Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114
619.954.4447
IndaGroDarryl@gmail.com

March 11, 2021

Mr. James Anthony
Anthony Law Group
3542 Fruitvale Ave., #224
Oakland, CA 94602
510.842.3553
James@anthonylaw.group

Mr. Anthony;

My name is Darryl Cotton and I am a businessman, commercial property owner, medical cannabis patient and a patient's rights activist located in San Diego. It was because of my having read the court filings in your representation of the Petitioners in HARRENS LAB and MING LI (Harrens) v BUREAU OF CANNABIS CONTROL and TAMARA COLSON (BCC) that I made the decision to reach out to you.

In addition to what I have read in those filings, I have recently discovered things about the licensing process and the lack of environmental controls and protections within these laws that while at first might not seem relevant to your matter, I think when you consider how these issues affect all provisional licensees it will make sense. The information I will share with you has taken over 4 years to mature.

When I read your case, I was astonished that the BCC would take the position that as a provisional licensee, Harrens would not be afforded due process during their license revocation process. It made me think as to what the bigger picture might be, and things began to make sense to me.

1.1) 02/26/21: HARRENS v BCC - PETITION FOR WRIT OF MANDATE
1.2) 02/26/21: DECLARATION OF ATTORNEY JAMES ANTHONY

Within your Declaration, beginning on page 3, para 11 and ending on page 5, para 21 you cite a number of important issues that would help explain the situation that a provisional licensee finds themselves in today. You cite statistics from October 2020 that of the 8,754 licenses the BCC has granted, only 1,061 of them are considered "permanent". This means that the position the BCC is taking in the Harrens case would be one which the BCC might take in any of the other 7,093 and growing numbers of provisional licenses that have, or will be, issuing. That of course is a real problem because regardless of how the Harrens case is decided, it shows that the BCC does not fundamentally believe that due process should be afforded to a provisional licensee.

I think your work is exceptional. If I had to critique anything that I have read of the Harrens case it would be in your Declaration. I'm not so willing to grant the parallel paths to regulatory success which, as you describe it, joins private industry with those of the BCC. I do not believe that the obstacles we all faced in COVID, or were enhanced by creating a post Prop 64 regulatory framework which required the liberal issuance of temporary and provisional licenses as a response to reducing the unlicensed cannabis threat to this newly regulated industry. When you read my

last page in this letter you will see that the promise of license revocation was alive and well even back when the authors originally drafted Prop 64.

Based on what we now know, and from cases like yours, there is no sound business reason to invest the time, money and effort into a licensing venture that can be revoked without cause or due process. Aside from that slight difference of opinion I would like to sincerely congratulate you, the other attorneys and your staff who worked on this matter in which the court granted you the order which would allow Harrens to remain operational while awaiting the BCC's response. That was great news! It means you have a fighting chance to defend this type of unilateral and unlawful decision making by the BCC.

2) 03/04/21: ORDER ON TEMPORARY STAY AND PRELIMINARY INJUNCTION

Based on what I see in happening in the Harrens case as well what I've come to discover are now thousands of provisional licenses cases that have, among other issues, California Environmental Quality Act (CEQA) requirements, I don't believe the state has any real incentive to convert these provisional licensees into permanent ones. The numbers you cite clearly show that. It seems clear that their agenda is one that maintains overreaching control of the industry at all costs, by passing legislation that simply extends the provisional deadline by yet another year all while denying the licensee their rights. Kicking the can down the road if you will.

3) AB 97 - Extends the BCC Provisional License Deadline to January 1, 2022

It's important to note that AB 95 is not only giving the provisional licensee an extension of time, it also informs them that they need to be enrolled in the CEQA submittal and approval process for their specific project to remain provisionally compliant. This is important because when the voters approved Prop 64, one of the major attractions was the net positive effect it claimed it would have on the environment and more specifically, controlling the amount of unaccounted water which was being used by the unregulated cannabis market and a key component being offered to the voters.

4) PROP 64 SECTION 2: FINDINGS AND DECLARATIONS (A)(F)-WATER RESOURCES

The passage of Prop 64 signaled that the cannabis industry had to be Controlled, Taxed and Regulated. It had to attract honest mainstream businesspeople. It had to become like any other reputable business and under Prop 64 the state had the plan to get us there. CEQA compliance would seem like a practical step in achieving those goals. Except, as it is currently being run, it is not. Instead, it is an absolute threat to the provisional licensees who will one day find that they likely cannot comply with the CEQA standards and will be forced to go back to whatever it was they were doing before they were licensed.

