

NO FEE PURSUANT
TO GOVERNMENT
CODE SECTION 6103

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12 CENTRAL DIVISION

14 **DARRYL COTTON, an individual,**
15
16 Plaintiff and Petitioner,
17
18 **v.**
19
20 **STATE OF CALIFORNIA, a public entity,**
ROBERT BONTA, an individual acting
under color of law; and DOES 1 through
200, inclusive,
21
22 Defendants and Respondents.

Case No. 37-2021-00053551-CU-WM-CTL

**DEFENDANTS AND RESPONDENTS'
NOTICE OF DEMURRER AND
DEMURRER TO PETITION TO
PREEMPTORY WRIT OF MANDATE
AND COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: April 29, 2022
Time: 10:30 a.m.
Dept: C-64
Judge: The Honorable John S. Meyer
Trial Date:
Action Filed: December 22, 2021

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Respondents' motion is based on this notice, the demurrer, the supporting memorandum of points and authorities, the Declaration of Deputy Attorney General Ethan Turner, the concurrently filed Request for Judicial Notice, all pleadings and papers on file, and such other matters as may be presented in connection with the hearing on the motion.

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1 4. The allegations supporting both of the causes of action for writ of mandamus and
2 complaint for injunctive relief are fatally uncertain, ambiguous, and unintelligible because it is
3 unclear how any act or omission of the Respondents has had any effect upon the Petitioner.
4 Additionally, it cannot be determined from the face of the complaint what, if any duty has been
5 breached, whether there has been any concrete or particularized injury, or any feasible remedy.
6 (Code Civ. Proc. § 430.10, subd. (f).)

7 WHEREFORE, the State of California and Attorney General Rob Bonta move the Court for
8 an order sustaining the demurrer to the Petition, without leave to amend, for an order of dismissal,
9 and for such other relief as the Court may deem proper.

10 Dated: February 28, 2022

Respectfully submitted,

11 ROB BONTA
12 Attorney General of California
13 HARINDER K. KAPUR
14 Senior Assistant Attorney General
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1 *Wellness Center, Inc. v City of Agoura Hills* (2013) 214 Cal.App.4th 1534, 1554; Health & Saf.
2 Code, § 11362.5.)

3 In 2004, Senate Bill 420, the Medical Marijuana Program Act (MMPA), was signed into
4 law. (Sen. Bill No. 420 (2003-2004 Reg. Sess.)) The stated purpose of the bill was to “promote
5 uniform and consistent application of the act among the counties within the state.” (*Id.* at § 1.)
6 The MMPA developed, inter-alia, a state-directed program for the issuance of identification cards
7 to qualifying medicinal cannabis patients, and required the Attorney General to develop and adopt
8 appropriate guidelines to ensure the security and non-diversion of cannabis grown for medicinal
9 use by patients qualified under the Compassionate Use Act of 1996. (Health & Saf. Code,
10 § 11362.71, et seq.)

11 In 2015, the Legislature passed the Medical Marijuana Regulation and Safety Act,
12 implementing a statewide regulatory program for commercial medicinal marijuana activities.
13 (Assem. Bill No. 243 (2015-2016 Reg. Sess.) § 1; Assem. Bill No. 266 (2015-2016 Reg. Sess.) §
14 1; Sen. Bill No. 643 (2015-2016 Reg. Sess.) § 1.) The program was quickly renamed the Medical
15 *Cannabis* Regulation and Safety Act (MCRSA) (Sen. Bill No. 837 (2015-2016 Reg. Sess.)
16 MCRSA specifically provided that “[N]o person shall engage in commercial cannabis activity
17 without possessing both a state license and a local permit license or other authorization.” (Former
18 Bus. & Prof. Code, § 19320, added by Stats, 2015, ch. 689, and repealed by Stats. 2017, ch. 27, §
19 2.)

20 In 2016, the people of California, through the initiative process, voted to legalize and
21 regulate the adult-use of cannabis through the passage of Proposition 64. (Respondents’ RJN, Ex
22 A [2016 Complete Statement of Vote, p. 74-76].) These sweeping changes to California law were
23 intended to “establish a comprehensive system to legalize, control and regulate the cultivation,
24 processing, manufacture, distribution, testing, and sale of non-medical marijuana.” (Respondents’
25 RJN, Ex. B [Ballot Pamp., Primary Elec. (Nov. 8, 2016) text of Prop. 64, p. 179].)

