relief. (Dec. of Anthony ¶ 36.) That motion may be filed on short notice in the event that the Court shortens time thereon in the event that emergency relief is not granted. (Dec. of Anthony ¶ 36.)

III. LEGAL ARGUMENT

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

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

In the absence of clear statutory authority under CCP § 1085 providing a mechanism for a temporary protective order, equitable relief is applicable, and Petitioners are well able to satisfy the Court that the equities involved here require use of this temporary and extraordinary remedy. Petitioners are likely to prevail on the merits of the petition or have satisfactorily presented serious questions of law going to the issues of the case, and the interim harm that Petitioners are likely to sustain if the TRO is not granted greatly outweighs any possible harm to Respondents. Nor has there been any allegation whatsoever of any potential harm to the public. BCC has never once alleged that Petitioners' actual lab testing procedure and results are anything else than well within accepted best practices and accuracy tolerances mandated by regulation. In the present matter, there is no adequate remedy at law because Respondents' enforcement actions will cause tremendous, if not insurmountable, economic damages to Petitioners and their many employees. Petitioners face irreparable harm if the relief sought in this application is not granted. Any analysis of the public interest and balance of conveniences will weigh heavily in the favor of Petitioners.

A. Petitioners are entitled to ordinary mandamus relief to compel Respondents to provide a fair and impartial hearing before an independent hearing officer (i) before revocation of their license authorizing them to operate a cannabis testing laboratory given to them by the BCC three years ago and (ii) to undo BCC's purported revocation of 2/4/21 with which they have complied only under protest and duress.

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

B. Petitioners are entitled to a temporary protective order against Respondents as relates to the purported revocation with zero due process of February 4, 2021.

1. The Court has subject matter jurisdiction over the writ petition.

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

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,

or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.”

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

2. The Court has personal jurisdiction over BCC

A court has jurisdiction over a party from the time the summons is served on the party. (Cal. Code Civ. Proc. § 410.50). Counsel for BCC has stipulated to electronic service of all pleadings in this matter. (Dec. of Anthony ¶ 29). BCC, a state agency, while entitled to the same level of service as any party to any matter is a government entity with clear mechanisms for service of process. Service in this matter is a routine undertaking and the concerns for which California law have rigorous and structured processes for personal service of individuals are not present in this matter. Alameda County Superior Court only accepts filing by fax, typically taking three business days to process such filings. In light of the delay to court process caused by the COVID-19 pandemic, the ease of serving a government agency, as well as the dire urgency of this matter, the Court should proceed as if Respondents will be served according to the Code and presume jurisdiction over Respondents.

3. Petitioners have standing to request a temporary protective order.

When a plaintiff or petitioner in an affirmative action, including writ petitions, has standing to seek relief at trial or any other comparable adjudicative hearing, then that plaintiff or petitioner has standing to seek injunctive relief. (Common Cause v. Board of Supervisor (1989) 49 C3d 432).

The basis for writ relief under California Code of Civil Procedure § 1085 requires generally that (1) the petitioner be beneficially interested in the outcome, (2) respondent in the case has a ministerial duty to follow the law, and (3) there is no plain or speedy remedy at law. (Cal. Code Civ. Proc. § 1085, et. seq.) Petitioners, as a lawful cannabis testing laboratory in possession of a state license to engage in commercial cannabis activity in California, 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 to Petitioners prior to revoking a constitutionally protected property right, regardless of any legislative authority to the contrary, which is ultimately subordinate to the protections of the state and federal constitutions. Petitioners allege that there is no plain, speedy, and adequate remedy at law for the matters alleged herein as the catastrophic economic damages they face will be incurred long before the natural resolution of the writ petition.

4. Petitioners are entitled to a prohibitory preliminary injunction preventing Respondents from revoking their license as a property right without due process of law, and thus maintaining the *status quo ante* until resolution of the underlying writ petition.

The proper analysis of whether temporary protection in the form of a temporary protective order is appropriate in the context of ordinary mandamus requires a careful consideration of the following elements: (a) whether there is a statutory mechanism for temporary protection (see *City of Tiburon v. Northwestern Pac. R. R.* (1970) 4 CA3d, (b)), the likelihood that the petitioners will prevail on the merits, or the extent to which the petitioners establish significant questions going toward the merits of the case (see *Southwest Voter Registration Educ. Project v. Shelley* (9th Cir 2003) 344 F3d 914, 918, and *Alliance for Wild Rockies v. Cottrell*, (9th Cir. 2011) 632 F.3d 1127, 1135), (c) whether the harm faced by the petitioners outweighs the harm faced by Respondents (see *Southwest Voter Registration Educ. Project* at 918), (d) whether petitioners have an adequate remedy at law (see *Dodge, Warren & Peters Ins. Servs. V. Riley* (2003) 105 CA4th 1414), and (e) an analysis

of the public interest and balance of the equities demonstrates that risk of public harm is low while the risk of irreparable harm to Petitioners is high (see *City of San Diego v. Southern Cal. Tel. Corp.* (1954) 42 C2d 110; see also *Tahoe Keys Prop. Owners Ass'n v. State Water Resources Control* (1994) 23 CA4th 1459).

