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

12 HARREN LABS INC., a California
13 corporation, and MING LI, an individual

14 Petitioners,

15 vs.

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

19 Respondents.

Case No. _____

**PETITIONERS' UNVERIFIED
PETITION FOR WRIT OF MANDATE
(CCP §1085)**

Date: _____
Time: _____
Judge: _____
Dept.: _____

22
23 **COMES NOW PETITIONER WHO ASSERTS AND ARGUES AS FOLLOWS:**

24 1. Petitioners, HARREN LABS INC., a California corporation (“Harrens Lab”), and
25 MING LI, an individual (“Li”), petition this Court for a writ of mandate under Code of Civil
26 Procedure §1085, directed to Respondents and by this unverified petition allege as follows:
27
28

1 industry’s only “regulation” stemmed from a sixty-three-word sentence containing an affirmative
2 defense in the Health and Safety Code¹, a scattering of case law interpreting it, and two documents
3 from the state attorney general including an eleven-page set of “guidelines” and a three-and-a-half-
4 page letter to the legislature, neither of them binding law.

5 12. At this time, there was little to no regulation at the local government level either.
6
7 Only a few dozen of California’s 548 local governments chose to regulate (and tax) storefront retail
8 dispensaries—and no other part of the supply chain.

9 13. In 2015 the California state legislature at long last created a statewide regulatory
10 framework for the burgeoning medical cannabis industry. But before it could be fully implemented
11 by the state agencies, it was caught in the tide of cannabis legalization for adult use. In November
12 2016, 58% of California voters approved Proposition 64 and legalized cannabis for adult use (aka
13 “recreational use”) as opposed to medical use, following the trend set by Colorado and Washington
14 in 2012, and Oregon in 2014.

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

20 15. The agencies rushed to meet their statutory mandate to promulgate emergency
21 regulations. They created, at the instigation of the state legislature, a “temporary” licensing scheme
22 pending the processing of the anticipated thousands of applications for “annual” licenses.
23
24

25
26
27 ¹ Then (now sunset-ed as of 2019) Health and Safety Code § 11362.775: “Qualified patients, persons with valid identification cards,
28 and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of
California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be
subject to state criminal sanctions under Section 11357, 1358, 11359, 11360, 11366, 11366.5, or 11570.”

1 16. For that reason, on January 1, 2018, an existing \$3 billion industry of thousands of
2 businesses was suddenly regulated, and state licenses (and local permits too) were required to operate.
3 The BCC and the other state licensing agencies commenced to issue temporary licenses, in
4 conjunction with temporary or permanent authorization from local governments, their partners in
5 the state’s dual licensing system. Without these temporary arrangements, the state would have had to
6 have shut down the entire existing multi-billion-dollar industry comprising cannabis cultivation,
7 manufacturing, testing, distribution, and retail.
8

9 17. In 2018, the licensing agencies initially issued temporary licenses valid only for a
10 period of 120 days. They then gave 90-day extensions for temporary licensees that had submitted
11 applications for annual licenses. Annual licenses in this context are permanent licenses much like
12 licenses issued by the Alcohol Beverages Control (“ABC”), and like those also have rigorous and
13 detailed due process rights and procedures. The licensing agencies issued thousands of temporary
14 licenses throughout 2018 pursuant to Bus. & Prof. Code § 26050.1 which sunset on December 31,
15 2018.
16

17 18. Effective January 1, 2019 the legislature replaced this temporary license system with a
18 “provisional” license system for calendar year 2019 as identified in Cal. Bus. & Prof. Code § 26050.2.
19 The legislature then extended the provisional license system for another two years, scheduled to
20 sunset at the end of calendar year 2021 per Bus. & Prof. Code § 26050.2(i). However, the legislature
21 is currently considering SB 59 which would extend the provisional licensing system until 2028.
22 Should it pass, as is expected, the system of “temporary” or “provisional” licenses upon which
23 thousands of businesses have relied, and will continue to rely, by investing billions of dollars a year,
24 will be authorized to last for a total of at least ten years.
25

26 19. Approximately 8,754 licenses are active in the BCC’s licensing apparatus.
27 Approximately 1,661 such licenses are annual (permanent) licenses, and the remaining 7,093 licenses
28 are “provisional” licenses.

1 20. All stakeholders in the Cannabis industry, including the California Government
2 proceeded with hope that annual, or permanent, license applications would be swiftly and smoothly
3 processed in the new system. This hope has been in vain. Instead, this awkward transition continues
4 through the present day. The progress of the billions of dollars' worth of operating businesses,
5 including once largely underground and gray area medical-law operators, towards a fully and heavily
6 regulated system of state and local licensing has taken much longer than expected. This delay has
7 only been exacerbated by the COVID-19 pandemic.
8

9 **B. Harrens Lab and Ming Li, an individual and its former CEO, have navigated**
10 **the BCC's complex license application system for approximately four years now, and**
11 **have operated a fully legal "provisionally" licensed cannabis testing laboratory for 2**
12 **years and 8 months, invested over \$5 million in reliance on that license, and employ**
13 **18 full time staff members.**

14 21. In December 2014 Harrens Lab began operating as an analytical laboratory (pre-
15 dating their cannabis quality testing business under license by BCC), and Ming Li became the first
16 CEO. Since then, they have worked under, and been fully compliant with, various FDA and DEA
17 regulations. Ming Li has now lost his position as CEO of Harrens Lab due to the events of this
18 matter and has suffered personal losses and damages.