26 MCRSA and Proposition 64 were two separate regulatory schemes that were consolidated
27 into the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) (Sen. Bill
28

1 No. 94 (2017-2018 Reg. Sess.) § 4.) MAUCRSA explicitly recognized that both medicinal and
2 adult-use cannabis was illegal under federal law: “Although California has chosen to legalize the
3 cultivation, distribution, and use of cannabis, it remains an illegal Schedule I controlled substance
4 under federal law.” (Sen. Bill No. 94 (2017-2018 Reg. Sess.) § 1, subd. (d); RJN, Exhibit C, p.
5 15.)

6 STANDARD ON DEMURRER

7 Respondents may demur to the Petition for Writ of Mandate to test its legal sufficiency.
8 (*SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1051). “A
9 demurrer tests the legal sufficiency of factual allegations in a complaint.” (*Chapman v. Skype Inc.*
10 (2013) 220 Cal.App.4th 217, 225.) “To properly state a cause of action, and as pertinent here, the
11 operative complaint must sufficiently allege (1) every element of [that] cause of action and (2) the
12 plaintiff’s standing to sue.” (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125; internal
13 citations omitted.) Mere recitals, references to or allegations of material facts which are left to
14 surmise are subject to a special demurrer for uncertainty. (*Bernstein v. Piller* (1950) 98 Cal. App.
15 2d 441, 444.) Demurrer is also an appropriate response to a petition for writ of mandate that fails
16 to state a sufficient claim for mandamus relief. (Code Civ. Proc., § 1089; *Larson v. Redondo*
17 *Beach* (1972) 27 Cal.App.3d 332, 338 [affirming demurrer to writ of mandate petition that failed
18 to show clear duty existed].) When it is clear under substantive law that no liability exists, a court
19 should sustain a demurrer without leave to amend; a petitioner must show that amendment would
20 be fruitful. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68
21 Cal.App.4th 445, 459-460.)

22 ARGUMENT

23 I. PETITIONER HAS NO STANDING

24 Petitioner cannot demonstrate that he has any beneficial interest that would be served, or
25 any injury that would be redressed, by the Court’s review of the questions raised in the Petition.
26 While Petitioner has offered his legal opinion that MAUCRSA is “in direct positive conflict with
27 both the [Controlled Substances Act] and [United Nations Single Convention on Narcotic
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1 Drugs]” (Petition at p. 19:5-6), he has not alleged anywhere in his pleading that the purported
2 unconstitutional character of MAUCRSA, has threatened any of his legal rights or directly caused
3 any injury.

4 “When a party asserts a statute is unconstitutional, standing is not established merely
5 because the party has been impacted by the statutory scheme to which the assertedly
6 unconstitutional statute belongs. Instead, the courts have stated that ‘[a]t a minimum,
7 standing means a party must ‘show that he personally has suffered some actual or
8 threatened injury as a result of the putatively illegal conduct of the defendant,’ . . . [I]t
9 is well-settled law that the courts will not give their consideration to questions as to
the constitutionality of a statute unless such consideration is necessary to the
determination of a real and vital controversy between the litigants in the particular
case before it.” (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th
798, 814; internal citations omitted.)

10 Clearly, neither the alleged impact of the regulatory scheme on Petitioner’s experience as a
11 consumer of medicinal cannabis or on his aspirations to cultivate cannabis as his vocation, are
12 sufficient to confer standing on the Petitioner.

13 **A. There is No Injury and No Beneficial Interest Implicated**

14 In his effort to establish standing and jurisdiction, Petitioner alleges: 1) Respondents’
15 actions have violated Petitioner’s Constitutional protections “. . .under *Article I* of *California’s*
16 *Constitution*, and the *First, Fourth, Fifth, Sixth, Eighth* and *Fourteenth Amendments* to the
17 *Constitution of the United States of America*” (Petition at p. 3:20-23); and, 2) that the actions of
18 the Respondents have caused personal injury to his “financial well-being, physical health,
19 interpersonal relationships[,] and mental stability.” (Petition at p. 6:24-26.) However, Petitioner
20 makes no colorable claim regarding violations of his constitutional rights and the petition is silent
21 as to how Petitioner’s personal injuries and monetary damages resulted from the alleged
22 preemptive conflict between MAUCRSA and the federal Controlled Substances Act (21 USC
23 § 801 et seq.) (CSA).

