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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

EMPYREAL ENTERPRISES, LLC,  
d/b/a EMPYREAL LOGISTICS,

Plaintiff,

vs.

The United States of America; the U.S.  
Department of Justice; Attorney General  
MERRICK GARLAND, in his official  
capacity; the Federal Bureau of  
Investigation; CHRISTOPHER A.  
WRAY, Director of the Federal Bureau  
of Investigation, in his official capacity;  
KRISTI KOONS JOHNSON, Assistant  
Director of the Federal Bureau of

Case No.: 5:22-cv-94

**PLAINTIFF'S *EX PARTE*  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE: PRELIMINARY  
INJUNCTION; MEMORANDUM  
OF POINTS & AUTHORITIES**

Judge:

Complaint Filed: 1/14/22

Investigation overseeing the FBI's Los Angeles Field Office, in her official capacity; the Drug Enforcement Administration; ANNE MILGRAM, Administrator of the Drug Enforcement Administration, in her official capacity; SHANNON D. DICUS, San Bernardino County Sheriff-Coroner, in his official capacity as the head of the San Bernardino County Sheriff's Office.

Defendants.

**PLEASE TAKE NOTICE** that Plaintiff Empyreal Enterprises, LLC, d/b/a Empyreal Logistics ("Empyreal") applies, *ex parte*, for a temporary restraining order ("TRO") and an order to show cause regarding the issuance of a preliminary injunction against Defendants The United States; the U.S. Department of Justice; Attorney General Merrick Garland, in his official capacity; the Federal Bureau of Investigation; Christopher A. Wray, Director of the Federal Bureau of Investigation, in his official capacity; Kristi Koons Johnson, Assistant Director of the Federal Bureau of Investigation overseeing the FBI's Los Angeles Field Office, in her official capacity; the Drug Enforcement Administration; Anne Milgram, Administrator of the Drug Enforcement Administration, in her official capacity (together, "Federal Defendants"); Shannon D. Dicus, San Bernardino County Sheriff-Coroner, in his official capacity as the head of the San Bernardino County Sheriff's Office ("Sheriff Dicus" or the "Sheriff") (collectively, "Defendants").

Empyreal seeks to prevent Defendants' continued unlawful and unconstitutional stops, searches, and seizures of its property, including Defendants' pretextual stops of Empyreal's vehicles and baseless seizures of hundreds of thousands of dollars of currency that Empyreal lawfully transports for other lawful businesses to deposit into legitimate banking institutions.

1       Empyreal is a cash-in-transit (armored car) business. Among its clients are  
2 financial institutions and the state-legal and licensed medical cannabis dispensaries  
3 that have banking services with those institutions, as well as traditional, non-  
4 cannabis businesses such as restaurants and convenience stores. To help prevent  
5 cannabis dispensaries from storing so much cash on hand that they become the  
6 targets of robberies, Empyreal transports their cash proceeds to legitimate banking  
7 institutions. On five occasions, including **three times in the past eight weeks** in San  
8 Bernardino County, sheriff's deputies have stopped and searched Empyreal's  
9 vehicles. During three of these five incidents, one or more Defendants seized the  
10 cash Empyreal was transporting. (Empyreal was not transporting any cash proceeds  
11 related to cannabis during the other two incidents.) The traffic stops themselves were  
12 pretextual; no citations were ever issued. And no one has been charged with any  
13 crime related to any of these incidents, but the seized cash has not been returned and  
14 is being processed for Defendants to keep through civil forfeiture. These stops and  
15 seizures were *ultra vires* the statutory authority of the agencies involved; were  
16 suspicionless, lacked probable cause, and were unreasonable in violation of the  
17 Fourth Amendment; and were motivated by Sheriff Dicus's ability to receive the  
18 proceeds of the civil forfeiture of the seized assets for his department's financial  
19 gain, in violation of the Due Process Clause of the Fourteenth Amendment.

20       Empyreal has already been forced to suspend its operations in San Bernardino  
21 County due to the ongoing nature of these stops, searches, and seizures, and it has  
22 had to suspend the use and renovation of a vault and currency processing facility in  
23 San Bernardino County that is critical to its business in Southern California. It has  
24 also had to reroute its vehicles to avoid traveling through Kansas while traveling to  
25 and from state-licensed medical cannabis dispensaries in Kansas City, Missouri—  
26 after an Empyreal vehicle was stopped, searched, and had its cash contents seized  
27 on I-70 in Dickinson County, Kansas—at great inconvenience and additional cost.  
28 Empyreal has also had to forgo its plans to roll out services for non-cannabis

1 customers in three Midwestern states due to informed concerns that Empyreal's  
2 vehicles may be targeted by law enforcement in those states in the aftermath of the  
3 Kansas seizure. Empyreal has lost potential customers and new business from  
4 existing customers due to concerns about the Kansas seizure, and it expects that the  
5 California seizures will have a similar effect.

6 For Empyreal to continue operating its lawful business, these unlawful and  
7 unconstitutional stops, searches, and seizures must be enjoined going forward.  
8 Without this Court's immediate intervention, Empyreal cannot continue to operate  
9 in San Bernardino County, or in Kansas, or anywhere else the Federal Defendants  
10 partner with state or local law-enforcement agencies to target Empyreal's vehicles  
11 for stops, searches, and the seizure of their contents. These ongoing abuses pose a  
12 critical threat to Empyreal's business operations and its ability to retain clients and  
13 acquire new clients, particularly in Southern California.

14 For the reasons explained in the accompanying memorandum of points and  
15 authorities, (1) Empyreal is likely to succeed on its claims that Defendants are acting  
16 *ultra vires* their statutory authority and that Sheriff Dicus is violating the Fourth and  
17 Fourteenth Amendments to the U.S. Constitution; (2) Empyreal is suffering and will  
18 continue to suffer irreparable harm in the absence of immediate injunctive relief; and  
19 (3) the balance of equities and the public interest compel immediate injunctive relief.  
20 Accordingly, the Court should issue a temporary restraining order and an order to  
21 show cause why a preliminary injunction should not issue.

22 The Court should also "dispense with" the requirement that Empyreal file a  
23 bond under Rule 65(c) because "there is no realistic likelihood of harm to  
24 [Defendants] from enjoining [their] conduct." *Jorgensen v. Cassidy*, 320 F.3d 906,  
25 919 (9th Cir. 2003). This is a civil rights case, and Defendants are government  
26 entities—not for-profit businesses—so there is no risk to Defendants of business  
27 disruption or other economic injury in the absence of a bond. And "Defendants are  
28 not likely to suffer harm as a result of being enjoined from engaging in illegal

[namely, ultra vires and unconstitutional] conduct.” *BYD Co. Ltd v. Khazai*, 2020 WL 3893310, at \*6 (C.D. Cal. July 10, 2020).

This *ex parte* application for a temporary restraining order is based on Empyreal’s Complaint, this application, the attached memorandum of points and authorities, the attached declaration of Empyreal CEO Deirdra O’Gorman (“O’Gorman Decl.”) and exhibits thereto, the attached affidavit of counsel, and any further briefing and arguments of counsel.

Dated: January 14, 2022

Respectfully submitted,

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## MEMORANDUM OF POINTS & AUTHORITIES

### I. Introduction

Defendants are actively engaged in an ongoing effort—including as recently as last week, on January 6, 2022—to intercept armored cars transporting lawfully earned cash, stop them pretextually, search them, seize their contents, and permanently keep the proceeds using civil forfeiture. These unlawful and unconstitutional stops, searches, and seizures are being orchestrated by the Department of Justice (“DOJ”) and its subordinate law-enforcement agencies, including the Federal Bureau of Investigation (“FBI”) and the Drug Enforcement Administration (“DEA”) (collectively, with the United States, the “Federal Defendants”), in conjunction with local law-enforcement officials, including the San Bernardino County Sheriff (“Sheriff Dicus” or the “Sheriff”). Together, these law-enforcement agencies are targeting armored vehicles owned by Empyreal Logistics (“Empyreal”) because those vehicles are transporting cash proceeds from state-licensed medical and adult-use cannabis businesses. This continuing, ongoing pattern of behavior exceeds Defendants’ authority to act under state and federal law and violates Empyreal’s Fourth Amendment and due process rights.

These stops, searches, and seizures are costly to Empyreal and extremely disruptive to its business: Empyreal has been unable to complete contracted services with clients, has been forced to suspend business operations in the largest county in the United States, San Bernardino County, and has stopped driving through Kansas entirely. Because of these incidents, Empyreal has lost customers, has been unable to roll out new services in multiple states because of informed concerns about similar seizures occurring in those states, and is constrained from growing its services in Southern California, a key market. If these incidents continue to occur—and there is every indication they will given the five previous stops and seizures—they will threaten Empyreal’s business model and its ability to continue providing financial

1 infrastructure for the state-legal medical cannabis industry by safely moving cash  
 2 from business premises into the legal banking system for greater transparency.  
 3 Accordingly, Empyreal seeks immediate injunctive and declaratory relief in the form  
 4 of a temporary restraining order followed by a preliminary injunction so that it can  
 5 resume business operations in San Bernardino County and is not forced to suspend  
 6 or forgo business operations elsewhere in California and nationwide.

## 7 **II. Background**

### 8 **A. Empyreal is a law-abiding, national cash-in-transit business.**

9 Empyreal is a law-abiding, cash-in-transit (armored car) business operating in  
 10 28 states, including California. Unlike traditional armored-car companies, Empyreal  
 11 operates discreetly, using state-of-the art technology and surveillance systems in its  
 12 vehicle fleet. Empyreal serves financial institutions that work with state-licensed  
 13 medical and adult-use cannabis businesses in numerous states, including California,  
 14 offering secure cash collection and transport, deposit validation at secure vault  
 15 locations, and standard cash services. Empyreal thus provides critical financial  
 16 infrastructure for the state-legal medical (and adult-use) cannabis industry by safely  
 17 moving cash from business premises into the legal banking system for greater  
 18 transparency and improved public safety. Notably, Empyreal never transports  
 19 cannabis. A significant percentage of Empyreal's cash-in-transit business does not  
 20 involve the cannabis industry; these clients include restaurants, convenience stores,  
 21 and other cash-intensive businesses. O'Gorman Decl. ¶¶ 7–15.

22 Most of Empyreal's cannabis-industry clients hold medical cannabis licenses.  
 23 Empyreal and its clients operate in full compliance with applicable state cannabis  
 24 laws and all applicable federal and state money laundering laws, including the anti-  
 25 money laundering requirements of the Banking Secrecy Act. With respect to its  
 26 cannabis-industry clients, Empyreal contracts only with state-legal cannabis  
 27 businesses that have established banking relationships with financial institutions that  
 28 have anti-money laundering programs implemented pursuant to the 2014 FinCEN

1 Guidance Regarding Marijuana-related Business and applicable state-issued  
2 guidance. O’Gorman Decl. ¶¶ 16–17.

3 Approximately 20% of Empyrean’s business is in California, including  
4 business that originates in California but is served by Empyrean branches in nearby  
5 states. Many of Empyrean’s existing clients in California have requested that  
6 Empyrean expand services in California in the near future. To serve client demand,  
7 Empyrean was building a vault and currency processing facility in San Bernardino  
8 County, which was intended to serve all of Southern California. However, it recently  
9 suspended this project in response to Defendants’ unlawful actions at the heart of  
10 this motion. Absent interference by Defendants, Empyrean projects it would double  
11 its business in California next year. O’Gorman Decl. ¶¶ 18–19, 49.