In the meantime, as provisional licenses for commercial cultivation projects continue to explode all over the state, those who live in these new corporate cannabis communities and wish to express their frustration over having these new ventures populate their lives feel left out. Unheard. Many will appeal. Many will mount campaigns. They are rarely ever effective at turning back the proposed development. The local and state agencies will, through force and taxation, get their money. What our governments have not ACTUALLY AND ACCURATELY accounted for is the amount of water these projects require to operate. And that is where the real problem for the state and local governments, our communities the provisional licensee and each of us begins.

How much of this is the BCC already aware of? In my opinion, all of it! The BCC cannot afford to lose the Harrens case because if at some point in the future they need to revoke licenses to lower the impact licensed commercial cannabis is having on state water resources they can do so without having to engage in lengthy court battles that allow the licensee to stay in business while the matter is being litigated. **The BCC needs this win.** To lose this case brings everything they stand for in regulated cannabis into question and open debate.

So why did I take the time to write all this? Because I am in a unique position, having battled a number of parties, including the City of San Diego, in a civil case involving an illegal contract, a sham lawsuit and licensing scheme that would award certain "favored" parties a cannabis license over others. These favored actors got to see their license applications handled in a "favored" fashion. One that when parties would compete for a license that would allow land use separation requirements to grant the "favored" applicant, the license by using every trick in the book to do so.

In my case, while there were numerous activities of this type, I will concentrate on CEQA and what was/is mistakenly considered a local government's "discretion" to either require or not require, a CEQA application need be submitted to the reviewing agency. What should be noted here is that there is a CA Supreme Court ruling that clarified when and how CEQA requirements could be exempted and when it came to cannabis related licensing applications, they were considered projects that could not be exempted. These are not discretionary projects where CEQA can be waived! Once again, the BCC is simply kicking the can down the road. Year after year.

6) 08/19/19: UNION OF MEDICAL CANNABIS PATIENTS v CITY OF SAN DIEGO

What the next link will show you is how "categorically exempt" cannabis CEQA applications are being used by local governments as a tool to give one party favoritism over another by simply requiring a CEQA be submitted by one competing license property owner and not the other. I know this matter well as it is evidence in my current legal action. Sadly, these types of activities are more common than not and are not limited to just a City of San Diego Development Services Department although from my perspective they are particularly egregious in their use of this technique.

7) Comparing CEQA in Competing City of San Diego Cannabis License Applications

So, what is CEQA and why is it so important to have that conversation as it pertains to your case, those of all the other provisional licensees and every person who lives in CA that might eat food or need water? It's because we ALL need water and what the BCC is doing in conjunction with the state judiciary, as well as state and local licensing agencies, is criminal in its intent. State and local governments are awarding cannabis licenses without the proper data to confirm these projects will not take more water than our resources allow.

Now that we are well into the evolution of Prop 64 we all can see that our landscapes and our environment is changing dramatically with the influx of larger and more commercialized production of 'recreational", for-profit cannabis. Without legitimate CEQA protections we will not recover what will be lost as these projects are left to develop unchecked. Here is an example of just one of many commercial cannabis cultivation projects that are currently under consideration.

8) Lost Coast Outpost: The Rolling Meadow Ranch Project and Appeal

So are these legitimate CEQA protections? The vast majority of these projects are approved even after appeal. It has been my experience that even when there are community complaints and evidence of their own local government laws being broken by, among other things, setbacks from parks, schools and childcare not being adhered to, these projects will be approved even after the kabuki theater, that is the appeal process, has been completed. It appears that the appeal process is a foregone conclusion that eventually awards the licensee while giving opponents the mistaken belief that they would had a real degree of input into the outcome. They do not.

9) My Story of Land Use Setbacks: What Really Happens at a License Appeal

Question: This sounds like a localized problem. Does it affect us across the state?

Answer: These are most definitely statewide issues. Had it not been for my having been in state court over these cannabis related matters that stemmed from a sham lawsuit, one that has now ended up in federal court, whereby I represent myself as an in forma pauperis, pro se plaintiff litigant, **I can assure you, I would not have been paying attention to any of this.** The problems I've uncovered are systemic throughout the state and local government, with the very real effects to be felt in our civil, antitrust and environmental rights and laws.