24 **1. Alleged Violation of Petitioner’s Constitutional Rights**

25 Petitioner’s conclusion that any rights protected under the First, Sixth, and Eighth
26 Amendments to the Federal Constitution are implicated by the existence of MAUCRSA is not
27 supported by any allegations in the Petition. Regarding his rights under the Fifth Amendment,
28 Petitioner states that he “**must** waive his *Fifth Amendment* protections against involuntary self-

1 incrimination to obtain the STATE license.” (Petition at p. 8:14-15, emphasis in the original.)
2 Additionally, Petitioner argues that cannabis collectives are “rightfully exempt from sales tax”
3 and requiring payment of taxes on cannabis transactions also violates the “federal 5th amendment
4 protections of the PLAINTIFF and every member of that collective.” (Petition at p. 9:27-28.)
5 Even if this case did involve members of a collective challenging cannabis taxes imposed by the
6 voters, which it does not, the Fifth Amendment is inapplicable. No authority supports Petitioner’s
7 contention that voluntarily submitting an application or paying taxes on activity that is federally
8 illegal, amounts to a violation his Fifth Amendment rights.

9 Petitioner erroneously relies on *Feinberg v. Commissioner of Internal Revenue*, (2019) 916
10 F.3d 1330 (“*Feinberg*”), to support his claims. In *Feinberg*, the petitioners refused to provide
11 evidence that the Internal Revenue Service’s (IRS) rejection of their business expense deductions
12 was erroneous. (*Id.* at p. 1334.) They argued that because the evidence supporting their claims
13 could otherwise be incriminating, they should not have the burden of showing the IRS made a
14 mistake. (*Id.* at p. 1135.) The Court disagreed and distinguished the requirement that a party meet
15 a burden of proof from situations in which individuals were compelled to provide incriminating
16 evidence against themselves under threat of criminal sanction. (*Ibid.*) The Court found that the
17 petitioners could decline to provide potentially incriminating information, but that doing so would
18 render them unable to meet their burden of proof to establish that the IRS had acted erroneously.
19 Pursuant to the rationale in *Feinberg*, Petitioner’s argument is fatally flawed because MAUCRSA
20 provides no *criminal* penalty for refusal to disclose activity that violates the CSA when applying
21 for a commercial cannabis license or filing income taxes.

22 Petitioner attempts to connect the Fourth and Fourteenth Amendments to his positive
23 conflict arguments is similarly flawed. (Petition at p. 22:27-28; 23:5-6.) While the argument is
24 unclear, Petitioner seems to allege that any confusion about what is illegal and legal with respect
25 to commercial cannabis activities is the result of wrongful conduct perpetrated by the
26 Respondents. (Petition at pp. 3:6-7 and 14:11-12.) However, the Petition contains no allegation
27 that any employee, agent, or officer of the State of California or the Attorney General ever
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1 represented that compliance with state law would “immunize” anyone from federal prosecution.
2 In fact, the Petition only references instances in which it was acknowledged that the passage of
3 Proposition 64 would *not* obstruct or impede the ability of federal authorities to enforce the CSA
4 within the state of California.² Additionally, the legislation which created MAUCRSA expressly
5 references the federal illegality and Schedule I status of cannabis under the CSA. (See Sen. Bill
6 No. 94 (2017-2018 Reg. Sess.) § 1, subd. (d); RJN Exhibit C, p. 15.) Furthermore, MAUCRSA
7 also requires that cannabis product warning labels contain a bold print statement that reads as
8 follows: “GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A
9 SCHEDULE I CONTROLLED SUBSTANCE.” (Bus. & Prof. Code, § 26120, subd (c)(1).)
10 Therefore, Petitioner’s claims that Respondents have attempted to deceive anyone regarding
11 federal illegality, is contradicted by matters subject to judicial notice, and by the plain text of
12 applicable statutes. (See RJN Ex. C at p. 15, 57 – MAUCRSA expressly refers to schedule I
13 status.) Allegations in the Petition which are inconsistent with, or contradicted by, judicially
14 noticed facts must be rejected. (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1040.)