a) There is no statutory mechanism for a protective order under CCP 1085 and equitable relief is therefore properly requested.

Unlike the related provisions of Cal. Code of Civ. Proc. § 1094.5(g), applicable in cases of administrative mandamus, which provides a statutory basis for a temporary stay, there is no statutory mechanism for a temporary or preliminary stay in Cal. Code Civ. Proc. § 1085. (Cal. Code Civ. Proc. § 1085). In the absence of a statutory basis for a temporary or preliminary stay, an analysis in equity is required. (*City of Tiburon v. Northwestern Pac. R. R.* (1970) 4 CA3d). Petitioners herein request equitable relief in the form a temporary stay of Respondents' enforcement of its order to cease operations.

b) Petitioners are likely to prevail on the merits of the writ petition because under the Due Process Clauses of both the Constitutions of the United States and of the State of California, they have a property interest in the license—that BCC purports to have revoked with zero due process because Business & Professions Code §26050.2 says that it can.

In considering in equity whether to grant a temporary or preliminary protective order staying action by a respondent in cases of ordinary mandamus, the court must consider whether petitioner is likely to prevail on the merits. (*White v. Davis* (2003) 30 C4th 528, 554). A preliminary protective order is also "appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." (*Alliance for the Wild Rockies*, 632 F.3d at 1134-35.)

(1) Under the Fourteenth Amendment to the U.S. Constitution, and under Article I, § 7(a) of the California Constitution, BCC is barred from depriving Harrens Lab Inc. and Ming Li, an individual, of their property interest in the license, "without due process of law."

Once the state government authorizes (or, licenses) a person to engage in a business or profession, it has created an entitlement property interest protected from arbitrary deprivation by both the Fourteenth Amendment to the U.S. Constitution and Article I, §7(a) of the California Constitution (collectively, “the Constitutions”). Such property interests are entitled to procedural due process *before* deprivation: specifically, detailed notice of the grounds for the deprivation and an opportunity to be heard. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 263 n.8; 264 (1970).

The threshold issue is whether Petitioners have a property interest in their cannabis testing laboratory business “provisional” license that BCC gave them three years ago authorizing them to engage in commercial cannabis activity. This issue is also dispositive because if there is a property interest, then such property interest is entitled to due process before deprivation thereof. BCC claims that the license can be revoked without due process implying that Petitioners do not have a property interest therein. BCC’s repeated justification for this position is because Cal. Bus. & Prof. Code §26050.2(h)² states that no due process is required in contexts such as the present conflict. There can be no question that §26050.2(h) cannot preempt the Federal or State constitutions.

Authorization to operate, and to continue operating if straightforward evolving regulatory requirements are met, is no different from the entitlement in any other professional or business license that might be nominally “renewable,” but belongs perpetually to the individual or business absent some egregious incurable fundamental violation. Vested property rights have value because there is confidence among the people that such rights will be protected by the government, not taken by the government without due process.

² “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 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 (commencing with Section 26040) of this division and Sections 26031 and 26058 shall not apply to licenses issued pursuant to this section.” Cal. Bus. & Prof. Code §26050.2(h), emphases added.

(2) U.S. 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.”

U.S. 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.” (*Board of Regents v. Roth* (1972) 408 U.S. 564, 577 (emphasis added.) Here, such an “understanding” stems from Cal. Bus. & Prof. Code § 26050.2(a) itself, which creates entitlements by issuing “provisional” licenses identical in every way to permanent (annual) licenses, save for their purported lack of due process protections asserted in subsections (c), (d), (e), and (h). It is subsection (i)³ that explicitly states that in all other respects the license types are identical.