10) 02/09/18: COTTON v CITY OF SAN DIEGO ET AL - COMPLAINT

While the last few sections have given you some background about me and my case I would like you to know that after over 4 years and having had 12 state or federal judges touch my case I still await justice. In April I will be providing opposition to the defendants MOTIONS TO DISMISS but as you can see by my last opposition before the court is a very simple question of law and that is; can the courts be used to enforce an illegal contract? There has now been a total of eight 12(b)(6) MTD's filed in this matter. My oppositions to them all will be similar in substance. I will not go quietly into the night. **This is a basic matter of contract law! Answer the question!**

11) 01/19/21: COTTON'S OPPOSITION TO JUDGE WOHLFEIL'S MTD/RJN's

All this information may appear unnecessary, but I would like you to really understand what it is I'm fighting for and what those tens of thousands of other affected parties have been subjected to in this Post Prop 64 licensing process. Prop 64 is an illegal contract with the voters based on numerous lies but that included one **very telling warning.** One that you and all licensees, regardless of their BCC status, should be painfully aware of by now.

12) Prop 64: Defining "No Positive Conflict" and "Unreasonably Impracticable"

Is it a result of not having read Prop 64 that attorneys believed this would be progressive cannabis law or were there other motives in their endorsement? Law that with its passing would not negatively impact the medical cannabis patient or the environment? Were we to believe their assurances then or those being made now? Would these same attorneys have worked for years to pass the BAR only to be told that they may only qualify for a "provisional BAR card" as the wait to be given a permanent card was delayed due to the threat of COVID, unlicensed lawyers or some other such nonsense? Of course not! Where are all those lawyers when it comes to countermanding the provisional licensing efforts of a state agency gone wild with abuse of process

and the effects that their actions are having and will continue to have, on our current and future generations? **They should all be banging on that courtroom table with you!**

13) Friends of Prop 64: We are Expert Attorneys and we say VOTE FOR 64!!!

It took time after the passage of Prop 64 but now that the evidence of their actions is on full display here, those actions can no longer be ignored. And the most likely recovery to the mess all the Canna-Lawyers and lobbyists have made of this will be through plaintiff environmental law specialists. Those who see what I'm about to share may be the best tool to recover and correct a course gone wrong through either incompetence, ignorance, overwhelming work, lack of leadership or what I suspect is an orchestrated effort to monopolize this industry by destroying others. If that does turn out to be the case, you should be seeing evidence of that whereby the BCC will prevail in the Harrens case.

Of course, this is coming entirely from my perspective. A perspective that starts with my protesting in front of the state and federal courthouses and continues to my having been paying close attention to the cannabis licensing processes as it relates to CEQA at both the state/county and local government levels.

14) Judges Protecting Judges: A Protest Presentation

What follows is a list of all of the 58 counties in CA that give the total number of CEQA permits the state has on record, beginning with January 1, 2017 thru March 8, 2021. As you will see, each year is isolated by county and the number of CEQA permits that made it to the state CEQAnet database for that year. By clicking the year in that county's cell on the following spreadsheet, you will be given that total CEQA count for that period.

15) All CA Counties CEQA Totals from 01/01/17 thru 03/08/21

While I intended on digging into other county totals before I sent this letter to you, I simply have not had the money, time or other resources to have done so. At least not yet. What I can tell you is that I did make the effort to dig into San Luis Obispo's county cannabis cultivation licensing program, I did so only to discover it was a mess. At least from what can be seen from public records. And by that, I mean comparing the following SLO county datebase:

16) San Luis Obispo County Cannabis Project Database Record

To one that I created. One that allowed me to compile data to confirm that water rights issues were being protected in this process. Now this spreadsheet will take some time to get through but the top-down view is this. Within the spreadsheet you will find yellow cells with hyperlinks that will take you to SLO county project's that have been approved or accepted with records. Having these records let me do two things. It allowed me to compile all the records that the county had publicly available, which led to projects being approved based on the water demands the applicant provided. What I found is that the reviewing agencies grant their licenses based on a wildly fluctuating set water consumption values that they accepted from the applicant. In no case did I see any suggestion that the amount of water being stated on an ANNUAL ACRE-FEET PER YEAR (AFY) was an issue for the reviewing authority. Ever.