15 Regardless of whether any actual person has been confused about conflicts between
16 federal and state law (something not alleged anywhere in the Petition), the mere fact that federal
17 law provides for criminal penalties for an activity that is regulated under state law, does not create
18 a violation of any right protected under the Fourth or Fourteenth Amendments. Conflicts between
19 what is permissible under state law and federal law are common, but a preemptive, positive
20 conflict only exists when federal law and state law are irreconcilable. Overcoming the
21 presumption against preemption is an exceptionally difficult feat,³ and whether the Congressional
22 intent even supports the Federal Government’s interference with the implementation of state laws

23 ² The Petitioner quotes the Blue Ribbon Commission on Marijuana Policy’s report, which states “the federal
24 government can enforce its own laws prohibiting marijuana use even within the states that have legalized it under
25 their own law.” (Petition at p. 19:21-22, citing *Pathways Report: Policy Options for Regulating Marijuana in*
26 *California*.)

27 ³ “The mere fact that there is tension between federal and state law is not enough to establish conflict preemption.”
28 (*MetroPCS Cal., LLC v. Picker* (2020) 970 F.3d 1106, 1118 (internal quotation marks and alteration omitted).) “In
the absence of irreconcilability” between state and federal law, “there is no conflict preemption.” (*United States v.*
California, (2019) 921 F.3d 865, 882.) The burden for showing a positive conflict is very high, the Petitioner “must
show that ‘no set of circumstances exists under which [it] would be valid.’ ” (*United States v. Salerno*, (1987) 481
U.S. 739, 745.)

1 on this particular topic is an open question.⁴ However, the Petitioner’s contentions on the topic
2 should not be addressed in the absence of a justiciable controversy.

3 For the foregoing reasons, the Petition does not contain allegations sufficient for the Court
4 to find that there has been an invasion of the Petitioner’s Constitutional rights and therefore
5 Petitioner lacks standing.

6 **2. Alleged Personal Injuries and Financial Harm**

7 Petitioner’s claims regarding personal and financial injuries are so vague and attenuated
8 that equitable relief should be precluded. Petitioner alleges that “he has suffered financial,
9 physical and emotional harm through former Attorney General Brown’s “failure to obey the
10 Legislature in § 11362.765(a).” (Petition at p. 30:10-11.) However, Petitioner fails to explain
11 what constituted the alleged failure or how this purported failure resulted in his alleged personal
12 injuries and financial damages. Petitioner also requests that he be “made whole.” To the extent
13 that this would involve curing the ills that federal preemption has caused to his “physical health,
14 interpersonal relationships[,] and mental stability” (Petition at p. 6:25) or rescinding the
15 “Guidelines for the Security and Non-Diversion of Marijuana for Medical Use” that were
16 published 13 years ago, the requested relief is uncertain and unintelligible within the meaning of
17 Code of Civil Procedure section 430.10, subdivision (f), because the pleadings do not contain any
18 explanation of how the Petitioner’s legal conclusion regarding positive conflict or his criticisms
19 of the Attorney General’s guidelines are connected to any harm. “It is settled law that, . . . in
20 pleading, the essential facts upon which a determination of the controversy depends should be
21 stated with clearness and precision so that nothing is left to surmise. Those recitals, references to,
22 or allegations of material facts which are left to surmise are subject to special demurrer for
23 uncertainty.” (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d.531, 537.)

24 In this case, the Constitutional claims either fail for lack of any factual allegations
25 supporting them or because they are without legitimate legal basis. The personal injury and

26 ⁴ “If the Government is now content to allow States to act “as laboratories” “ ‘and try novel social and economic
27 experiments,’ then it might no longer have authority to intrude on “[t]he States’ core police powers . . . to define
28 criminal law and to protect the health, safety, and welfare of their citizens.”. A prohibition on intrastate use or
cultivation of marijuana may no longer be necessary or proper to support the Federal Government’s piecemeal
approach.” (*Standing Akimbo, LLC v. United States* (2021) 141 S.Ct. 2236, 2238; internal citations omitted.)

1 monetary damages claims are left entirely to the speculation of the reader. Therefore, Petitioner
2 has not plead facts sufficient to establish standing and will be unable to satisfy the required
3 elements for a viable petition for writ of mandate or complaint for injunctive relief.

4 **II. THE PETITION FAILS TO ESTABLISH THE ELEMENTS OF MANDAMUS RELIEF**

5 **A. There is No Beneficial Interest**

6 In order to sustain a petition for writ of mandamus, Petitioner needed to make allegations
7 sufficient to satisfy three basic elements. Specifically, that “. . .there is no other plain, speedy, and
8 adequate remedy; the respondent has a clear, present, and ministerial duty to act in a particular
9 way; and the petitioner has a clear, present[,] and beneficial right to performance of that duty.”
10 (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 606.) However, even if
11 the Court were to accept Petitioner’s assertion that there is no plain, speedy, and adequate
12 remedy, Petitioner fails to make any allegation which, if true, would establish the other two
13 required elements for issuance of a writ of mandate. Therefore, Petitioner has failed to plead facts
14 adequate to establish a cause of action under Code of Civil Procedure section 1085, and the first
15 cause of action should be subject to demurrer on this basis.