Effective, January 1, 2019, the state legislature created, through Cal. Bus. & Prof. Code §26050.2, its “provisional” licensing system. Originally intended to last for only a year, it was then extended through 2021, and the legislature is now considering a bill to extend it through 2027, which would make for a full decade of temporary and provisional licensing. (Dec. of Anthony ¶ 30.) Cannabis legalization created a difficult regulatory conundrum: shut down an existing multi-billion dollar legacy medical-use industry of thousands of operators and take years to license and re-open it, or allow it to continue operating while simultaneously licensing it (building the jet plane of regulation while flying it, as it were). (Dec. of Anthony ¶ 30.) The §26050.2 system is the solution the legislature devised to that problem.

This is how SB 1459 that created §26050.2 (Stats. 2018, Chapter 857) justified its “urgency” status (emphases added):

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

³ “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. Cal. Bus. & Prof. Code § 26050.2(f).”

2 **The significant number of cultivation license applications pending** with local authorities
3 that do not have adequate resources to process these applications before the applicants'
4 temporary licenses expire on January 1, 2019, **threatens to create a major disruption in the**
5 **commercial cannabis marketplace.**

6 (Stats. 2018, Chapter 857, Section 4, emphases added.)

7 Expiration of the “temporary” licenses, by rendering almost the entire industry illegal, would have
8 collapsed the whole scheme. (Decl. of Anthony ¶ 30.)

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

11 “In order **to have a thriving and legal cannabis market in California,** it is necessary that this act
12 take effect immediately.”

13 (Stats. 2019, Chapter 40, Section 20, emphasis added.)

14 §26050.2(a) grants “the licensing authority” (in this case, BCC) discretion to *issue* provisional
15 licenses (or not). That was clearly necessary: without authorized licensed operators the entire \$3
16 Billion legal cannabis market might have instead operated underground as did many unlicensed
17 operators at that time and which still do today. (Dec. of Anthony ¶ 31.) Current estimates are that the
18 legal aboveground California cannabis industry has annual gross receipts of around \$3 Billion, while
19 the underground market is almost triple that at an estimated \$8.7 Billion. (Dec. of Anthony ¶ 32.)

20 There can be no legal marketplace of thousands of businesses without authorizing them to
21 legally engage in “commercial cannabis activity,” as the code defines it at Cal. Bus. & Prof. Code
22 §26001(k). They must be authorized, legal, and entitled to continue doing what they are doing—or
23 else “the immediate preservation of the public peace, health, or safety” is threatened (SB 1459 (Stats.
24 2018, Chapter 857, Section 4), *supra*), and California is in danger of having no “legal cannabis market”
25 (AB 97 (Stats. 2019, Chapter 40, Section 20, emphasis added.), *supra*).

26 That is the only logical way of understanding the provisional system created by SB 1459 and
27 extended by AB 97: it must be swift and sustainable, and it must authorize and license businesses to
28 operate legally and in compliance with all applicable regulations, or else face enforcement measures

coupled with due process protections, like any other licensed business, or else the system cannot work as intended and as empowered by Cal. Bus. & Prof. Code § 26050.2(a).

And that is the very nature of entitlement property interests: “they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.” Provisional licensees, including Petitioners, have property entitlements that constitutionally require procedural due process. *Board of Regents v. Roth* (1972) 408 U.S. 564, 577 (emphases added.)

(3) Business & Professions Code § 26050.2 is unconstitutional on its face, and as applied to Petitioners, because it purports to grant to the cannabis licensing authorities two irreconcilable powers: 1) the power of the agencies to exercise their discretion to issue “provisional” licenses that authorize licensees to engage in commercial cannabis activity; and 2) the power subsequently to revoke or suspend those entitlements in their “sole discretion” without notice and hearing.

In the BCC letter, the agency claims that its revocation is effective immediately, and that pursuant to BPC § 26050.2, Petitioners are “not entitled to a hearing or appeal of this decision.” (Dec. of Li ¶ 13, Ex. A.)

As argued above, BPC § 26050.2(a) creates the only possible system that can work in the circumstances as the legislature recognized in its stated findings of urgency and necessity. But the rest of Cal. Bus. & Prof. Code § 26050.2 purports to deny legally operating licensees the same procedural due process afforded other similar business license entitlements: notice and an opportunity to be heard before revocation. *Goldberg v. Kelly*, 397 U.S. 254, 263 n.8, 264 (1970). Under §26050.2, the government authorizes, licenses, entitles, and encourages businesses to operate in the legal aboveground industry to save it from “major disruption”—but it would prefer not to give them any due process rights. (Stats. 2018, Chapter 857, Section 4), *supra*.) That preference is impermissible under the Due Process Clauses of the Constitutions.