12 **B. Defendants are engaged in an ongoing effort targeting**  
13 **Empyrean’s vehicles for stops, searches, and seizures.**

14 Defendants are targeting Empyrean’s vehicles for pretextual stops and  
15 searches, and they are seizing cash and other property lawfully transported therein  
16 for civil forfeiture. Empyrean’s vehicles are being targeted by Defendants because  
17 Defendants know Empyrean vehicles are transporting the cash proceeds of state-legal  
18 cannabis businesses and want to seize that money and forfeit it using civil forfeiture.

19 Upon information and belief, DOJ is coordinating a federal effort across  
20 multiple states, jurisdictions, and DOJ agencies—in cooperation with multiple state  
21 and/or local law-enforcement agencies via joint task forces or joint investigations—  
22 to target Empyrean vehicles for these stops, searches, seizures, and forfeitures. Upon  
23 information and belief, the San Bernardino County Sheriff’s Department is working  
24 in coordination with one or more of the Federal Defendants via a task force or joint  
25 investigation to orchestrate these ongoing stops, searches, seizures, and forfeitures.  
26 O’Gorman Decl. ¶¶ 21, 28; Compl. ¶¶ 56–63, 235–39.

27 Since mid-May 2021, Empyrean’s vehicles have been stopped and searched  
28 by sheriff’s deputies five times, including **three times in the past eight weeks**: on

1 May 17, 2021 in Dickinson County, Kansas (the “May 17 stop”); on May 18, 2021  
2 in Dickinson County, Kansas (the “May 18 seizure”); on November 16, 2021 in San  
3 Bernardino County (the “November 16 seizure”); on December 9, 2021 in San  
4 Bernardino County (the “December 9 seizure”); and on January 6, 2022 (the  
5 “January 6 stop”) in San Bernardino County. No warrant was obtained for the stop  
6 and search of Empyreal’s vehicles on May 17 or January 6, nor for the stop, search,  
7 and seizure of Empyreal’s vehicles and their contents on May 18 or December 9.

8 On May 17, 2021, the Sheriff’s Office in Dickinson County, Kansas stopped  
9 an Empyreal vehicle eastbound on I-70 based on an allegedly obscured license plate  
10 tag. Upon information and belief, this was a pretextual stop done in conjunction with  
11 a DEA task force. The Empyreal vehicle was not transporting any cash proceeds  
12 during the May 17 stop, so no seizure occurred, but the deputy questioned the  
13 Empyreal driver extensively about the purpose of the trip, asking many questions  
14 unrelated to the alleged license plate tag, demanded to see the driver’s manifest  
15 without cause, and searched the vehicle. O’Gorman Decl. ¶¶ 23; Compl. ¶¶ 87–93.

16 On May 18, 2021, the Sheriff’s Office in Dickinson County, Kansas stopped,  
17 searched, and seized approximately \$165,620 from an Empyreal vehicle traveling  
18 westbound on I-70, working in conjunction with a DEA task force. The cash  
19 proceeds being transported by Empyreal’s vehicle during the May 18 seizure were  
20 entirely from state-licensed medical cannabis dispensaries operating lawfully under  
21 Missouri law in Kansas City, Missouri. On September 3, 2021, the United States of  
22 America filed a civil forfeiture complaint in the United States District Court for the  
23 District of Kansas seeking civil forfeiture of the cash seized in the May 18 seizure.  
24 The accompanying affidavit by DEA Special Agent Bryson Wheeler stated that  
25 DEA conducted surveillance of Empyreal’s vehicle visiting state-legal medical  
26 cannabis dispensaries in Kansas City, Missouri to pick up the currency prior to the  
27 May 18 seizure. O’Gorman Decl. ¶¶ 24–26; Compl. ¶¶ 94–109.

1 On November 16, 2021, San Bernardino County Sheriff's Department  
2 deputies stopped and seized approximately \$700,000 in lawfully obtained currency  
3 from one of Empyreal's vehicles, seized the vehicle itself, and seized the driver's  
4 business and personal cellphones. In the process, the government caused significant,  
5 unnecessary damage to the vehicle and the technology therein. The cash proceeds  
6 being transported by Empyreal's vehicle during the November 16 seizure were  
7 entirely from state-licensed cannabis businesses in good standing, operating lawfully  
8 under California law. Three of the four cannabis businesses whose cash proceeds  
9 were seized during the November 16 seizure hold California medical cannabis  
10 licenses. Upon information and belief, the Sheriff was working in conjunction with  
11 the FBI and/or one or more of the other Federal Defendants during or shortly after  
12 the November 16 seizure. O'Gorman Decl. ¶¶ 28–31; Compl. ¶¶ 110–42.

13 On December 9, 2021, San Bernardino County Sheriff's Department deputies  
14 again stopped and this time seized approximately \$350,000 in lawfully obtained  
15 currency from one of Empyreal's vehicles. The cash proceeds being transported by  
16 Empyreal's vehicle during the December 9 seizure were entirely from state-licensed  
17 cannabis businesses operating lawfully under California law. All four of the cannabis  
18 businesses whose cash proceeds were seized during the December 9 seizure hold  
19 California medical cannabis licenses. Upon information and belief, the Sheriff was  
20 working in conjunction with one or more of the Federal Defendants during or shortly  
21 after the December 9 seizure. O'Gorman Decl. ¶¶ 28, 32–34; Compl. ¶¶ 143–86.

22 On January 6, 2022, one or more San Bernardino County Sheriff's deputies  
23 stopped and searched an Empyreal vehicle and interrogated the driver. The driver  
24 was not on a cash logistics trip and was merely picking up Empyreal's order of rolled  
25 coin boxes from Empyreal's vendor, which happens to be located in San Bernardino  
26 County. The vehicle was not transporting any cannabis proceeds. It was transporting  
27 coins from a non-cannabis business (a rolled coin vendor). Deputies declined to seize  
28 the coins once they realized they were from a non-cannabis business. When the



1 Empyreal driver asked a deputy why Empyreal's vehicles were being stopped so  
 2 frequently, the deputy told him it was "political" but declined to elaborate.  
 3 O'Gorman Decl. ¶¶ 44–48; Compl. ¶¶ 187–99. This statement confirms that  
 4 Empyreal's vehicles are being targeted by Defendants for improper reasons.

5 Upon information and belief, the approximately \$1,050,000 cash seized by  
 6 Sheriff Dicus has been transferred under DOJ's equitable sharing program to FBI  
 7 and/or the other the Federal Defendants, who are or will be pursuing civil forfeiture  
 8 of that cash. Decl. David C. Bass ¶¶ 4–5; O'Gorman Decl. ¶¶ 39–40.

9 Because of these five stops and searches—including three in the past eight  
 10 weeks in San Bernardino County—which resulted in three seizures of the cash  
 11 Empyreal vehicles were transporting, as well as the comments made by San  
 12 Bernardino Sheriff's deputies during the stops, including that they were being done  
 13 for "political" reasons, Empyreal reasonably believes it is being targeted by the  
 14 Sheriff and the Federal Defendants for continued stops, searches, and seizures.  
 15 O'Gorman Decl. ¶¶ 21, 36–37, 48, 49.

16 Upon information and belief, Defendants' ongoing targeting of Empyreal  
 17 vehicles does not take into account whether the proceeds being seized are from state-  
 18 licensed medical cannabis businesses operating lawfully under state law, Defendants  
 19 take no measures to verify whether the proceeds are from medical or adult-use  
 20 cannabis sales, and Defendants often do not even know whether the proceeds being  
 21 seized are from cannabis or non-cannabis businesses. O'Gorman Decl. ¶¶ 41–43.

22 **C. Because of Defendants' ongoing conduct, Empyreal has had**  
 23 **to suspend operations and forgo offering new services in**  
 24 **several states, and it is suffering reputational damage that is**  
**causing it significant harm, including losing potential clients.**

25 Defendants' conduct is causing irreparable harm to Empyreal, forcing it to  
 26 suspend business operations in San Bernardino County and Kansas and to forgo  
 27 offering new services in several states. The May 18 seizure already caused Empyreal  
 28 to suffer reputational damage causing economic hardship to it business, including



1 losing potential clients and business opportunities. Empyreal reasonably anticipates  
2 the two California seizures will cause it similar serious harm. O’Gorman Decl. ¶ 49.

3       Being subject to repeated stops, searches, and seizures by Defendants is  
4 extremely disruptive and costly to Empyreal and threatens the viability of  
5 Empyreal’s entire cash-in-transit business model. Because of Defendants’ actions  
6 against Empyreal vehicles in San Bernardino County, Empyreal has been forced to  
7 suspend its business operations in San Bernardino County, at substantial financial  
8 loss. This was particularly costly because Empyreal was building a vault and  
9 currency processing facility in San Bernardino County to serve all of Southern  
10 California and has had to suspend further construction and planned operations from  
11 that facility. Empyreal had already spent approximately \$100,000 on renovations to  
12 its planned location in San Bernardino County and is incurring expenses of  
13 approximately \$21,000 per month in rent and utilities. Losing the ability to open and  
14 operate the San Bernardino County currency processing facility has impacted  
15 Empyreal’s operations outside San Bernardino County, because that location was to  
16 be Empyreal’s currency processing facility serving all of Southern California. *Id.*

17       Empyreal’s ability to meet the demands of its existing clients, expand its  
18 services, and meet revenue projections in California is dependent on both being able  
19 to continue operations in San Bernardino County and on being able to serve Southern  
20 California from its San Bernardino County currency processing facility. *Id.*

21       If Empyreal continues to have its vehicles stopped and searched and their  
22 contents seized by Defendants in California, Empyreal will have to suspend its  
23 business operations in California, at substantial financial loss. Suspending business  
24 operations in California will be particularly costly to Empyreal, because  
25 approximately 20% of Empyreal’s business—over \$3.5 million in 2021—originates  
26 in California, and Empyreal projects that revenue to more than double in 2022  
27 (absent Defendants’ interference). *Id.*

1 If Empyreal continues to have its vehicles stopped, searched, and seized  
2 nationwide by the Federal Defendants, their task forces, and local or state law  
3 enforcement partners, Empyreal will have to cease lawful business operations for  
4 financial institutions, and their customers, involved in state-legal medical cannabis  
5 and adult-use cannabis operations. Ending these services would severely impact  
6 Empyreal's business. *Id.*