16 Petitioner has failed to establish standing because he has not established a direct and
17 beneficial interest over and above the general public interest. (*Mission Hosp. Regional Med.*
18 *Center v. Shewry* (2009) 168 Cal.App.4th 460, 479.) In order to establish standing, “petitioner
19 also must show his legal rights are injuriously affected by the action being challenged.” (*Braude*
20 *v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87.) The standard used for determining whether
21 a petitioner seeking a writ of mandate is beneficially interested in the subject matter for purposes
22 of establishing standing is equivalent to the federal “injury in fact” test, which requires a party to
23 prove by a preponderance of the evidence that it has suffered an invasion of a legally protected
24 interest that is both concrete and particularized, and actual or imminent. (*State Water Resources*
25 *Control Bd. Cases* (2006) 136 Cal.App.4th 674, 829.)

26 Petitioner fails to allege the particular nature of his injuries, and fails to draw a causal
27 connection between any act or omission by Respondents and his alleged injuries. “Allegations of
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1 damages without allegations of fact to support them are but conclusions of law, which are not
2 admitted by demurrer.” (*Zumbrun v. University of California* (1972) 25 Cal.App.3d 1, 12). As
3 discussed above, there is no factual pleading which supports the existence of any legally
4 cognizable injury that could be redressed by the issuance of the requested writ. Further, to the
5 extent Petitioner seeks to be “made whole” for damages to his “financial well-being,” that would
6 contradict his allegation that he has no “plain, speedy or adequate remedy in the ordinary Course
7 of law” (Petition at p. 34:3-4.) If there is no injury in fact and there *is* an adequate remedy at law,
8 then Petitioner has failed to establish two of the three elements required to justify mandamus
9 relief. Therefore, Petitioner fails to satisfy *any* requisite element necessary to justify mandamus
10 relief.

11 **B. There is No Duty to Compel.**

12 Petitioner has also failed to establish the existence of any duty which can be compelled.
13 Petitioner alleges that “Prop 64 was the product of a highly sophisticated conspiracy to enact law
14 that on the surface appeared to be compliant with federal law . . . when in fact it is language
15 within Prop 64 that demonstrates the initiative should not have been approved for placement on
16 the November 2016 ballot.” (Petition at p. 20:26-28). Implicit in this allegation is the assumption
17 that the Attorney General or an officer or agent of the State of California can unilaterally interfere
18 with the people’s power to qualify initiatives for the ballot. No named or unnamed Respondent is
19 vested with such power. Petitioner’s claims against the State and the Attorney General
20 demonstrate a misunderstanding of the initiative process. Contrary to Petitioner’s claim, the
21 Attorney General has no “fiduciary duty” to “protect the citizens of the State” from the initiative
22 process. (See Petition at p. 4:22-24.) The nature and purpose of the initiative process are well
23 established. (Cal. Const., art. II, § 8.) In California, “[a]ll political power is inherent in the
24 people.” (Cal. Const., art. II, § 1.) The initiative is “the power of the electors to propose statutes
25 and amendments to the Constitution and to adopt or reject them.” (Cal. Const., art. II, § 8, subd.
26 (a).) Once voters have approved an initiative measure, the results must be certified, regardless of
27 whether there is a belief that the initiative may be unconstitutional. (*Kevelin v. Jordan* (1964) 62
28

1 Cal.2d 82, 83.) Proposition 64 qualified for the ballot, and the majority of Californians voted to
2 pass Proposition 64. (Respondent’s RJN, Ex A: Statement of Vote, Nov. 8, 2016 Election.)
3 Respondents have not breached any duty implicated in these events and, therefore there is no duty
4 which Respondents could be compelled to perform.