Both subsections (c) and (d) use the phrase “in its sole discretion” in authorizing a licensing agency to suspend or revoke the “provisional” licenses (subsection (d)), and to renew them until they issue or deny the licensee’s “annual” license (subsection (c)). That annual license is really a permanent license that the Bus. & Prof. Code, and the agencies in their regulations, concede is a property interest entitled to notice and hearing before deprivation. For those applicable due process procedures, *see*, Chapter 2 (commencing with Section 480) of Division 1.5 and Chapter 4 (commencing with Section 26040) of this division and Sections 26031 and 26058—all of the sections that §26050.2(h) purports to deny to provisional licenses. *See also*, the BCC Regulations Chapter 7, Enforcement, 16 California Code of Regulations 42 §§5800 *et seq.*

The only difference between a provisional license and an annual license is the purported denial of due process found in §26050.2 generally, and as it bluntly specifies in §26050.2(l) which reads in its entirety: “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.” A provisional licensee is fully authorized to engage in commercial cannabis activity—and of course is also required to follow the hundreds of pages of applicable statute and regulations. §26050.2(l).

Statutory authorization to act “in its sole discretion” does not authorize an agency to deprive any person of their property without due process of law. U.S. Const., XIV Am.; Cal. Const. Art. I, §7(a). In *Board of Regents v. Roth*, *supra*, the U.S. Supreme Court cited one of its earlier cases, *Goldsmith v. Bd. of Tax Appeals*, 270 U.S. 117 (1926), in which the U.S. Board of Tax Appeals’ rules allowed it to deny applicants admission to practice before it “in its discretion” and to likewise subsequently suspend or disbar admittees. In the context of the “discretionary” denial of an admission application, the *Goldsmith* decision says that the board’s discretionary power “must be construed to mean the exercise of a discretion to be exercised after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process.” *Board of Regents, supra*, at 577, n15.

Given that due process is required for the exercise of discretion to deny an initial admission, it is logically even more required for the revocation of a license issued and relied on, in Petitioners' case for almost 3 years with a \$5 million investment, and with 18 employees' families' livelihoods dependent upon it, as in Petitioners' case here. (Dec. of Li ¶ 17.)

And indeed, BCC's practice as to the renewal process has been to make it a simple and straightforward "rubberstamping," exactly as one would expect of a recognized entitlement. (Dec. of Anthony ¶ 33.) Typically, the annual renewal process takes about an hour online filling in the same basic information again and affirming that there have been no changes in operations. BCC then approves promptly and issues an invoice for the annual licensing fee (which is substantial). Once paid, the license is renewed as would be expected. The whole process takes a week or so, most of which is waiting time. (Dec. of Anthony ¶ 33.)

Inserting the word "sole" into the phrase "in its discretion" does not alter the Constitutions or the facts: the licensing authorities have issued 7,000 provisional licenses, including one to the Petitioners, with the clear understanding that the licensees would actually operate licensed businesses under them to further the government's purpose of bringing cannabis into control and regulation, and that they would rely on them by investing significant sums of money and by employing workers.

Petitioners, and all other provisional licensees, have a legitimate right to assume that barring any glaring unresolvable issues, their applications for "annual" (really permanent) licenses will be granted in due course, and that in the meantime, while waiting for the licensing authorities to process the 7,093 pending license applications (Dec. of Anthony ¶ 34), their provisional licenses will be renewed regularly in due course—as they were and have been. (Dec. of Anthony ¶ 34.)

If Respondents take issue with any provisional licensee's compliance with the statutes and regulations, they are free to take disciplinary action against them provided that they first provide notice and a hearing. Inserting the word "sole" into the statute does not defeat the due process clauses of the Constitutions.

On its face §26050.2(c) does not offend the Constitutions, unless “sole discretion” is interpreted to mean that Respondents after creating an entitlement by first exercising their discretion to issue a provisional license authorizing the activity—indistinguishable from a fully protected annual license save for its purported statutory deprivation of any due process protection—are then free to exercise their discretion again and revoke that license without due process of law. That reading does offend both Constitutions and is impermissible.

§26050.2(d) authorizes a licensing agency “in its sole discretion” to revoke or suspend the “provisional” licenses if it “determines the licensee failed to actively and diligently pursue requirements for the annual license.” The constitutional analysis is the same as that immediately above. And it is even clearer here that due process is not only required in context, but also contemplated by the plain language of the statute itself. The agency cannot “determine” this alleged failure, except through the “exercise of a discretion to be exercised after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process.” *Board of Regents, supra*, at 577, n15. This sub-section’s mandatory requirement of a determination *before* revocation legally implies the making of factual findings based on substantial evidence subject to administrative due process. *Ibid*. The conclusion must be the same, a reading of this sub-section that would allow revocation without due process is impermissible.