17) Comparative Analysis of SLO County with State Records re Water Consumption Values

As can be seen on the far-right percentage columns, the same, like kind projects, would come into submittal review where their own valuations as a percentage factor would vary wildly. This, in and of itself, is inexplicable, but in addition to that, fundamental information would be missing, multiple applications would exist on the same property and regardless of the deficiencies, the pending applications would still be approved. Having been a developer and working through these processes, I found this to be astonishing and unless some type of pay to play favoritism exists, completely without explanation.

I then went into my spreadsheet values by using the applicant's numbers they were providing in their submittal documents for annual water use and found them, as a 30 year cannabis farmer, to be unrealistically low. The obvious incentive to the applicant being to submit low numbers so that their license would be approved not denied. What I would ask anyone reading this to, is simply click one of the hyperlinks in one of the left column cells which would take you to a specific project where county and state CEQA records were available. The values I use in the KNOWN PROJECTS where public records were available showed that the **understated value of just the 33 KNOWN PROJECTS amounted to 315.33 AFY!!!** And this is only on the projects that were approved or in process where the records and Mitigated Negative Declarations (MND) were supplied by the applicant. **THAT NUMBER DOES NOT INCLUDE, THAT BY THE COUNTY'S OWN SPREADSHEET, SHOWS 29 PROJECTS HAVING BEEN APPROVED WHERE WE HAVE NO IDEA WHAT THE IMPACT THOSE FARMS WILL ULTIMATELY HAVE ON THIS REGIONS WATER RESOURCES WILL BE!!! THERE ARE NO RECORDS ON THE STATE CEQA WEBSITE!!! IN OTHER WORDS THAT UNDERSTATED 315.33 AFY MAY BE EASILY DOUBLE THAT AND SLO COUNTY IS ONLY ONE OF THE 58 COUNTIES I REVIEWED FOR COMMERCIAL CANNABIS CULTIVATION IN THIS STATE!**

I now know of hundreds of projects that avoided CEQA around the state and the overall impact to our states water resources and environmental needs may be permanently at risk unless we act to undo the damages of a corrupt licensing system. It will only take the first drought to pit farmer against farmer and industry against industry to maintain enough water to meet their needs and the demands of those we must find a way to feed when there is not enough water to do so. And the state has no idea. These state agencies are too busy fighting to revoke Harrens license then to worry about where the water is going to come from to curtail feeding the widespread corruption and incompetence that has been spawned with the passage of Prop 64.

This is not just my fight anymore. It's yours too. I pray you succeed in your state court matter, but I have very little hope that will happen because from what I've seen, the state courts are influenced deeply by these kind of policy decisions. They are not likely to get in the way of that. In fact, if you read SB 94 Section 28 para 26045 (a-f) it states in part:

> (a) No court of this state, except the Supreme Court and the courts of appeal to the extent specified in this chapter, shall have jurisdiction to review, affirm, reverse, correct, or annul any order, rule, or decision of a licensing authority or to suspend, stay, or delay the operation or execution thereof, or to restrain, enjoin, or interfere with a licensing authority in the performance of its duties, but a writ of mandate shall lie from the Supreme Court or the courts of appeal in any proper case.

Why the BCC has not yet fallen on this jurisdictional argument baffles me. As a licensee your client is subject to the language contained in SB 94. Due process for licensees ended a long time ago.

17) SB 94: Section 28 para 26045 (a-f)

There are those of us, who lacking the proper state court venue to fight these constitutionally protected issues, have taken our fight to the federal courts. For those cases I would refer you not only to mine but also the related case in;

18.1) 07/09/20: FLORES V AUSTIN - FIRST AMENDED COMPLAINT

And then on to unrelated federal cases such as;

18.2) 09/03/20: BORGESS v COUNTY OF MENDOCINO - FIRST AMENDED COMPLAINT

18.3) 09/23/20: RONDON v COUNTY OF MENDOCINO

18.4) 06/22/20: USA v HUIZAR - LA CITY COUNCILMAN IN PAY TO PLAY SCANDAL

18.5) 05/21/20: USA v ROMERO - CALEXICO MAYOR IN PAY TO PLAY SCANDAL

While you consider the implications of what I've just shared with you, I would also like you to consider that the entire for-profit "recreational" cannabis industry in CA licensing scheme that requires us to break higher federal law as defined under the Controlled Substances Act. Under the Supremacy Clause within the Doctrine of Preemption, we would not survive a conflict with federal law unless we argued we were operating within our higher international obligations as defined under the United Nations Single Convention on Narcotics, (UNSCON) Article 49 para 2(f) which only allows our international controls of cannabis to be for **medical, scientific or research purposes.** What the State of CA is doing is forcing us to violate not only higher federal but higher international law as well! Why have cannabis laws at all if you can choose which ones you would follow and which ones you choose not to? When considering federal and international law, that is precisely what the State of California has done.