5 **1. The Attorney General Has No Duty to Interfere with the Initiative Process**

6 Petitioner claims “that he will prove at trial that BROWN, and each Attorney General of the
7 STATE thereafter, has been derelict in the performance of their fiduciary duties.” (Petition at p.
8 12:7-8.) However, Petitioner fails to describe the term “fiduciary duties” with any particularity
9 and fails to provide any legal authority to support his claims. The Attorney General is the chief
10 law enforcement officer of the State and is vested with the authority to “. . . see that the laws of
11 the State are uniformly and adequately enforced. . .” and when “any law of the State is not being
12 adequately enforced . . . to prosecute any violations of law . . .” (Cal. Const., art V, § 13.) With
13 respect to the initiative process, the Attorney General is responsible for preparing the title and
14 summary of the initiative, initiating a public review process, and transmitting copies of the text of
15 the measure and the circulating title and summary to the Senate and the Assembly. (Elec. Code
16 §§ 9001, 9002, & 9007.) The Attorney General does not comment on the constitutionality of an
17 initiative and possesses no authority to veto or invalidate an initiative measure that has been
18 approved by the voters. (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1126.)

19 Petitioner asks in his Petition, “Does a STATE’s Attorney General, as that STATE’s
20 principal legal office, have a fiduciary duty to protect the citizens of that State from frivolous
21 ballot measure?” (Petition at p. 4:22-24.) The answer to this question is definitively, no.

22 **2. Alleged Ministerial Duties and Abuses of Discretion Are Baseless**

23 In an effort to persuade the Court that some duty exists or that the execution of some duty
24 is subject to the Court’s review, Petitioner alleges unspecified actions as “abuses of discretion.”
25 However, the Court need only “accept well pleaded facts, but not adjectival descriptions or legal
26 conclusions to determine whether a cause of action exists.” (*Ellis v. County of Calaveras* (2016)
27 245 Cal.App.4th 64, 70; see also *Bell Atl. Cort v. Twombly* (2007) 550 US 544, 555 [“Courts are
28

1 not bound to accept as true legal conclusions couched as a factual allegation.”].) None of the
2 following allegations have any basis in law or fact.

3 First, Petitioner alleges that “Respondents had a ministerial duty to adhere to, follow and
4 enforce the applicable law as had been set forth within Prop 215 and SB 420.” (Petition at p.
5 33:10-11.) To the extent that there are provisions of the Compassionate Use Act and the Medical
6 Marijuana Program Act that impose ministerial duties on one or more Respondents, no such
7 ministerial duty is identified anywhere in the Petition.

8 Second, Petitioner claims that the issuance of provisional licenses without adherence to
9 California Environmental Quality Act (“CEQA”) requirements, violates Respondents’ ministerial
10 duty. (Petition at p. 33:12-17.) Petitioner’s allegation demonstrates a misapprehension of
11 applicable law. Business and Professions Code section 26050.2, subdivision (d)(2), authorizes the
12 Department of Cannabis Control to issue provisional licenses so long as compliance with CEQA
13 is underway. And, Petitioner makes no allegation that a provisional license has ever been issued
14 in violation of CEQA.

15 Finally, even though Petitioner has not identified any specific duty, he requests that the
16 Court review any exercises of discretion that may have occurred in connection with the
17 performance of some duty or another. (Petition at p. 33:17-23.) Petitioner’s assertion is merely a
18 conclusion and characterization that is not connected to any identified event, set of facts, or any
19 other allegations that can be deemed true for the purposes of demurrer. “The court does not,
20 however, assume the truth of contentions, deductions or conclusions of law.” (*Moore v. Regents*
21 *of University of California* (1990) 51 Cal.3d 120, 125.) “A plaintiff is only required to set forth in
22 his complaint the essential facts of his case with reasonable precision and with sufficient clarity
23 and particularity that a defendant may be apprised of the nature, source, and extent of his cause of
24 action.” (*Foster v. Sexton* (2021) 61 Cal.App. 5th 998, 1019-1020.) However, Petitioner fails to
25 meet that threshold because the Petition does not adequately inform either the Respondents or the
26 Court of the existence of any particular duty, or explain how any act or omission of the
27 Respondents is related to any harm suffered by Petitioner. Therefore, Petitioner’s first cause of
28

1 action should be subject to general demurrer because it fails to state a claim upon which relief can
2 be granted and may be subject to special demurrer because it is uncertain and unintelligible in that
3 it does not apprise Respondents of any beneficial interest in issue or any duty that can be
4 compelled. (Code Civ. Proc., § 430.10, subds. (e) and (f).)