7 Defendants' conduct seriously jeopardizes Empyreal's ability to serve even  
8 its non-cannabis clients. For example, prior to the May 18 seizure, Empyreal had  
9 planned to start offering services for non-cannabis clients in three Midwestern states.  
10 Because of the events described in this lawsuit, and reasonable, informed fears that  
11 its vehicles would be targeted for stops, searches, and seizures in those expansion  
12 states, Empyreal has been unable to start offering those new services. *Id.*

13 Being subject to repeated stops, searches, and seizures by Defendants also  
14 causes Empyreal reputational harm and makes Empyreal's clients less likely to  
15 engage in business with Empyreal in the future. Empyreal has lost business  
16 opportunities and potential clients because of the May 18 seizure in Kansas and  
17 reasonably expects the two California seizures to have a similarly negative effect on  
18 its business. For example, Empyreal lost a potential client—the Colorado franchisee  
19 of a major fast-food chain—because of concerns the potential client had arising from  
20 the May 18 seizure. Empyreal's competitors have also used the May 18 seizure as a  
21 selling point for why Empyreal's clients and potential clients should do business  
22 with them instead, including in posts on social media websites such as LinkedIn. *Id.*

23 Because of the reputational harm Empyreal has suffered from the May 18  
24 seizure, and that it anticipates suffering from the two California seizures, Empyreal  
25 is reasonably concerned that potential financial investors or business partners will  
26 be reluctant to invest in Empyreal or enter into business relationships with it. *Id.*

1                   **D. California law authorizes the business activities for which**  
 2                   **Defendants are targeting Empyreal for unlawful stops,**  
 3                   **searches, and seizures.**

4                   Cannabis has been legal in California for medical use since 1996, when  
 5                   Californians voted to pass the Compassionate Use Act of 1996. Cal. Health & Safety  
 6                   Code § 11362.5. Later, in November 2016, California voters also approved the Adult  
 7                   Use of Marijuana Act, which legalized the recreational use of cannabis. In addition  
 8                   to protecting the use of cannabis, California law makes it legal for state-licensed  
 9                   dispensaries to sell cannabis for medical and recreational (“adult use”) sales. Cal.  
 10                  Bus. & Prof. Code § 26000(b). Under California law, local law enforcement may not  
 11                  seize or forfeit the assets of state-legal cannabis operations. *See, e.g., Granny Purps,*  
*Inc. v. County of Santa Cruz*, 266 Cal. Rptr. 3d 752, 758 (Cal. Ct. App. 2020).

12                  As state-licensed dispensaries proliferated across the state, industry actors  
 13                  recognized a need for protection for financial transactions associated with cannabis  
 14                  businesses. *See* Assem. Com. on Banking and Finance, Analysis of Assem. Bill No.  
 15                  1525 (2019–2020 Reg. Sess.). Specifically, entities were reluctant to provide  
 16                  financial services to cannabis businesses because of the absence of a clear legal  
 17                  framework for providing those services. *See id.* As a result, dispensaries and other  
 18                  state-legal cannabis businesses were often forced to keep large amounts of cash on  
 19                  hand, unable to deposit it with financial institutions. *See id.* To address this problem,  
 20                  the California Legislature passed, and Governor Newsom signed, Assembly Bill  
 21                  1525, which protects entities providing financial services to the legal cannabis  
 22                  industry. Cal. Bus. & Prof. Code § 26260(a). Among other things, the new law  
 23                  makes clear that “[a]n entity that . . . **transports cash** or financial instruments, or  
 24                  provides other financial services **does not commit a crime under any California**  
 25                  **law** . . . solely by virtue of the fact that the person receiving the benefit of any of  
 26                  those services engages in commercial cannabis activity as a licensee pursuant to this  
 27                  division.” Cal. Bus. & Prof. Code § 26260(a) (emphasis added). Empyreal’s business  
 28

1 operations—transporting cash for state-legal dispensaries and the financial  
 2 institutions with which they contract—fall squarely within this statutory protection.

3 **E. The appropriations rider known as the Rohrabacher-Farr**  
 4 **Amendment prohibits the Federal Defendants from**  
 5 **interfering with state-legal medical cannabis industries.**

6 Congress has explicitly limited the Federal Defendants’ authority to enforce  
 7 federal drug laws against state-authorized medical cannabis use by exercising its  
 8 appropriations power in the Consolidated Appropriations Act of 2021, via a rider  
 9 known as the Rohrabacher-Farr Amendment. This rider constrains the Federal  
 10 Defendants because they may not “draw[] [Money] from the Treasury, but in  
 11 Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7.

12 Through this constitutional power, Congress has withheld all funding for any  
 13 activities that interfere with a state’s implementation of its medical marijuana laws.  
 14 Consolidated Appropriations Act 2021, Pub. L. No. 116-260, § 531, 134 Stat. 1283  
 15 (2020) (amended Dec. 3, 2021) (“None of the funds made available under this Act  
 16 to the Department of Justice may be used, with respect to any of the [listed states] to  
 17 prevent any of them from implementing their own laws that authorize the use,  
 18 distribution, possession, or cultivation of medical marijuana.”); *United States v.*  
 19 *McIntosh*, 833 F.3d 1163, 1172 (9th Cir. 2016) (interpreting the Rohrabacher-Farr  
 20 Amendment to conclude that “Congress has enacted an appropriations rider that  
 21 specifically restricts DOJ from spending money to pursue certain activities”).

22 The Federal Defendants are thus prohibited from spending funds for law  
 23 enforcement activities against those engaged in conduct permitted by state medical  
 24 marijuana laws so long as they are in full compliance with such laws. *Id.* at 1177.  
 25 And the Federal Defendants cannot interfere with the state-sanctioned operations of  
 26 a state’s medical cannabis industry, including the financial infrastructure necessary  
 27 for that industry to operate, because this prohibition includes *any* use of funds that  
 28 “prevent[s a] state from giving practical effect to its [medical cannabis] law[s].” *Id.*

1        Moreover, prospective relief is available against the Federal Defendants for  
 2 actions that violate the spending prohibition of the Rohrabacher-Farr Amendment.  
 3 *Sierra Club v. Trump*, 929 F.3d 670, 695–96 (9th Cir. 2019) (“Appellants . . . can  
 4 seek—and have sought—to enjoin [an agency] from spending funds’ contrary to  
 5 Congress’s restrictions.” (quoting *McIntosh*, 833 F.3d at 1172)).

6        California and Missouri, among other states, have both authorized the use of  
 7 medical marijuana and the establishment of businesses to distribute and sell medical  
 8 marijuana to customers. Cal. Bus. & Prof. Code, § 26000 *et seq.*; Mo. Const. art.  
 9 XIV, § 1. Empyrean’s cash-in-transit business provides financial infrastructure for  
 10 the depositing of cash proceeds that is essential to implementing the medical  
 11 marijuana laws in California and Missouri, among other states, and that has been  
 12 expressly authorized by California statute. Cal. Bus. & Prof. Code § 26260(a).

13                **F. Defendants have a financial incentive to stop, search, and**  
 14                **seize Empyrean’s vehicles and their contents, which violates**  
 15                **Empyrean’s Due Process rights.**

16        Defendants’ true motivation for stopping, searching, and seizing Empyrean’s  
 17 vehicles and the money they transport is not law enforcement, but revenue  
 18 generation. Sheriff Dicus has no legitimate reason to interdict Empyrean vehicles for  
 19 engaging in a business that is expressly authorized by California law, and the Federal  
 20 Defendants are transparently focused only on seizing the cash proceeds that  
 21 Empyrean is transporting while taking no other steps to enforce federal laws against  
 22 state-licensed cannabis businesses that operate openly and publicly.

23        The San Bernardino Sheriff’s Department participates in DOJ’s equitable  
 24 sharing program and, upon information and belief, is working with one or more of  
 25 the Federal Defendants to seize and forfeit the proceeds of state-legal cannabis  
 26 businesses that Empyrean transports. DOJ’s equitable sharing program permits local  
 27 or state law-enforcement agencies to transfer seized property to a federal agency,  
 28 which then processes the forfeiture under federal law and distributes the proceeds to  
 cooperating state and local law enforcement agencies. *See DOJ, Guide to Equitable*

1 *Sharing for State and Local Law Enforcement Agencies* (July 2018),  
 2 <https://www.justice.gov/criminal/afmls/pubs/pdf/04-2009guide-equit.pdf>. The  
 3 minimum share of the proceeds that goes to federal agencies is 20%. *Id.* at 9–10.  
 4 Participating local or state agencies are eligible for payments of up to 80% of the  
 5 forfeiture proceeds. Institute for Justice, *Policing for Profit*, “Equitable Sharing  
 6 Creates a Giant Loophole” (Dec. 2020), [https://ij.org/report/policing-for-profit-](https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/)  
 7 [3/pfp3content/equitable-sharing-creates-a-giant-loophole/](https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/).

8 There are two primary ways for local law enforcement to qualify for DOJ  
 9 equitable sharing: by participating in a joint task force or investigation with federal  
 10 law-enforcement, or through adoption, a process by which a federal agency takes  
 11 control of property seized by state authorities, based on state law, and then  
 12 investigates and prosecutes the case under federal law. *Id.*, “Didn’t DOJ Fix the  
 13 Problem,” [https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-](https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/didnt-doj-fix-the-problem/)  
 14 [creates-a-giant-loophole/didnt-doj-fix-the-problem/](https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/didnt-doj-fix-the-problem/). Because adoptive forfeitures  
 15 are prohibited by California law, *see* Cal. Health & Safety Code § 11471.2(a), the  
 16 Sheriff may only *legally* qualify for equitable sharing—and up to 80% of federal  
 17 equitable sharing proceeds from Empyrean seizures—through the former option: a  
 18 joint task force or investigation with one or more of the Federal Defendants.

19 Every year, state and local law enforcement agencies collect hundreds of  
 20 millions through DOJ equitable sharing. In 2019 alone, the federal government made  
 21 \$333.8 million in payments to state and local law enforcement through the program.  
 22 Institute for Justice, *Policing For Profit*, “Trends in Equitable Sharing Revenues and  
 23 Payments,” [https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-](https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/trends-in-equitable-sharing-revenues-and-payments/)  
 24 [creates-a-giant-loophole/trends-in-equitable-sharing-revenues-and-payments/](https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/trends-in-equitable-sharing-revenues-and-payments/).

25 Sheriff Dicus also relies on equitable sharing as a significant revenue stream. In the  
 26 last five years alone, the San Bernardino County Sheriff’s Department has received  
 27 more than \$4.2 million in equitable sharing proceeds, earned primarily through joint  
 28 task forces. *See* DOJ, Consolidated Asset Tracking System,



1 <https://web.archive.org/web/20210418164910/https://www.justice.gov/afp/freedo>  
 2 [m-information-act](#) (data obtained through analysis of CATS Zip File, current  
 3 through Jan. 9, 2021). Also in the last five years, the Inland Regional Narcotics  
 4 Enforcement Team, a joint task force lead by the San Bernadino County Sheriff’s  
 5 Department, in conjunction with DEA and FBI, has received more than \$15.8  
 6 million in equitable sharing proceeds. *Id.* Since there is no legal basis for the Sheriff  
 7 to seize the cash proceeds Empyrean is transporting for state-legal cannabis business,  
 8 and since the Sheriff is not pursuing forfeiture in California courts for any violations  
 9 of state law, the only plausible explanation for the Sheriff’s conduct in seizing the  
 10 cash and transferring it to the Federal Defendants is revenue generation.