§26050.2(f), as noted in the analyses of §26050.2(c) and (d), above, explicitly provides that the provisional license is indistinguishable from a fully protected annual license save for its purported statutory deprivation of any due process protection. It states, *in toto*: “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.” (Cal. Bus. & Prof. Code§ 26050.2(f)). It is functionally the exact same license: the Business & Professions Code Division 10 Cannabis license to engage in commercial cannabis activity. The “provisional” licensees include approximately 7,100 of the 8,800 or so licensed business that currently make up (and have for over three years) the multi-billion dollar California cannabis

industry, representing that much in investment and in annual gross receipts, and employing many thousands of Californians. These licensed businesses cultivate, manufacture, test, distribute, and sell to the public, cannabis and cannabis products—strictly subject to hundreds of pages of administrative regulation.

It defies law and logic to assert that a governmental agency can issue a license identical to a slightly differently named license, for exactly the same activity under exactly the same regulations, for years on end, and yet one license has procedural due process protection and the other does not. Again, the plain language of the statute makes the case for due process, save for the initial phrase, “Except as specified in this section.” That phrase purports to deny due process through other subsections; it must be stricken from the statute as unconstitutional for the reasons given herein.

§26050.2(h) is the crux of the matter. And it is at least partially invalid, including under the facts presented here, as to purported revocation (same analysis for suspension) of a license granted and relied on. (The question of its constitutionality as regards “[r]efusal to issue” a provisional license, is a different issue than the one that concerns us here.)

§26050.2(h) is two sentences long. The first states that revocation or suspension of a provisional license “shall not entitle the applicant or licensee to a hearing or an appeal of the decision.” The second sentence specifies four BPC sections that shall not apply to provisional licenses—all related to due process.

The first BPC section excluded from application to provisional licensees is from Division 1.5 “Denial, Suspension and Revocation of Licenses,” Chapter 2 “Denial of Licenses” (commencing with §480). But notably §26050.2(h) does not specify the non-applicability of Div. 1.5, Chapter 3 “Suspension and Revocation of Licenses” which therefore still applies to provisional licenses. That is separate grounds for Petitioners right to notice and an appeal hearing, separate and apart from the unconstitutionality of the whole scheme to treat legal cannabis businesses as second-class citizens.

The other three excluded BPC sections are from Division 10 “Cannabis” itself: Chapter 4 “Appeals;” Chapter 3 “Enforcement,” §26031 (revocation process including notice and hearing); and Chapter 5 “Licensing” §26058 (appeals process after denial of license application—not relevant to the present matter).

Again, under the constitutional analysis given *supra* for sub-sections (c) and (d), to the extent that this sub-section (h) purports to allow deprivation of the entitlement in the provisional license through revocation (or suspension) without prior notice and hearing, it offends the due process clauses of the Constitutions and is impermissible.

The government cannot arbitrarily set rules for one industry that apply to no other industry. These licensed businesses and individuals who have staked time (literally, liberty) and treasure (property) in carrying out the state’s mandate to rescue the “the commercial cannabis marketplace” from “major disruption,” must have the entitlement that comes with that authorization and the appropriate due process rights. No businesses will invest capital in a system that gives them authorization and a license, lures them into detrimental reliance at grand scale, but then pulls the plug at its “discretion.” That cannot be the logical “understanding...that stem[s]” from the provisional licensing system. Rather, the logical understanding that stem[s]” from the provisional licensing system is that licensed legally operating cannabis businesses have the same measure of constitutional due process protection as everyone else like situated. *Board of Regents v. Roth* (1972) 408 U.S. 564, 577.

(4) Unlike the U.S. Constitution’s “entitlement” approach to determining the existence of a property interest, California Constitutional due process protections are broader and more nuanced, recognizing property and liberty interests even where the government has “discretionary” powers, through a 4-part balancing test that also recognizes a dignitary interest, under which Petitioners are clearly entitled to due process before revocation of their authorization and license to engage in commercial cannabis activity.

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

to the State Bar by the legislature in statute, similarly to that discretion facially apparent in Cal. Bus. & Prof. Code § 26050.2. The Court found that the California Constitution required that they:

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

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

The Court even mentioned, in contrast to federal law, that even an “expectancy is entitled to some modicum of due process protection.” (*Ibid.* at 564.) Under these standards, Petitioners property interest and due process rights are even more clear. The BCC on behalf of the state employed its “discretion” in a manner so general and vague as to fail to give notice even of what specific violations from what time period were the grounds for the revocation, let alone an opportunity to be heard and respond in even the most informal and settlement-oriented manner. Such slipshod practice does not pass muster under California law as detailed below.