5 **III. PETITIONER’S ALLEGATIONS ARE INSUFFICIENT TO SUSTAIN A COMPLAINT FOR**
6 **INJUNCTIVE RELIEF**

7 To obtain a permanent injunction “a plaintiff ordinarily must show that the defendant’s
8 wrongful conduct threatens to cause irreparable injury, meaning injury that cannot be adequately
9 compensated in damages.” (*Syngenta Crop Protection Inc. v. Helliker* (2006) 138 Cal.App.4th
10 1135, 1167, citing *Intel Corp v. Hamidi* (2003) 30 Cal.4th 1342, 1352, Civ. Code, § 3422.).
11 Petitioner fails to establish that there has been an irreparable injury or wrongful conduct.

12 **A. Petitioner Has No Irreparable Injury**

13 For the reasons articulated above, Petitioner failed to provide any colorable claim for
14 violation of his constitutional rights, and has failed to make any allegation that connects
15 Respondents’ actions to his personal injuries. To the extent that Petitioner wishes to be “made
16 whole” for injuries to his “financial well-being” (Petition at p. 3:14-15), that is not the proper
17 subject of injunctive relief. This is because “mere monetary loss does not constitute irreparable
18 harm” (*Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 890), and even “a substantial
19 economic loss of [business] revenues” does not rise to the level of irreparable injury. (*IT Corp. v.*
20 *County. of Imperial* (1983) 35 Cal.3d 63, 75.)

21 **B. There Has Been No Wrongful Act That Can Be Redressed Through**
22 **Injunctive Relief.**

23 Just as Petitioner has failed to identify any duty relative to mandamus relief, he has also
24 failed to establish the required element that any breach of duty or wrong has occurred which
25 could be redressed by injunctive relief. As set forth above, there is no duty that was breached, the
26 pleadings do not demonstrate that any cognizable injury has occurred, and Petitioner does not
27 draw a connection between any act of Respondents and any purported injuries. Just as Petitioner
28 failed to demonstrate that there is any duty of Respondents which ought to be compelled,

1 Petitioner has also failed to plead facts sufficient to establish that there has been any injury or any
2 wrongful conduct. There is no duty, there is no breach, and in the absence of any identifiable
3 wrongful conduct which must be redressed or prevented, a complaint for injunctive relief will not
4 lie.

5 **C. The Demurrer Should be Granted as to the Second Cause of Action.**

6 Where it cannot be shown that there is (1) a wrongful act constituting a cause of action, and
7 (2) a factual showing that the wrongful act constitutes an actual or threatened injury to property or
8 personal rights which cannot be compensated by damages, a complaint for injunctive relief may
9 be disposed of by demurrer. (See, *Brownfield v. Daniel Freeman Marina Hospital* (1989) 208
10 Cal.App.3d 405, 410; *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748-749.)
11 Petitioner has failed to plead facts or present any legal theory that could be the basis of a
12 complaint for injunctive relief. The Petition is therefore subject to demurrer for failure to state a
13 claim upon which relief can be granted. (Code Civ. Proc., § 430.10, subd. (e).)

14 **IV. THE SUPREMACY CLAUSE DOES NOT CREATE A PRIVATE RIGHT OF ACTION**

15 The predominant theme of the Petition is that California's cannabis laws are preempted by
16 Federal law and, supposedly, by an international treaty. As discussed above, this question should
17 not be entertained by the Court because there is no controversy to be resolved in answering this
18 question. In the absence of standing, Article VI, paragraph 2 (Supremacy Clause) of the United
19 States Constitution does not provide for any private right of action. (*Armstrong v. Exceptional*
20 *Child Care Center* (2015) 575 U.S. 320, 326.) In the context of an actual controversy, Courts may
21 enjoin actions of state officials where the execution of a state law would violate rights protected
22 under Federal law. (*Ibid.*) In this case, Petitioner has failed, as a matter of law, to plead any facts
23 that can show that the existence of MAUCRSA or any past action by current or past Attorneys
24 General has violated or jeopardized any federally protected right. Therefore, it is not possible that
25 any amendment to the complaint would cure its fatal defects, and demurrer should be granted
26 without leave to amend.