11 The January 6 stop demonstrates the Sheriff is *only* interested in seizing  
 12 cannabis proceeds, not cash from other businesses. That is because, unlike other  
 13 business revenue that is legal in California, state-licensed cannabis proceeds—illegal  
 14 under federal law—can be forfeited through DOJ’s equitable sharing program.<sup>1</sup>

### 15 **III. Legal Standard**

16 To obtain a TRO or preliminary injunction, Empyrean must demonstrate that  
 17 (1) it is likely to succeed on the merits of at least one of its claims, (2) it is likely to  
 18 suffer irreparable harm in the absence of preliminary relief, (3) the balance of  
 19 equities tips in its favor, and (4) an injunction is in the public interest. *Winter v.*  
 20 *NRDC, Inc.*, 555 U.S. 7, 20 (2008). “When the government is a party, the last two  
 21 factors (equities and public interest) merge.” *E. Bay Sanctuary Covenant v. Biden*,  
 22 993 F.3d 640, 668 (9th Cir. 2021). Under the Ninth Circuit’s sliding scale approach,  
 23 “[s]erious questions going to the merits and a balance of hardships that tips sharply  
 24 towards the plaintiff can support issuance of a preliminary injunction, so long as”  
 25 the irreparable injury and public interest elements are satisfied. *Alliance for the Wild*  
 26 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). So “[i]f the balance of harm  
 27

28 <sup>1</sup> However, as noted *supra*, DOJ is prohibited from spending any funds to forfeit  
 state-legal medical cannabis proceeds.

tips decidedly toward [Empyreal], then [it] need not show as robust a likelihood of success on the merits as when the balance tips less decidedly.” *Republic of Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988).

#### IV. Argument

A TRO should issue and a preliminary injunction is appropriate here because (A) Empyreal is likely to succeed on the legal claims it brings here challenging Defendants’ conduct as *ultra vires* and violative of Empyreal’s constitutional rights, (B) Empyreal is currently suffering and will continue to suffer substantial irreparable harm due to Defendants’ ongoing conduct without relief from this Court, and (C) the balance of the equities and public interest strongly favor an injunction.

##### A. Empyreal is likely to succeed on its *ultra vires*, Fourth Amendment, and due process claims.

##### 1. The ongoing conduct of Sheriff Dicus and his department exceeds his statutory authority.

Under California law, “[a] governmental agency that acts outside of the scope of its statutory authority acts *ultra vires* and the act is void.” *Cal. DUI Laws. Ass’n v. Cal. Dep’t of Motor Vehicles*, 20 Cal. App. 5th 1247, 1264 (2018). California law provides specific protections for the business activities Empyreal was engaged in at the time of the searches and seizures. And Sheriff Dicus has no statutory authority to search and seize property without evidence of criminal activity. Because Sheriff Dicus had no statutory authority for his illegal searches and seizures of Plaintiff’s property, those acts, including any future such acts, are void as *ultra vires*.

Sheriff Dicus is the chief law enforcement officer of San Bernardino County. He acts under the authority vested in California sheriffs set out in Cal. Gov’t Code §§ 26600–16. Specifically, those provisions authorize a sheriff to “preserve peace” and, in furtherance of that objective, to “sponsor, supervise, or participate in any project of crime prevention, rehabilitation of persons previously convicted of crime, or the suppression of delinquency.” Cal. Gov’t Code § 26600. Sheriffs are also authorized to “arrest and take before the nearest magistrate for examination all



1 persons who attempt to commit or who have committed a public offense.” Cal. Gov’t  
 2 Code § 26601. No California law, however, empowers Sheriff Dicus to search or  
 3 seize property where there is no probable cause of criminal activity. Nor is Sheriff  
 4 Dicus authorized to conduct stops, searches, or seizures for “political” reasons.

5 Sheriff’s deputies had no reason to believe that Plaintiff was engaged in  
 6 criminal activity during the course of any of the three stops, searches, and seizures  
 7 of Empyreal. Any alleged initial doubt over the origin of the cash carried in  
 8 Empyreal’s vehicles was immediately resolved by information readily provided by  
 9 Empyreal documenting the operation of its legal cash-in-transit business. O’Gorman  
 10 Decl. ¶¶ 29–48. These business activities are expressly protected by California law,  
 11 which states that “[a]n entity that . . . transports cash or financial instruments, or  
 12 provides other financial services **does not commit a crime under any California**  
 13 **law** . . . solely by virtue of the fact that the person receiving the benefit of any of  
 14 those services engages in commercial cannabis activity as a licensee pursuant to this  
 15 division.” Cal. Bus. & Prof. Code § 26260(a) (emphasis added). Through this law,  
 16 the California Legislature recognized the importance of businesses like Empyreal’s  
 17 in making California’s legal cannabis industry safe. *See* Assem. Com. on Banking  
 18 and Finance, Analysis of Assem. Bill No. 1525 (2019–2020 Reg. Sess.). Sheriff  
 19 Dicus’s ongoing disruptions of Empyreal’s business operations are not only  
 20 unauthorized by California law, they undermine the law’s express protections and  
 21 the important public safety objectives it advances.

22 Sheriff Dicus is exceeding his statutory authority by instructing or permitting  
 23 his office to repeatedly stop, search, and seize Empyreal’s property without any  
 24 indication of criminal activity (let alone probable cause). Targeting Empyreal’s  
 25 vehicles for any sort of criminal enforcement measures based on “political” reasons  
 26 is also deeply improper and unauthorized by any statute. Because the activities for  
 27 which Sheriff Dicus is targeting Empyreal for stops, searches, and seizures are  
 28

1 expressly protected by California law, Empyreal is likely to succeed on its claim that  
 2 Sheriff Dicus's practice of illegal searches and seizures is void as *ultra vires*.

3 **2. The Federal Defendants' ongoing conduct exceeds**  
 4 **their statutory authority to spend federal funds.**

5 Any activity by the Federal Defendants to seize cash proceeds from medical  
 6 cannabis businesses that Empyreal is transporting is *ultra vires* their authority and  
 7 should be enjoined. The ability for California cannabis distributors to sell medical  
 8 cannabis and deposit the cash proceeds in financial institutions is not only essential  
 9 to conducting business, it is also explicitly authorized under California law. *See* Cal.  
 10 Bus. & Prof. Code § 26260(a). Congress has spoken clearly and prohibits DOJ from  
 11 spending any funds interfering with state-legal medical cannabis, including the  
 12 seizure of any cash proceeds from medical cannabis. The Federal Defendants'  
 13 ongoing seizures are *ultra vires* because they violate Congress's prohibition.

14 The Constitution exclusively vests the power of the purse with Congress. U.S.  
 15 Const. art I., § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in  
 16 Consequence of Appropriations made by Law.") ("Appropriations Clause"). The  
 17 Appropriation Clause is simple and explicit: "It means simply that no money can be  
 18 paid out of the Treasury unless it has been appropriated by an act of Congress." *Off.*  
 19 *of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990) (citations omitted). The  
 20 Constitution delegates to Congress "exclusive" power "not only to formulate  
 21 legislative policies and mandate programs and projects, but also to establish their  
 22 relative priority for the Nation." *McIntosh*, 833 F.3d at 1172.

23 Unlike other constitutional provisions, there is no *de minimis* allowance, no  
 24 reasonableness test, no forgiveness for mistake, no good faith exception, and no  
 25 balancing against compelling government interests that allows the Executive Branch  
 26 to act in violation of the plain language of the Appropriations Clause. *See Off. of*  
 27 *Pers. Mgmt.*, 496 U.S. at 425 (holding that a mistake by an official is not grounds  
 28 for obliging the government to pay where no appropriation has been made because

1 under the Appropriations Clause “if individual hardships are to be remedied by  
 2 payment of Government funds, it must be at the instance of Congress”); *Reeside v.*  
 3 *Walker*, 52 U.S. 272, 291 (1850) (“However much money may be in the Treasury at  
 4 any one time, not a dollar of it can be used in the payment of any thing not thus  
 5 previously sanctioned.”); *U.S. Dep’t of Navy v. Fed. Lab. Rels. Auth.*, 665 F.3d 1339,  
 6 1342 (D.C. Cir. 2012) (holding that the Navy may not even buy bottled water absent  
 7 a congressional appropriation). The command is clear—without an appropriation,  
 8 no money may be spent by the Executive Branch.

9 Pursuant to its exclusive power of appropriation, Congress imposed through  
 10 an appropriations rider a duty on DOJ, including its subsidiary agencies FBI and  
 11 DEA, to not spend *any* money that prevents a state from implementing its own laws  
 12 that authorize the use, distribution, possession, or cultivation of medical cannabis.  
 13 Consolidated Appropriations Act 2021, Pub. L. No. 116-260, § 531, 134 Stat. 1283  
 14 (2020) (amended Dec. 3, 2021). In *McIntosh*, the Ninth Circuit recognized the  
 15 absolute effect of this appropriation rider’s command and the ability for courts to  
 16 grant injunctive relief. *McIntosh*, 833 F.3d at 1175. There, the Court held that  
 17 “Appellants . . . can seek—and have sought—to enjoin DOJ from *spending funds*”  
 18 contrary to Congress’s restrictions.” *McIntosh*, 833 F.3d at 1172 (enjoining  
 19 prosecution of charged conduct that is in compliance with state medical marijuana  
 20 laws); *see also Sierra Club v. Trump*, 929 F.3d at 695 (rejecting an interpretation of  
 21 *McIntosh* that only provides “a defense for criminal defendants”). By seizing the  
 22 proceeds of medical cannabis businesses that Empyreal is transporting and by  
 23 forcing Empyreal to stop operating where those seizures occur, the Federal  
 24 Defendants are “spending money on actions that prevent the Medical Marijuana  
 25 States’ giving practical effect to their state laws that authorize the use, distribution,  
 26 possession, or cultivation of medical marijuana.” *McIntosh*, 833 F.3d at 1176.  
 27 Empyreal thus seeks to enjoin the Federal Defendants from seizing the medical  
 28 cannabis funds it is transporting because those acts are unfunded and thus *ultra vires*.