The *Saleeby* Court also laid out the 4-part balancing test used not only to determine the type of due process required in each situation, but also before that, to determine if a property or liberty interest is implicated in the government action. (*Ibid.* at 565.) We examine each part, quoted from *Saleeby*, in turn below.

“(1) the private interest that will be affected by the official action”

The private interest affected by the BCC letter and forcible deprivation of the right to engage in cannabis economic activity has a monetary value of approximately \$20 Million dollars, the estimated market value of Harrens Labs before revocation. (Dec. of Li, ¶ 18.) 18 full-time employees’ livelihoods are at stake, as is Mr. Li’s personal and professional reputation, standing, his position, and his business interests. (Dec. of Li, ¶ 18.) The property interest at stake is highly significant in a number of dimensions. Petitioners meet this part of the *Saleeby* test and are entitled to due process under the California Constitution.

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

4 BCC’s procedures are opaque. A one-page letter of conclusory allegations was offered with a
5 blunt assertion that no due process appertained per the untested language of BPC § 26050.2. (BCC
6 letter, Ex. A to Dec. of Li at ¶ 13.) There being no due process “procedures used” whatsoever, any
7 additional “safeguards” would be hugely valuable. As it is, the risk of erroneous deprivation has zero
8 checks and balances on it. The allegations might be entirely arbitrary and capricious and there would
9 be no way to know, and if known, there would be no way to challenge capricious or inadvertent error
10 by government actors and agents.

11 BCC has a robust disciplinary and appeal hearing process with clear notice and hearing
12 requirements following the Administrative Procedures Act, and with a 5-member Cannabis Controls
13 Appeals Panel that responds to due process requests in enforcement issues with the annual licensees,
14 whose due process rights they recognize and provide for. If any modicum of that process were
15 available to Petitioners they would be vastly better off. If BCC would even communicate with them,
16 they are eager to find common ground and understand the agency’s concerns (or the concerns of its
17 investigators). (Dec. of Anthony, ¶ 35.) Petitioners meet this part of the *Saleeby* test and are entitled to
18 due process under the California Constitution.

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

22 For both Harrens Lab Inc., and for Mr. Li as an individual, this revocation has deep
23 wounding significance. (Dec. of Li, ¶ 19.) They are mystified as to what they did to deserve the swift
24 death sentence without notice or warning. (Dec. of Lee, ¶ 19.) Petitioners have been subjected to an
25 abrupt and egregious violation of the norms of fairness. Their public reputation is in ruins and their
26 treatment by BCC in this case has violated their dignitary interests in a substantial and demonstrable
27 way. Mr. Li is humiliated before his majority business partner and his employees. (Dec. of Li, ¶ 19.)
28

His dignity has been utterly disregarded by the agency in its callous, abusive, unilateral “revocation” without notice and hearing. Petitioners meet this part of the *Saleeby* test and are entitled to due process under the California Constitution.

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

The government has an interest in licensing and regulation—and enforcing regulations—and in successfully implementing the legal cannabis system on which the jury is still out. The underground market is still three times larger than the aboveground market. (Dec. of Anthony, ¶ 32.) The government function is critical, and Petitioners support it and wish to contribute to its success. This relationship can be collaborative; it need not be adversarial. As for fiscal and administrative burdens, BCC already has a whole division committed to enforcement, discipline, appeals, hearings, and due process, with many pages of specific regulation and of course the Administrative Procedures Act. See, Bus. & Prof. Code Chapter 2 (commencing with Section 480) of Division 1.5, Chapter 4 (commencing with Section 26040) of Division 10, and Sections 26031 and 26058. There is no additional burden on BCC in affording, and it is already well equipped to afford, Petitioners with reasonable notice and an appeal hearing. That is all that Petitioners ask: the basic level of respect and due process for a government-authorized-and-licensed professional organization with numerous scientific certifications and a track record of excellent service. Petitioners meet this part of the *Saleeby* test and are entitled to due process under the California Constitution.

Looking at the 4-part balancing test, it is clear that Harrens Lab Inc., and Ming Li as an individual, have both property and liberty interests at stake here, and under California law must be extended the basic elements of due process: notice and hearing prior to deprivation.

In the present matter, Petitioners have made a strong factual showing that they have property and liberty rights that they have been deprived of with neither compensation nor a shred of procedural due process. Quite the opposite.