1 **V. THE STATUTE OF LIMITATIONS BARS ALL OF PETITIONER’S CLAIMS**

2 A general demurrer is proper where the dates alleged in the complaint show that the action
3 is barred by the statute of limitations. (*Roman v. County. of Los Angeles* (2000) 85 Cal.App.4th
4 316, 324.) The Petition alleges that the issuance of guidelines by the Attorney General in 2008,
5 the passage of Proposition 64 in November 2016, and the subsequent passage of Senate Bill 94, in
6 June 2017, are at the basis for his claims. (Petition at p. 10:7-12:19, 30:9-12.) Petitioner filed the
7 complaint on December 28, 2021, more than thirteen years after the guidelines were issued, five
8 years after the passage of Proposition 64, and more than four years following the passage of
9 Senate Bill 94. Because there is no specific statute of limitations governing an attack on
10 guidelines issued by an Attorney General or a lawfully passed initiative, the general statute of
11 limitations of four years is applicable. (Code Civ. Proc., § 343.) Therefore, the statute of
12 limitations has run on Petitioner’s claims. To the extent that Petitioner claims he suffered
13 damages or a compensable injury as a result of the State or the Attorney General, he was required
14 to file a Government Torts Claim within six months of the accrual of the injury. (Gov. Code, §
15 910.) Having failed to do so, Petitioner’s claims are statutorily barred as a matter of law under
16 Government Code sections 910, subdivision (e), 911.2, 950.2, and 950.4, due to the failure to
17 comply with mandatory Government Tort Claims Act filing requirements.

18 **VI. THE DOCTRINE OF LACHES BARS THIS ACTION**

19 Notwithstanding the statute of limitations, a demurrer is also properly sustained to a
20 complaint that is not timely pursued based on the doctrine of laches. “It is a well-settled rule of
21 law that the defense of laches can be raised by a general demurrer.” (*Zakaessian v. Zakaessian*
22 (1945) 70 Cal.App.2d 721, 725, citing *Kleinclaus v. Dutard* (1905) 147 Cal. 245, 250.) The
23 doctrine of laches rests on the maxim that “the law helps the vigilant, before those who sleep on
24 their rights.” (Civ. Code, § 3527.) It is applicable where “unreasonable delay plus either
25 acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting
26 from the delay” are established. (*Conti v. Bd. of Civil Serv. Commissioners* (1969) 1 Cal.3d 351,
27 359 (Conti).)

1 Here, Petitioner's action is barred by laches because: (1) he unreasonably delayed in
2 asserting his claim; (2) he acquiesced in the behavior that he now complains about; and, (3) the
3 State is prejudiced by Petitioner's unreasonable delay. (*Conti*, supra, 1 Cal.3d at p. 359.)
4 Petitioner has unreasonably delayed the commencement of this action to the prejudice of
5 Respondents in that the events allegedly giving rise to this action occurred over thirteen years
6 ago, and were known to Petitioner at that time. The Attorney General caused to be issued
7 Guidelines on Medical Cannabis in 2008. Since 2016, the State has been responsible for ensuring
8 that Proposition 64, a statewide ballot initiative approved by the majority of Californians, is
9 implemented. To this end, the State has established the Department of Cannabis Control to
10 oversee, establish regulations, and engage in enforcement activity related to commercial cannabis
11 activity in the state, set-up a system to collect taxes, ensured the protection of California's
12 environmental resources, and ensured criminal justice reforms and public safety efforts.
13 Moreover, Petitioner has not alleged any excuse or reason for his delay. (*Robert F. Kennedy*
14 *Medical Center v. Department of Health Services* (1998) 61 Cal.App.4th 1357, 1362 [statute of
15 limitations period borrowed as measure of outer limit of reasonable delay in determining laches].)
16 Thus, the doctrine of laches also applies and this case should be dismissed.

17 CONCLUSION

18 For the reasons set forth, the Department respectfully requests that the Court grant its motion
19 for demurrer without leave to amend.

20 Dated: February 28, 2022

Respectfully submitted,

21 ROB BONTA
22 Attorney General of California
23 HARINDER K. KAPUR
24 Senior Assistant Attorney General



25
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27 Deputy Attorney General
28 *Attorneys for Defendants and Respondents*

SD2021802741

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Cotton v. State of CA, et. al.**
Case No.: **37-2021-00053551-CU-WM-CTL**

I declare:

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

On April 26, 2022, I served the attached **DEFENDANTS AND RESPONDENTS' NOTICE OF DEMURRER AND DEMURRER TO PETITION TO PEREMPTORY WRIT OF MANDATE AND COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

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

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
E-mail Address: 151DarrylCotton@gmail.com

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2022, at Rocklin, California.

N. Clark

Declarant



Signature