Empyrean's lawful business of transporting cash from state-licensed medical cannabis businesses to financial institutions has been targeted several times by the Federal Defendants, including as recently as January 6, 2022. Transporting cash from a state-licensed medical cannabis business is expressly protected by California law. Cal. Bus. & Prof. Code § 26260(a). The threat of future seizures of cash proceeds like those that have already occurred has forced Empyrean to suspend its service to state-licensed medical cannabis businesses in San Bernardino County and threatens to force Empyrean to suspend service to state-licensed medical cannabis businesses elsewhere in California and across the nation. This threat of seizure interferes with a vital business operation for medical cannabis businesses, frustrating their ability to safely store cash proceeds off-premises, which in turn interferes with their ability to provide medical cannabis to those seeking treatment. O'Gorman Decl. ¶ 49. The Federal Defendants' actions violate the clear prohibition against DOJ spending money that prevents states from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical cannabis.<sup>2</sup>

The Federal Defendants' participation in these seizures and forfeitures also cannot be justified by reliance on probable cause, even if some of the seized cash might originate from adult-use cannabis businesses not covered by the appropriations rider. As noted above, the necessity of strict adherence to the limitations of the Appropriation Clause, coupled with the prohibitions of the rider, means the Federal Defendants must take care to not engage in activities, whether they have probable cause or some other justification, to spend *any* money that

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<sup>2</sup> Any activity by Federal Defendants to seize proceeds from medical cannabis necessarily costs money and violates the rider—government employees do not work pro bono. *See United States v. Jackson*, 388 F. Supp. 3d 505, 514 (E.D. Pa. 2019) (“That U.S. Attorneys and U.S. Marshals are paid a fixed salary is immaterial; the fact that these employees would be devoting time to this case over another case is sufficient to constitute use of funds. Moreover, however minor the expense, the rider provides that ‘[n]one of the funds’ appropriated to DOJ may be used to prevent a state from implementing its medical marijuana laws. Thus, DOJ participation in such proceedings would constitute a use of its funds under the rider.”).

1 prevents states from implementing their medical cannabis laws. As such, the Federal  
 2 Defendants should be enjoined from participating in the stops and searches of  
 3 Empyrean's vehicles or in the seizures or forfeitures of proceeds Empyrean is  
 4 transporting unless they can establish that those funds originated *entirely* from adult-  
 5 use cannabis (or from medical cannabis not in compliance with California law).<sup>3</sup>

6 The practical effect may be that the Federal Defendants are limited in the types  
 7 of law enforcement tactics they can engage in or require them to be more careful in  
 8 identifying the sources of funds before seizing them, but that result was Congress's  
 9 policy decision to make, not the Federal Defendants'. *McIntosh*, 833 F.3d at 1172  
 10 ("Once Congress, exercising its delegated powers, has decided the order of priorities  
 11 in a given area, it is for the courts to enforce them when enforcement is sought.")  
 12 (cleaned up). The burden is rightly on the Federal Defendants because it is their  
 13 burden to not violate the Appropriations Clause by acting *ultra vires* their authority.  
 14 A contrary holding would allow for the inadvertent (or advertent) spending of funds  
 15 without an appropriation, which is antithetical to long-standing constitutional law.  
 16 Therefore, Empyrean is likely to succeed on this claim.

### 17 **3. The Sheriff is violating the Fourth Amendment.**

18 The sine qua non of the Fourth Amendment is that, even where a warrant may  
 19 not be required, officers are prohibited from conducting stops, searches, or seizures  
 20 without reasonable suspicion or probable cause of criminality. *Jones v. Las Vegas*  
 21 *Metro. Police Dep't*, 873 F.3d 1123, 1132 n.7 (9th Cir. 2017) ("Officers are required  
 22 to have at least reasonable suspicion to stop a vehicle for investigatory purposes.")  
 23 (citations omitted); *United States v. Rojas-Millan*, 234 F.3d 464, 468 (9th Cir. 2000)

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24  
 25  
 26 <sup>3</sup> However, if such seizures were to prevent Empyrean from operating the financial  
 27 infrastructure necessary to support state-sanctioned medical cannabis businesses,  
 28 they would still violate the Rohrabacher-Farr appropriations rider by interfering with  
 states' implementation of their medical cannabis laws. DOJ may not spend money  
 on actions that prevent states from "giving practical effect to their state laws that  
 authorize" medical cannabis. *McIntosh*, 833 F.3d at 1176.

1 (Officers “must have at least a reasonable suspicion of criminal misconduct before  
2 detaining a driver.”); *United States v. Place*, 462 U.S. 696, 709–10 (1983) (brief  
3 investigatory seizure of property requires reasonable suspicion, and anything longer  
4 requires probable cause). The Sheriff is violating that elementary principle.

5 Because the sale of cannabis and the transport of cannabis proceeds (including  
6 in localities where dispensaries are prohibited) are lawful under California law, the  
7 Fourth Amendment prohibits the Sheriff from stopping, searching, or seizing  
8 Empyreal’s personnel or property (namely, vehicles, safes, and cash) without  
9 reasonable suspicion or probable cause to believe that the property is associated with  
10 or is the proceeds of cannabis sales that violate state law. The Sheriff has no such  
11 basis for conducting the ongoing stops, searches, and seizures of Empyreal’s  
12 vehicles, as revealed by his deputy’s January 6, 2022 statement that Empyreal’s  
13 vehicles are being targeted for “political” reasons. O’Gorman Decl. ¶ 48.

14 Instead, the ongoing stops, searches, and seizures are improperly based on the  
15 Sheriff’s insistence that because the cash Empyreal lawfully transports on behalf of  
16 its clients is connected to “drugs” the Sheriff has “the right to take the money.” *Id.*  
17 ¶ 36. That is wrong. Empyreal is lawfully transporting the lawful proceeds of  
18 product sales that are completely lawful under California law, the state that employs  
19 the Sheriff and the state whose laws he is bound to enforce. The Sheriff has no “right  
20 to take the money” because the Sheriff has no “specific, articulable facts which,  
21 together with objective and reasonable inferences, form the basis for suspecting that  
22 the particular person detained is engaged in criminal activity.” *United States v.*  
23 *Twilley*, 222 F.3d 1092, 1096 (9th Cir. 2000) (citation omitted). And the Sheriff’s  
24 apparent “mistaken view of the law” does not absolve the Sheriff’s repeated,  
25 ongoing Fourth Amendment violations. *Id.*

26 Also wrong is the Sheriff’s mistaken belief that “if I stop you I have the right  
27 to open the safe” in the vehicle. O’Gorman Decl. ¶ 36. No such rule exists. Clearly,  
28 the Sheriff is using pretextual traffic stops to search and seize Empyreal’s property



1 without probable cause. Indeed, the Sheriff is not even issuing traffic citations during  
 2 these stops—just taking Empyrean’s cash. *Id.* ¶ 22. Even when the Sheriff has  
 3 “probable cause to believe that a traffic violation has occurred” and may therefore  
 4 conduct a vehicle stop, *Whren v. United States*, 517 U.S. 806, 810 (1996), that  
 5 traffic-violation stop does not give officers the right to search the vehicle. To the  
 6 contrary: Any warrantless search pursuant to the automobile exception requires  
 7 probable cause to believe that the place searched contains contraband. *United States*  
 8 *v. Ross*, 456 U.S. 798, 825 (1982). Contra the Sheriff’s wishes, a traffic-violation  
 9 stop is not carte blanche to search a vehicle, let alone a locked safe inside it.

10 At this stage, the Court need not opine on the pretextual nature of these  
 11 ongoing stops. All the Court need hold is: Even assuming the Sheriff’s stops are  
 12 lawful if based on actual traffic violations, any searches or seizures of personnel or  
 13 property conducted after those stops must be based on probable cause, *Ross*, 456  
 14 U.S. at 825, and the stops may not be prolonged beyond their traffic-violation  
 15 “mission” without at least articulable, individualized reasonable suspicion of  
 16 criminality, *Rodriguez v. United States*, 575 U.S. 348, 354–55 (2015). The Court  
 17 should preliminarily enjoin any stops, searches, or seizures of Empyrean vehicles  
 18 made without probable cause under California law—which the Sheriff does not and  
 19 cannot have, as evidenced by the fact that after multiple searches and seizures, the  
 20 Sheriff has not issued any traffic citations, arrested anyone, filed criminal charges,  
 21 or otherwise articulated or shown any evidence that Empyrean is doing anything  
 22 other than lawfully transporting the lawful proceeds of state-licensed businesses.

23 **4. The Sheriff is violating due process because his**  
 24 **conduct is driven by improper financial motives.**

25 The Fourteenth Amendment’s Due Process Clause “entitles a person to an  
 26 impartial and disinterested tribunal in both civil and criminal cases.” *Marshall v.*  
 27 *Jerrico, Inc.*, 446 U.S. 238, 242 (1980). For this reason, a “scheme injecting a  
 28 personal interest, financial or otherwise, into the enforcement process may . . . raise

1 serious constitutional questions.” *Id.* at 249–50; *see also, e.g., Ward v. Village of*  
2 *Monroeville*, 409 U.S. 57, 60–62 (1972) (holding that petitioner’s due process rights  
3 were violated when he was required to appear in traffic court before a mayor who  
4 was also responsible for village finances); *Harjo v. City of Albuquerque*, 326 F.  
5 Supp. 3d 1145, 1193 (D.N.M. 2018) (holding that institutional incentive to prosecute  
6 constituted a due process violation). Defendants run afoul of this constitutional  
7 guarantee by stopping, searching, and seizing Empyreal’s vehicles and the money  
8 transported in them for no reason other than supplementing their agencies’ budgets.

9 As detailed above, the Sheriff is participating in equitable sharing with one or  
10 more of the Federal Defendants, through which he receives up to 80% of the  
11 proceeds from assets forfeited through civil forfeiture. Notably, because medical and  
12 adult-use cannabis is entirely legal under California law, and Empyreal’s business  
13 has been expressly authorized by California law, the Sheriff has no legitimate law-  
14 enforcement purpose to search Empyreal’s property or seize the money Empyreal  
15 transports. And even if the Sheriff believed that Empyreal’s *clients* were not fully  
16 compliant with California law, it would only make sense for the Sheriff to search  
17 and investigate those businesses, not Empyreal’s vehicles.

18 While this alone demonstrates the Sheriff’s true motivation for seizing the  
19 money in Empyreal’s vehicles, his deputies’ comments during the December 9  
20 seizure leave no room for doubt. After seizing the cash in the vehicle, the deputies  
21 counted the money. Before beginning the count, one of them apparently observed  
22 the physical amount of cash in the vehicle and said, “this is, uh, more small,”  
23 presumably comparing the December 9 seizure total to the November 16 seizure  
24 total. Then, after they finished counting the cash, one of the deputies remarked that  
25 there were “pretty small amounts [of cash] this time, huh?” Another deputy said,  
26 “That’s it?” and chuckled. He then said “You set the bar too high.” When another  
27 deputy remarked that he thought they would get “a million or two,” the first deputy  
28 responded, “At least we got over a million.” Again, the deputies appear to be



1 comparing the November 16 and December 9 seizures, which together totaled  
 2 approximately \$1.1 million. O’Gorman Decl. ¶ 37. As these discussions reveal, the  
 3 deputies’ focus was on the quantity of cash, not its source. Because they cannot  
 4 actually be interested in curtailing the cannabis industry—which is legal under  
 5 California law—they must be interested in DOJ equitable sharing revenues.