2 The question before the court is not whether such a property right might be revoked in the
3 course of such due process, only whether due process is required. It is likely that Petitioners will
4 prevail on this question due to the extensive and unambiguous weight of law that the taking of a
5 property right by the government necessarily requires procedural due process under both the State
6 and Federal constitutions.

7 **c) The harm faced by Petitioners if the TRO is not granted greatly outweighs**
8 **any harm to Respondents.**

9 To satisfy the “likelihood of success on the merits” prong of the analysis, a plaintiff can
10 demonstrate that he is likely to succeed on the merits or alternatively, a protective order is also
11 “appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised
12 and the balance of hardships tips sharply in the plaintiff’s favor.” (Alliance for the Wild Rockies, 632
13 F.3d at 1134-35.)

14 The facts in this matter demonstrate a regulatory scheme that has faced significant delays on
15 the road to maturity. Factors external and internal to BCCs have resulted in the timeline of
16 provisional licensure to stretch for years beyond the original anticipated timeline. At some point in
17 time, fundamental questions of the constitutional protection of property start to exceed the
18 presumed legitimacy and authority of legislative acts. There can be little doubt that no legislature may
19 enact legislation in violation of the State or Federal Constitution. Petitioners present a legitimate
20 question of fact and law as to whether the State’s provisional license scheme has resulted, in fact, in
21 constitutionally protected property rights. This important question cannot be answered by a *pro forma*
22 assertion of legislative authority. Briefing and argument is required.

24 Petitioners, by their declaration filed in support hereof, have demonstrated that they have
25 spent over five million dollars on the development of their business over the last three years. (Dec. of
26 Li ¶ 16.) Further, Petitioner Ming Li, on his own personal knowledge, attests to the widespread
27 financial devastation that Petitioners are suffering since ceasing operations on February 4, 2021,
28

including, among other things, (1) the loss of all cannabis business revenue which last year amounted to some \$4 million dollars, (2) the inability to maintain positive cash flow resulting in bankruptcy, (3) the unknowable damage to Applicant's business reputation, brand, and goodwill, (4) the incidental economic damage to the sudden and unexpected termination of 18 full-time employees, and (5) the loss of business momentum. (Dec. of Li ¶ 17.) The level of irreparable injury that Petitioners are suffering cannot be overstated. Their business has been shut down and terminated after three years of licensed operation and significant expenditures of capital without due process. Case law strongly supports injunctive relief in such a circumstance. (Cohen v. Board of Supervisors (1985) 40 C3d 277).

Importantly, the City has made no allegations that implicate imminent harm to the public in the present case, and cannot allege "public harm" after three years of authorizing the business activity without raising such issues. This alone satisfies the analogues administrative mandate stay requirement pursuant to CCP 1094.5(g). On a balancing of the equities, it is proper and just to maintain the *status quo ante*, three years of authorized testing lab operation of a healthy business, until the important constitutional question posed in Petitioners' underlying writ is resolved.

d) Petitioners have no adequate remedy at law.

Injunctive relief is available when future pecuniary compensation would not provide adequate relief or it would be difficult to ascertain such damages. (Cal. Code Civ. Proc. § 526(a)(4)-(5); Dodge, Warren & Peters Ins. Servs. V. Riley (2003) 105 CA4th 1414). In the present case, it is unclear whether the legal remedy sought even provides Petitioners with an avenue to recover damages, and on this basis alone, injunctive relief is proper. Even if Petitioners were entitled to pecuniary relief, many of the elements of the harm they face, such as loss of long-term contracts and an entire highly trained workforce, are impossible to meaningfully quantify in advance. Even if the government ultimately had to pay the \$20 million market value of the business prior to the illegal revocation, Petitioners do not want sell their business. Nor has the government followed the proper procedures

to exercise eminent domain, condemn, appraise, and purchase the business at fair market value. On the basis that the harm faced is difficult or impossible to monetarily quantify, Petitioners are entitled to injunctive relief.

e) **An analysis of the public interest and balance of the equities demonstrates that risk of public harm is low (having never been alleged) while the risk of irreparable harm to Petitioners is high.**

Respondents have alleged no public harm at any point in the factual record. The BCC letter generally alleges, without any specific facts, details, dates, or circumstances, six general types of regulatory violations as grounds for revocation in a conclusory fashion. None of these include any allegation that Harrens Lab in any way threatens the public health and safety through alleged deficiencies in process or inaccurate testing protocols or results.