19.1) United Nations Single Convention of Narcotics Article 49 Para 2(f)

Which was further amended to reenforce our national cannabis policies to maintain the strict international control as agreed to at United Nations Commission on Narcotic Drugs (UN-CND) held in Vienna on December 4, 2020 that again expressly forbid the member nations to engage in recreational, for-profit cannabis activities.

19.2) 12/02/20: UN-CND International Cannabis Policy Press Release

19.3) 12/04/20: USA to UN-CND Position Paper on International Cannabis Law and Regulation

19.4) 10/07/03: USA Patent on Cannabinoids as an Antioxidant and Neuroprotectant

As we are in the fight for our lives when it comes to protecting medical cannabis law and regulation in this state, I would ask that you realize that your arguments and the final decision in your state case will predicate things to come. Do not feel that should a loss in state court occur I believe it is the end. I believe it portends much bigger things to come in federal court as the conspiracy to deny your client their civil rights under 42 U.S.C. § 1983 certainly exist, there is also a myriad of other parties that have had their civil rights violated under these licensing schemes.

How do we correct the course? Well, the first thing is to insist that all licensed cannabis farms have their water metered in real time with ultrasonic flow meters. Why are we ALL guessing what

that actual demand is? Why is it not mandatory that, like our security plans where the video is streamed to the BCC, or that that our plants must be tagged so that every last gram of potential weight is accounted for tax purposes that CEQA the CDFW and the CDFA are NOT INSISTING on metering this water? There are so many reasons to this that it boggles my mind this is not a mandatory condition of licensing. It could also aid the state with METRC weights which could be tallied, that would tie total statewide revenues to the water that was consumed during those processes? Why isn't this the metering of these projects water consumption mandatory? I'll tell you why. They do not want to know. They KNOW water is a finite resource and they are waiting for the first drought to hit where this will become the foremost issue on everyone's "hit list response" of cannabis cultivators who must be then shut down as they are bad for the environment! The provisional licensee, who is not on some "favored list" will be first to go.

These smart water meters cost around $1,000 each and they are NOT some kind of new technology the water boards, and these other local and state agencies would know nothing about. They not only should be mandatory, but the smart cannabis cultivator would be wise to already have them installed and insist that the state require these meters on ALL commercial agricultural farms.

20.1) Diehl Smart Water Metering Technologies

20.2) Badger Smart Water Metering Analytics

And please don't take my word for any of this. Instead take the words of the language contained within Prop 64 as previously linked in para 4 which states the license will be revoked for not demonstrating they are in full compliance with "applicable water usage laws"! It's no mystery what they intend on doing. It should come as no surprise when they do it.

> F. Currently, illegal marijuana growers steal or divert millions of gallons of water without any accountability. The Adult Use of Marijuana Act will create strict environmental regulations to ensure that the marijuana is grown efficiently and legally, to regulate the use of pesticides, to prevent wasting water, and to minimize water usage. The Adult Use of Marijuana Act will crack down on the illegal use of water and punish bad actors, while providing funds to restore lands that have been damaged by illegal marijuana grows. If a business does not demonstrate they are in full compliance with the applicable water usage and environmental laws, they will have their license revoked.

I have ideas on how to undo the damage that stems from Prop 64 but first things first. We all need to see how the Harrens case is decided. If, at some point, there is enough momentum to correct the good ship cannabis's course we can. I believe it begins by hitting the reset button on what we are currently engaged in, which in my opinion, the most straightforward approach, would be by a court ordered TRO and jury trial to follow. We are not going to undo 64 by producing another initiative to replace it nor by continuing to violate higher laws. What 64 has done to us has been predicated on a lie and can never be reconciled. There are much better paths going forward.

Thank you for taking the time to consider my thoughts. I would like to offer you, all those at Anthony Law Group and Mr. Li, my very best wishes as you navigate through these difficult and challenging times.

Darryl Cotton