6 The Sheriff’s financial motivation is further supported by the January 6 stop,  
 7 when deputies declined to seize boxed coins Empyreal was transporting because  
 8 they were from a non-cannabis business. *Id.* ¶ 47. That is because, unlike cannabis  
 9 proceeds, lawful revenue from other businesses cannot be forfeited through DOJ’s  
 10 equitable sharing program (nor can it be forfeited under California law).

11 This type of financial incentive is precisely the type that the U.S. Supreme  
 12 Court has warned violates due process. *See Marshall*, 446 U.S. at 249–50; *see also*  
 13 *Harjo*, 326 F. Supp. 3d at 1193. Empyreal is thus likely to succeed on this claim.

14 **B. Empyreal is suffering and will continue to suffer substantial**  
 15 **irreparable harm without relief from this Court.**

16 “[E]conomic hardship constitutes irreparable harm.” *Kildare v. Saenz*, 325  
 17 F.3d 1078, 1083 (9th Cir. 2003). More specifically, evidence supporting irreparable  
 18 harm can be: “threatened loss of prospective customers or goodwill,” *Stuhlbarg Int’l*  
 19 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001); “loss of control  
 20 over business reputation,” *Adidas Am., Inc. v. Skechers USA, Inc.*, 890 F.3d 747, 756  
 21 (9th Cir. 2018); or a “constitutional violation alone, coupled with the damages  
 22 incurred,” *Am. Trucking Assocs., Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058  
 23 (9th Cir. 2009). Having to cease lawful business operations suffices. *Id.*

24 Here, because of Defendants’ ongoing conduct, Empyreal is suffering the  
 25 following immediate and irreparable injuries. It is: (1) being deprived of its ability  
 26 to complete contracted services with its clients, damaging its business reputation,  
 27 client retention, and client recruitment; (2) forced to suspend its operations in San  
 28 Bernardino County and reroute other Southern California routes to avoid San

1 Bernardino County; (3) forced to suspend its operations through Kansas and reroute  
2 its operations to serve Kansas City, Missouri, at considerable expense; (4) forced to  
3 forgo offering new services in three Midwestern states; (5) unable to expand its  
4 services to meet client demands in Southern California due to its inability to make  
5 use of its currency processing facility in San Bernardino County and to otherwise  
6 operate there, including rerouting Southern California routes that would have  
7 delivered to that facility; (6) losing potential clients; (7) suffering significant  
8 reputational harm and economic hardship based on the May 18 seizure, including  
9 having its competitors use the May 18 seizure to publicly attack and degrade  
10 Empyreal to potential and current clients; (8) reasonably anticipating additional  
11 reputational harm and economic hardship due to the California seizures, which will  
12 affect its ability to attract investors and business partners; (9) being deprived of  
13 hundreds of thousands of dollars seized from its vehicles; (10) being forced to  
14 expend funds to defend against civil forfeiture proceedings initiated without cause;  
15 and (11) suffering violations of its constitutional rights. O’Gorman Decl. ¶ 49.

16 All of the above immediate and irreparable injuries will continue unabated if  
17 Defendants are not enjoined from this ongoing conduct, as shown by the January 6  
18 stop. Each day Defendants’ unlawful conduct continues, Empyreal will continue to  
19 suffer injury, further compounding its economic hardship and reputational damage.

20 Finally, if Defendants’ conduct continues, it poses an existential threat to  
21 Empyreal. If Defendants’ conduct continues in California, Empyreal will have to  
22 suspend its business operations in the state, at a significant financial loss, since  
23 California represents about 20% of Empyreal’s business and Empyreal reasonably  
24 anticipated its business would otherwise double in California in 2022. Even worse,  
25 if the Federal Defendants’ conduct continues in other jurisdictions, Empyreal may  
26 be forced to cease lawful business operations for financial institutions, and their  
27 customers, involved in state-legal medical cannabis and adult-use cannabis  
28 operations. Ending these services would severely impact Empyreal’s business. *Id.*

1                   **C. The equities and public interest strongly favor an injunction.**

2            “[I]t is always in the public interest to prevent the violation of a party’s  
3 constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
4 (quotation marks and citations omitted). It is, in fact, “the highest public interest.”  
5 *United States v. Raines*, 362 U.S. 17, 27 (1960). For that reason alone, Empyrean  
6 satisfies the equities and public-interest requirements for immediate relief, given that  
7 Defendants’ conduct violates Empyrean’s Fourth and Fourteenth Amendment rights.  
8 But even if the Court grants relief only on statutory grounds, the policies expressed  
9 in those statutes, both state and federal, make clear that there is no public interest in  
10 disrupting Empyrean’s lawful business specifically and the operations of the lawful  
11 cannabis industry generally—which depends on services like Empyrean’s to operate  
12 safely and in compliance with federal and state financial regulations. *See Weinberger*  
13 *v. Romero-Barcelo*, 456 U.S. 305, 320 (1982) (exercise of equity in the public  
14 interest should be in accordance with what legislature sought to protect); *Allergan,*  
15 *Inc. v. Merz Pharms., LLC*, 2012 WL 781705, at \*13 (C.D. Cal. Mar. 9, 2012)  
16 (giving effect to a law’s “broadly stated policies” “would serve the public interest”);  
17 *Shipp v. Schaaf*, 2019 WL 1472303, at \*2 (N.D. Cal. Apr. 2, 2019) (finding it in the  
18 public interest to enjoin conduct that “does not follow . . . stated policy”). On the  
19 other side of the ledger, Defendants have no reason to disrupt these lawful  
20 businesses. Their only interest, as demonstrated by their own words and conduct, is  
21 financial gain. That, of course, is never a legitimate government interest—especially  
22 when it contravenes explicit statutory commands, policies, and goals, in a manner  
23 that violates the Fourth Amendment to boot.

24                   **V. Conclusion**

25            The Court should issue a temporary restraining order enjoining Defendants’  
26 unlawful and unconstitutional stops, searches, and seizures of Empyrean’s vehicles,  
27 cash, and other property, and an order for Defendants to show cause why a  
28 preliminary injunction should not issue.

1 Dated: January 14, 2022

Respectfully submitted,

2  
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*Counsel for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

EMPYREAL ENTERPRISES, LLC,  
d/b/a EMPYREAL LOGISTICS

Plaintiff,

vs.

The United States of America; the U.S.  
Department of Justice; Attorney General  
MERRICK GARLAND, in his official  
capacity; the Federal Bureau of  
Investigation; CHRISTOPHER A.  
WRAY, Director of the Federal Bureau  
of Investigation, in his official capacity;  
KRISTI KOONS JOHNSON, Assistant  
Director of the Federal Bureau of

Case No.: 5:22-cv-94

**[PROPOSED] TEMPORARY  
RESTRAINING ORDER AND  
[PROPOSED] ORDER TO SHOW  
CAUSE RE: PRELIMINARY  
INJUNCTION**

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

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

Investigation overseeing the FBI's Los Angeles Field Office, in her official capacity; the Drug Enforcement Administration; ANNE MILGRAM, Administrator of the Drug Enforcement Administration, in her official capacity; SHANNON D. DICUS, San Bernardino County Sheriff-Coroner, in his official capacity as the head of the San Bernardino County Sheriff's Office,

Defendants.

On consideration of Plaintiff's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction, it is hereby ORDERED that the application is GRANTED. The Court finds that Plaintiff has demonstrated a likelihood of success on Counts 1, 2, 3, and 5 of its complaint, that Plaintiff is suffering irreparable harm in the absence of immediate relief, that the balance of the equities is in Plaintiff's favor, and that a temporary restraining order and order to show cause are in the public interest.

Specifically, Plaintiff is being deprived of its ability to complete contracted services with its clients, is being deprived of hundreds of thousands of dollars, is being forced to expend funds on civil forfeiture proceedings initiated without probable cause, is being forced to re-route or suspend operations in multiple jurisdictions including San Bernardino County at considerable expense, is being forced to suspend construction of a currency processing facility in San Bernardino County, is being forced to forgo offering new services in three Midwestern states

1 and in Southern California, has lost potential clients, is at risk of having to cease  
2 lawful business operations for financial institutions and their customers involved in  
3 state-legal medical cannabis and adult-use cannabis business, which would  
4 severely impact Empyrean's business, most of which comes from those operations.  
5

6 These injuries have caused and continue to cause Plaintiff irreparable harm  
7 in non-recoupable expenses, loss of business reputation and goodwill, and  
8 alteration and suspension of its lawful business operations. No reason justifies  
9 these irreparable harms; they are caused by Defendants' violations of federal and  
10 state law, the Fourth Amendment, and the Fourteenth Amendment in the form of  
11 stops, searches, and seizures of Plaintiff's personnel and property without  
12 reasonable suspicion or probable cause and in furtherance of Defendants'  
13 unconstitutional profit incentives.  
14  
15  
16

17 The Court accordingly ORDERS Defendants to show cause why a  
18 preliminary injunction should not issue, and, pending hearing on the Order to  
19 Show Cause, the Court GRANTS Plaintiff's application for a temporary restraining  
20 order. The Court further ORDERS:  
21

22 PENDING HEARING on the above Order to Show Cause, Defendants, their  
23 officers, agents, employees, and attorneys, and all those in active concert or  
24 participation with them are HEREBY RESTRAINED AND ENJOINED from:  
25

- 26 a. Stopping, detaining, or seizing Plaintiff's personnel or vehicles absent  
27  
28 articulable, particularized reasonable suspicion or probable cause of a

1 traffic violation or other criminal conduct. In the context of Plaintiff's  
2 cash-in-transit business, knowledge or belief that the personnel or  
3 vehicles are transporting the proceeds of state-licensed cannabis sales  
4 is not articulable, particularized reasonable suspicion or probable  
5 cause of criminal conduct.  
6

7  
8 b. Extending the duration of any traffic stop beyond the time necessary  
9 to complete the stop's traffic-violation or other probable-cause based  
10 reason for the stop. In the context of Plaintiff's cash-in-transit  
11 business, knowledge or belief that the vehicle is transporting the  
12 proceeds of state-licensed cannabis sales is not a lawful basis for  
13 extending the duration of a stop.  
14

15  
16 c. Searching Plaintiff's personnel, property, or possessions (including  
17 vehicles, safes, or other containers) absent articulable probable cause  
18 to believe that the particular place or thing being searched contains  
19 contraband or otherwise unlawful property. In the context of  
20 Plaintiff's cash-in-transit business, knowledge or belief that the place  
21 or thing being searched contains the proceeds of state-licensed  
22 cannabis sales is not articulable, particularized probable cause to  
23 believe that the place or thing contains contraband or otherwise  
24 unlawful property.  
25  
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1 d. Seizing Plaintiff's property or possessions (including vehicles, safes,  
2 other containers, cash, or currency) absent articulable, particularized  
3 probable cause to believe that the property is contraband or the  
4 proceeds of unlawful activity. In the context of Plaintiff's cash-in-  
5 transit business, knowledge or belief that a vehicle, safe, or other  
6 container contains the proceeds of state-licensed cannabis sales is not  
7 articulable, particularized probable cause. In the context of Plaintiff's  
8 cash-in-transit business, knowledge or belief that cash or currency is  
9 the proceeds of state-licensed cannabis sales is not probable cause.  
10  
11  
12