The alleged grounds for revocation include only the following, from the second paragraph of the three-paragraph BCC letter (Dec. of Li ¶ 20, Ex. A.) here numbered, listed, and with added emphases, all for ease of discernment, but otherwise quoted verbatim:

- [1. alleged] inability to take accurate representative **samples** of cannabis goods harvest batches;
- [2. alleged] inability to satisfy laboratory **transportation** and chain of custody requirements by using third-party courier services to ship cannabis goods samples;
- [3. alleged] failing to generate **shipping manifests** prior to transportation of cannabis goods;
- [4. alleged] transporting cannabis samples without affixing METRC identification **labels** to cannabis sample packaging;
- [5. alleged] making **premises modifications** without seeking prior Bureau approval; and
- [6. alleged] failing to run and maintain a **video** surveillance system.

None of these general allegations impugn the quality of Harrens Lab's science which actually serves the public interest by screening out contaminated products and offering accurate analyses of active components in the cannabis tested for consumer information, convenience, and protection.

Note that Harrens Lab refutes each of these allegations as either being false, too vague to be admitted or denied, previously cured, or easily cured if given specific details of violation actually occurring. (Dec. of Li ¶ 21.) And this refutation is not relevant to the immediate issue of whether there is any imminent harm to Respondents or the public in maintaining the *status quo ante* while the Court determines if Respondent must allow Petitioners an opportunity to have these issues heard by an impartial decision maker **prior to** revocation of their valuable license and the execution of the death sentence on their corporate business entity and their individual professional reputation, standing, position, and salary.

There is no defensible argument that allowing Petitioners to continue their operations, while their writ petition is properly heard and decided, poses any public harm as they have operated with a license for almost three years with no such allegation.

C. Applicants are entitled to emergency relief under the circumstances as they made an affirmative factual showing that irreparable harm and immediate danger exists for them if emergency relief is not granted.

California Rule of Court § 3.1202 states in pertinent part:

“...An applicant must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief *ex parte*.”

As set forth in the argument section hereof, Applicant has identified that there is a legitimate question of law as to whether Applicant is constitutionally entitled to a hearing before the BCC revokes their license to operate their cannabis testing laboratory. Whether Petitioners has a constitutionally protected property right in their state-issued cannabis business license is a question of law and fact properly decided within the context of Applicant’s underlying writ petition. Until such a time as those questions are resolved by a court of competent jurisdiction, Applicant is suffering immeasurable economic harm in being shut down by Respondent, including these forms of irreparable harm: (1) the loss of all cannabis business revenue which last year amounted to some \$4

million dollars, (2) the inability to maintain positive cash flow resulting in bankruptcy, (3) the unknowable damage to Applicant's business reputation, brand, and goodwill, (4) the incidental economic damage to the potential sudden and unexpected termination of 18 full-time employees, and (5) the loss of business momentum. (Dec. of Li, ¶ 17.) Further, these harms have been suffered since February 4—for over two weeks, a significant period of business cessation with no end in sight. With the threat of insolvency looming immediately over their shuttered testing laboratory business, Applicant cannot possibly obtain appropriate relief on normal court timelines. In demonstrating the above in this application and the declarations in support thereof, Applicant has made an appropriate affirmative factual showing, as required by the Rules of Court, to obtain the emergency relief sought herein.

IV. CONCLUSION

For all the reasons given herein, Petitioners pray that the Court issue a temporary protective order that:

1. Respondents BUREAU OF CANNABIS CONTROL ("BCC") and TAMARA COLSON ("Colson"), in her official capacity as Acting Chief of BCC, be prohibited from acting upon Respondents' "revocation" letter issued on February 4, 2021, purporting to revoke Petitioners' three-year-old commercial cannabis license to lawfully operate a cannabis testing laboratory, without notice or an opportunity to be heard, either before or after its alleged immediate effectiveness, and
2. Respondents be ordered to reinstate, and recognize the ongoing validity of the at-issue license; and
3. The Court issue an order to show cause, with a hearing date and a briefing schedule, as to why a prohibitory preliminary injunction preserving the *status quo ante* should not be issued against Respondents until resolution of Petitioners' underlying writ petition.

///.

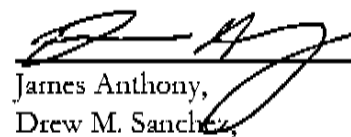
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4. Alternatively, if the Court does not grant emergency relief as requested in 1-3 above,
Petitioners request that the Court issue an order shortening time on Petitioners motion for
preliminary injunction enjoining Respondents from acting on the purported revocation of the BCC
license.

Respectfully submitted,

Date: February 25, 2021

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