13 Defendants are hereby ORDERED TO SHOW CAUSE why a preliminary  
14 injunction should not issue under the same terms as the Temporary Restraining  
15 Order described above.  
16

17 \*\*\*

18 Defendants are FURTHER ORDERED to appear before this Court in the  
19 courtroom of the Honorable \_\_\_\_\_, Courtroom \_\_\_\_, located at 3470 12th  
20 Street, Riverside, California 92501, on \_\_\_\_\_, 2022, at \_\_\_\_\_.m., or as soon  
21 thereafter as counsel may be heard. Plaintiff shall file any additional brief and  
22 supporting evidence for Plaintiff's requested motion for preliminary injunction by  
23 \_\_\_\_\_, 2022; Defendants shall file their oppositions to the motion for  
24 preliminary injunction by \_\_\_\_\_, 2022; and Plaintiff shall file its reply brief in  
25 support of the motion for preliminary injunction by \_\_\_\_\_, 2022.  
26  
27  
28

1 It is FURTHER ORDERED that this Temporary Restraining Order is  
2 effective immediately upon issue. A copy of this Order to Show Cause must be  
3 served on Defendants no later than \_\_\_\_\_, 2022.  
4

5 **IT IS SO ORDERED.**

6 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.  
7  
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9

10 UNITED STATES DISTRICT COURT JUDGE  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

EMPYREAL ENTERPRISES, LLC,  
d/b/a EMPYREAL LOGISTICS,

Plaintiff,

vs.

The United States of America; the U.S.  
Department of Justice; Attorney General  
MERRICK GARLAND, in his official  
capacity; the Federal Bureau of  
Investigation; CHRISTOPHER A.  
WRAY, Director of the Federal Bureau  
of Investigation, in his official capacity;  
KRISTI KOONS JOHNSON, Assistant  
Director of the Federal Bureau of

Case No.: 5-22-cv-94

**DECLARATION OF DEIRDRA  
O’GORMAN IN SUPPORT OF  
PLAINTIFF’S *EX PARTE*  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE: PRELIMINARY  
INJUNCTION**

Judge:

Complaint Filed: 1/14/22

Investigation overseeing the FBI's Los Angeles Field Office, in her official capacity; the Drug Enforcement Administration; ANNE MILGRAM, Administrator of the Drug Enforcement Administration, in her official capacity; SHANNON D. DICUS, San Bernardino County Sheriff-Coroner, in his official capacity as the head of the San Bernardino County Sheriff's Office,

Defendants.

I, Deirdra O'Gorman, submit the following declaration in support of Plaintiff's Ex Parte Application for Temporary Restraining Order and Order to Show Cause.

1. I am a citizen of the United States of America and a resident of the state of Colorado. I am over eighteen years of age and fully competent to make this declaration.

2. I am the President and CEO of Empyreal Enterprises, LLC d/b/a Empyreal Logistics.

3. I have personal knowledge of the following facts and would competently testify to them if called upon to do so.

4. Empyreal Enterprises, LLC, d/b/a Empyreal Logistics ("Empyreal") is a Pennsylvania limited liability company in good standing with the Pennsylvania Bureau of Corporations and Charitable Organizations.

5. Empyreal has over 200 employees in 13 offices.

1           6. I am Empyreal's CEO. I have more than 26 years of experience as a  
2 financial services executive and I also run a compliance firm that works with  
3 financial institutions to build compliance programs, with adherence to the enhanced  
4 due diligence compliance standards required by FinCEN.  
5

6           7. Empyreal operates a cash-in-transit (armored vehicle) business in  
7 approximately 28 states, including California.  
8

9           8. Unlike traditional armored-vehicle companies, Empyreal operates  
10 discreetly, using state-of-the-art technology and surveillance systems in its vehicle  
11 fleet.  
12

13           9. Empyreal's business model is unique as it relies on a multi-faceted  
14 approach that utilizes technology-based security solutions along with traditional  
15 approaches to armored transport.  
16

17           10. Empyreal's clients include both financial institutions and the state-legal  
18 cannabis businesses with which those institutions do business.  
19

20           11. Empyreal serves financial institutions that work with state-legal  
21 medical cannabis businesses in numerous states, including California, offering  
22 secure cash collection and transport, deposit validation at secure vault locations, and  
23 standard cash services to businesses and financial institutions.  
24

25           12. Empyreal offers these same cash management services to financial  
26 institutions that service state-licensed adult-use cannabis businesses.  
27  
28

1           13. Most of Empyreal's cannabis-industry clients hold medical cannabis  
2 licenses.

3  
4           14. Empyreal also provides its cash logistics services to clients in other  
5 businesses outside of the cannabis industry.

6           15. A significant percentage of Empyreal's cash-in-transit business does  
7 not involve the cannabis industry. These clients include restaurants, convenience  
8 stores, and other cash-intensive businesses.

9  
10           16. With respect to its cannabis-industry clients, Empyreal contracts only  
11 with state-legal cannabis businesses that have established banking relationships with  
12 financial institutions with anti-money laundering law programs implemented  
13 pursuant to the 2014 FinCEN Guidance Regarding Marijuana-related Business  
14 ("2014 FinCEN Guidance") and applicable state-issued guidance.  
15

16  
17           17. Empyreal's financial institution clients must also conduct extensive  
18 initial and on-going due diligence of cannabis industry customers to ensure  
19 compliance with their Bank Secrecy Act obligations and other regulatory  
20 requirements, including filing marijuana-related Suspicious Activity Reports  
21 (SARs) to comply with the 2014 FinCEN Guidance.  
22

23  
24           18. Approximately 20% of Empyreal's business is in California, including  
25 business that originates in California but is served by Empyreal branches operating  
26 from nearby states.  
27  
28

1           19. Many of Empyreal’s existing clients in California have requested that  
2 Empyreal expand services in California in the near future.

3  
4           20. Absent interference by Defendants, such as the events described in this  
5 lawsuit, Empyreal projects it will double its business in California next year.

6           21. Empyreal’s vehicles have been repeatedly targeted by Defendants for  
7 stops, searches, and seizures based on the fact that Defendants know that Empyreal  
8 vehicles are transporting the cash proceeds of state-legal cannabis businesses.

9  
10           22. In the several stops, searches, and seizures described below, not a single  
11 traffic citation was issued to an Empyreal driver, and no criminal charges have been  
12 brought against Empyreal or any of its employees relating to any of the stops,  
13 searches, and seizures.  
14

15  
16           23. On May 17, 2021, a deputy from the Dickinson County Sheriff’s Office  
17 stopped and searched an Empyreal vehicle driven by an Empyreal driver, demanding  
18 (and receiving) access to the vehicle without any basis as well as Empyreal’s route  
19 manifest for the next day’s pickup of cash proceeds from state-licensed medical  
20 cannabis dispensaries in Kansas City, Missouri.  
21

22           24. The next day, on May 18, 2021, deputies from the Dickinson County  
23 Sheriff’s Office in Dickinson County, Kansas stopped, searched, and seized  
24 approximately \$165,620 from an Empyreal vehicle (“the May 18 seizure”) on I-70  
25 without a warrant, working in conjunction with a DEA task force.  
26  
27  
28



1           25. The cash proceeds being transported by Empyreal's vehicle during the  
2 May 18 seizure were entirely from state-licensed medical cannabis dispensaries  
3 operating lawfully under Missouri law in Kansas City, Missouri, and the proceeds  
4 were being transported to legitimate financial institutions.  
5

6           26. On September 3, 2021, the United States of America filed a civil  
7 forfeiture complaint in the United States District Court for the District of Kansas  
8 seeking civil forfeiture of the cash seized in the May 18 seizure. DEA Special Agent  
9 Bryson Wheeler was the affiant for the affidavit accompanying that forfeiture  
10 complaint. According to that complaint, the DEA conducted surveillance of the  
11 Empyreal vehicle as it visited state-legal medical cannabis dispensaries in Kansas  
12 City, Missouri to pick up the currency prior to the May 18 seizure.  
13  
14  
15

16           27. Three times in the past eight weeks, the San Bernardino County  
17 Sheriff's Department in California has stopped, searched, and seized the contents of  
18 Empyreal vehicles as their drivers lawfully conducted Empyreal business.  
19

20           28. Based on information provided to me, I understand that the San  
21 Bernardino County Sheriff's Department is working in coordination with one or  
22 more of the Federal Defendants to orchestrate these ongoing stops, searches, and  
23 seizures.  
24

25           29. On November 16, 2021, San Bernardino County Sheriff's Department  
26 deputies stopped and seized approximately \$750,000 in legal currency from one of  
27 Empyreal's vehicles, seized the vehicle itself, and seized the driver's business and  
28

1 personal cellphones (the “November 16 seizure”). In the process, Defendants caused  
2 significant, unnecessary damage to the vehicle and the technology therein. The stop,  
3 search, and seizure took more than four hours.  
4

5 30. The cash proceeds being transported by Empyreal’s vehicle during the  
6 November 16 seizure were entirely from state-licensed cannabis businesses in good  
7 standing, operating lawfully under California law, and the proceeds were being  
8 transported to legitimate financial institutions.  
9

10 31. Three of the four cannabis businesses whose cash proceeds were seized  
11 during the November 16 seizure hold California medical cannabis licenses.  
12

13 32. On December 9, 2021, San Bernardino County Sheriff’s Department  
14 deputies stopped and seized approximately \$350,000 in legal currency from one of  
15 Empyreal’s vehicles (the “December 9 seizure”).  
16

17 33. The cash proceeds being transported by Empyreal’s vehicle during the  
18 December 9 seizure were entirely from state-licensed cannabis businesses operating  
19 lawfully under California law, and the proceeds were being transported to legitimate  
20 financial institutions.  
21

22 34. All four of the cannabis businesses whose cash proceeds were seized  
23 during the December 9 seizure hold California medical cannabis licenses.  
24

25 35. In the course of the December 9 seizure, the San Bernardino Sheriff’s  
26 deputies covered up or attempted to cover up the cameras on the exterior and interior  
27  
28

1 of the Empyrean vehicle but failed to disable the vehicle's audio recording  
2 equipment.

3  
4 36. In the video and audio recording of the December 9 seizure, the  
5 Sheriff's deputies can be heard to make several statements indicating that any  
6 purported traffic violation bases for the stop (for which no citations were issued)  
7 were pretextual, and that the Sheriff's deputies had planned the stop, search, and  
8 seizure of the vehicle and its cash contents in advance (as also indicated by the fact  
9 that they already had a drug-sniffing dog with them at the time of the stop). Those  
10 statements include:  
11  
12

- 13 i. Alleging that the dog alerted on the vehicle, even though video  
14 footage from the vehicle shows that the dog did not alert on the  
15 vehicle and was barely interested in the vehicle.  
16  
17 ii. Stating that "If I stop you, I have the right to open the safe" in the  
18 vehicle.  
19  
20 iii. Stating that "I do have the right to take the money" because it was  
21 connected to "drugs," without indicating any basis to believe that  
22 the money was connected to anything other than state-legal cannabis  
23 sales.  
24

25 37. In the video and audio recording of the December 9 seizure, the  
26 Sheriff's deputies can be heard to make several statements indicating that they were  
27 motivated by revenue generation, including:  
28

1 i. Upon seeing the physical amount of cash in the vehicle, observing  
2 that “this is, uh, more small”—presumably in relation to the amount  
3 they seized in the November 16 seizure.  
4

5 ii. After they finished counting the cash, one of the deputies said  
6 “That’s it?” and chuckled. He then said: “You set the bar too high.”  
7 When another deputy remarked that he thought they would get “a  
8 million or two,” the first deputy responded “At least we got over a  
9 million”—presumably referring to the combined total of the  
10 November 16 and December 9 seizures, which totaled  
11 approximately \$1.1 million.  
12

13  
14 iii. After they finished counting the cash, one of the deputies remarked  
15 that there were “pretty small amounts [of cash] this time, huh?”—  
16 presumably in relation to the amount they seized in the November  
17 16 seizure.  
18  
19

20 38. Based on information provided to me by the Empyreal driver, whom I  
21 employ and supervise, I understand that some of the same Sheriff’s deputies  
22 conducted the December 9 stop, search, and seizure and the November 16 stop,  
23 search, and seizure.  
24

25 39. Based on information provided to me, I understand that the  
26 approximately \$1,050,000 in cash seized from Empyreal’s vehicles in the two  
27 seizures by San Bernardino County Sheriff’s Department has been transferred to one  
28

1 or more of the Federal Defendants and remains in the possession of one or more of  
2 the Federal Defendants.

3  
4 40. Based on information provided to me, I understand that one or more of  
5 the Federal Defendants will be pursuing civil forfeiture of the currency seized in the  
6 November 16 seizure and the December 9 seizure.

7  
8 41. Based on information provided to me and based on what I have  
9 observed in the video and audio of the seizures, the Defendants do not appear to take  
10 account of whether the cash proceeds they seized were from state-licensed medical  
11 cannabis dispensaries operating lawfully under the laws of the state in which they  
12 are located.

13  
14 42. Based on information provided to me and based on what I have  
15 observed in the video and audio of the seizures, the Defendants do not appear to take  
16 account of whether the cash proceeds they seized were from medical cannabis, and  
17 Defendants took no measures to verify whether the proceeds were from medical  
18 cannabis or other state-legal, adult-use cannabis sales.

19  
20 43. Based on information provided to me and based on what I have  
21 observed in the video and audio of the seizures, the Defendants often do not take  
22 account of whether the cash proceeds they seized were from cannabis businesses or  
23 other types of businesses.  
24  
25  
26  
27  
28

1           44. On January 6, 2022, one or more San Bernardino County Sheriff's  
2 Department deputies stopped and searched an Empyreal vehicle and interrogated the  
3 driver.  
4

5           45. Although Empyreal had suspended cash logistics operations in San  
6 Bernardino County after the December 9 seizure and instructed drivers on cash  
7 logistics trips to not to enter San Bernardino County, this Empyreal driver was  
8 simply picking up an order of rolled coin boxes from Empyreal's vendor, which  
9 happens to be located in San Bernardino County, in order to replenish its rolled coin  
10 supply.  
11  
12

13           46. The Empyreal vehicle was not transporting any cannabis proceeds on  
14 January 6 but was transporting rolled coins from a non-cannabis business.  
15

16           47. Based on information provided to me by the Empyreal driver, whom I  
17 employ and supervise, Sheriff's deputies declined to seize the coins once they  
18 realized they were from a non-cannabis business.  
19

20           48. Based on information provided to me by the Empyreal driver, whom I  
21 employ and supervise, when the Empyreal driver asked the Sheriff's deputy on  
22 January 6 why Empyreal vehicles were being stopped so frequently, the deputy told  
23 him it was "political" but declined to elaborate further.  
24

25           49. As a result of Defendants ongoing conduct, including the stops,  
26 searches, and seizures of Empyreal's personnel, vehicles, safes, cellphones, and  
27  
28

1 money, Empyreal is suffering substantial and ongoing harms to its business and its  
2 business reputation. Those harms include:

- 3  
4 i. Each seizure of Empyreal's cash renders it unable to perform a  
5 service for which it was contracted, damaging Empyreal's business  
6 reputation, client retention, and client recruitment.
- 7  
8 ii. Being subject to repeated stops, searches, and seizures by  
9 Defendants causes reputational harm and makes Empyreal's clients  
10 less likely to engage in business with Empyreal in the future.
- 11  
12 iii. Empyreal has lost business opportunities and potential clients  
13 because of the May 18 seizure in Kansas. Further, based on my  
14 extensive experience in the financial industry and as the CEO of  
15 Empyreal and my communications with clients, potential clients,  
16 and business partners, we at Empyreal reasonably expect the two  
17 California seizures to have a similarly negative effect on its  
18 business.
- 19  
20  
21 iv. Empyreal lost a potential client—the Colorado franchisee of a major  
22 fast-food chain—because of concerns the potential client had arising  
23 from the May 18 seizure.
- 24  
25 v. Due to the May 18 seizure, Empyreal has re-routed its services for  
26 medical cannabis dispensaries in Kansas City, Missouri in order to  
27 avoid traveling through the State of Kansas, including Dickinson  
28



1 County, at substantial expense. This is particularly inconvenient  
2 because Kansas City, Missouri sits on the Kansas border, and is  
3 primarily served by I-70, which runs through Kansas, for westbound  
4 travel.  
5

6 vi. Prior to the May 18 seizure, Empyreal had planned to start offering  
7 services for non-cannabis clients in three Midwestern states. But I  
8 have been provided reliable information that, based on the May 18  
9 seizure, law-enforcement agencies in those states have begun to  
10 keep a lookout for Empyreal vehicles to stop, search, and seize their  
11 contents. Because of this real risk of harassment and property loss,  
12 Empyreal has been unable to start offering services for non-cannabis  
13 customers in those three Midwestern states.  
14  
15  
16

17 vii. Empyreal's competitors have used the May 18 seizure as a selling  
18 point for why Empyreal's clients and potential clients should do  
19 business with them instead, including in posts on social media  
20 websites such as LinkedIn. Attached to this declaration as **Exhibit**  
21 **A** is a true and correct copy of one such LinkedIn post.  
22  
23

24 viii. Based on my extensive experience in the financial industry and as  
25 the CEO of Empyreal, as well as my communications with potential  
26 investors and business partners, we at Empyreal are reasonably  
27 concerned that potential financial investors or business partners will  
28

1 be reluctant to invest in or enter into business relationships with  
2 Empyreal as a result of the reputational harm Empyreal has suffered  
3 from the May 18 seizure, and that we anticipate suffering from the  
4 two California seizures.  
5

6 ix. Being targeted for repeated stops, searches, and seizures by  
7 Defendants threatens the viability of Empyreal's entire cash-in-  
8 transit business model.  
9

10 x. Because of Defendants' actions against Empyreal vehicles in San  
11 Bernardino County, Empyreal has been forced to suspend its  
12 business operations in San Bernardino County and reroute other  
13 Southern California routes to avoid San Bernardino County, at  
14 serious and unquantifiable financial loss.  
15  
16

17 xi. Suspending business operations in San Bernardino County has been  
18 particularly costly to Empyreal because Empyreal was building a  
19 vault and currency processing facility in San Bernardino County and  
20 has had to suspend further construction and planned operations from  
21 that facility. Empyreal had already spent approximately \$100,000  
22 on renovations to its planned location in San Bernardino County and  
23 is incurring expenses of approximately \$21,000 per month in rent  
24 and utilities.  
25  
26  
27  
28

xii. Losing the ability to open and operate the San Bernardino County currency processing facility has impacted Empyreal's operations outside San Bernardino County, because that location was to be Empyreal's currency processing facility serving all of Southern California, a key market for our business, and Empyreal has had to reroute Southern California routes that would have delivered to that facility at considerable expense.

xiii. Empyreal's ability to meet the demands of its existing clients to expand its services in California is dependent on both being able to continue operations in San Bernardino County and on being able to serve Southern California from its San Bernardino County currency processing facility.

xiv. Empyreal's projected future revenue growth in California is dependent on both being able to continue operations in San Bernardino County and on being able to serve Southern California from its San Bernardino County currency processing facility.

xv. If Empyreal continues to have its vehicles stopped, searched, and seized by Defendants in California, Empyreal will have to suspend its business operations in California, at serious and unquantifiable financial loss.

xvi. Suspending business operations in California will be particularly costly to Empyreal, because approximately 20% of Empyreal's business—over \$3.5 million in 2021—originates in California, and Empyreal projects that revenue to more than double in 2022.

xvii. If Empyreal continues to have its vehicles stopped, searched, and seized nationwide by the Federal Defendants, and their task forces and partners in local or state law enforcement agencies, Empyreal will have to cease lawful business operations for financial institutions, and their customers, involved in state-legal medical cannabis and adult-use cannabis operations. Ending these services would severely impact Empyreal's business.

xviii. To protect its business reputation, Empyreal reimbursed its clients the approximately \$165,620 seized during the May 18 seizure, effectively indemnifying its clients out of its own revenue.

xix. To protect its business reputation, Empyreal reimbursed its clients the approximately \$700,000 seized during the November 16 seizure, and the approximately \$350,000 seized during the December 9 seizure, effectively indemnifying its clients out of its own revenue.

xx. Defendants continue to retain all of the money they seized from Empyreal, without any measures to verify the sources of the money.

xxi. Empyreal is forced to expend revenue and resources contesting the attempted civil forfeitures of its seized money.

xxii. Empyreal is forced to expend revenue and resources repairing the damage that Defendants did to its vehicle and security features during the November 16 seizure.

xxiii. Defendants' practice of disabling the cameras on Empyreal's vehicles during these stops, searches, and seizures interferes with Empyreal's property and inhibits Empyreal's ability to gather facts about the incidents to both defend against the forfeiture of the seized property and to pursue vindication of its statutory and constitutional rights.

50. Due to the ongoing nature of Defendants' conduct and the ongoing harm Empyreal is suffering to avoid being further victimized by Defendants' conduct, every day Defendants' conduct continues, Empyreal will continue to suffer immediate and irreparable injury including the injuries I've mentioned above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of January, 2022, in Englewood, Colorado.

  
Deirdra O'Gorman

## **EXHIBIT A**

TO DECLARATION OF DEIRDRA O’GORMAN IN SUPPORT OF PLAINTIFF’S  
*EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION



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### Cannabis Funds Seized Crossing State Lines

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**Exhibit A**