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

24 23. They also contribute to cannabis consumer safety in ways outside of the mandated
25 testing: they test the safety of Vitamin E Acetate for cannabis concentrate manufacturers, implicated
26 in vaping-associated pulmonary injury (VAPI); and they test for hop latent viroid, a plant disease, that
27 can greatly reduce cannabis productivity and efficacy.
28

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

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

12 26. On June 22, 2018, Petitioners Harrens Lab and Ming Li submitted the required
13 annual license application to BCC. On October 18, 2018, BCC marked the application “Accepted”
14 and then qualified them for a provisional license to follow their temporary license, thus authorizing
15 their continuous licensed operation. Specifically, BCC reviewed the documents that Harrens Lab and
16 Ming Li had submitted in June 2018. BCC then requested and reviewed 58 additional highly technical
17 documents submitted in October 2018 and in March and May of 2019. And only at that time did
18 BCC find Harrens Lab and Ming Li qualified for a provisional license.

19 27. On May 29, 2019, BCC issued that provisional license to Harrens Lab and Ming Li,
20 which was due to expire May 25, 2020.

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

23 29. Since BCC first gave Petitioners Harrens Lab and Ming Li a license authorizing them
24 to operate a cannabis testing laboratory in June 2018, they have navigated BCC’s complex license
25 application system for approximately four years and have operated a fully legal “provisionally”
26
27
28

1 licensed cannabis testing laboratory for 2 years and 8 months, invested over \$5 million in reliance on
2 that license, and employed 18 full time staff members. Harrens Lab and Ming Li anticipated
3 operating indefinitely.

4 30. Notwithstanding Harrens Lab and Ming Li's reliance on the provisional license,
5 including the substantial sums expended thereon, on February 4, 2021, BCC entered the premises of
6 Harrens Lab with 12 armed investigators and hand delivered to Petitioner Ming Li a one-page letter
7 of revocation of that date addressed to him and signed by Respondent Tamara Colson in her capacity
8 as Acting Chief of the BCC. BCC then proceeded to seize from the premises all the cannabis samples
9 collected by Harrens Lab from other licensees for cannabis lab testing services.
10

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

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

23 33. On February 9, 2021, after six days of the abrupt closure of Petitioners' business,
24 Angela C. McIntire-Abbott, of the BCC, replied to Mr. Anthony with an email, stating in its entirety,
25 "Greetings Mr. Anthony, Thank you for contacting the Bureau of Cannabis Control (Bureau). I just
26 wanted to confirm the Bureau's receipt of your February 5th email. The Bureau is currently in the
27 process of reviewing the information you have submitted regarding the above-titled matter."
28

1 constitutionally mandated due process of law. These arguments are meritorious and present
2 important and undecided issues of law and fact.

3 40. Petitioners, therefore, are entitled to a prohibitory injunction that prevents
4 Respondents from taking action and preserves the *status quo ante* until the underlying controversy is
5 resolved. This Court has subject matter jurisdiction over the controversy and personal jurisdiction
6 over Respondents. Petitioners have standing to bring the underlying action.
7

8 V. LEGAL ARGUMENT IN SUPPORT OF PETITION

9 **A. Petitioners are entitled to ordinary mandamus relief to compel Respondents to**
10 **provide a fair and impartial hearing before an independent hearing officer BEFORE**
11 **revoking their license authorizing them to operate a cannabis testing laboratory given**
12 **to them by the BCC three years ago—and to undo BCC’s purported revocation of**
13 **2/4/21 with which they have complied only under protest and duress.**

14 41. Petitioners allege and argue that Petitioners possess a constitutionally protected
15 property right which Respondents seek to revoke without affording constitutionally mandated due
16 process of law.

17 **B. The Court has subject matter jurisdiction over the writ petition.**

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

19 “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,
20 or person, to compel the performance of an act which the law specially enjoins, as a duty
21 resulting from an office, trust, or station, or to compel the admission of a party to the use and
22 enjoyment of a right or office to which the party is entitled, and from which the party is
23 unlawfully precluded by that inferior tribunal, corporation, board, or person.”

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

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

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

12 45. The threshold issue is before the Court is whether Petitioners have a property interest
13 in their cannabis testing laboratory business “provisional” license that BCC gave them three years ago
14 authorizing them to engage in commercial cannabis activity. This issue is also dispositive because if
15 there is a property interest, then such property interest is entitled to due process before deprivation
16 thereof. BCC claims that the license can be revoked without due process implying that Petitioners do
17 not have a property interest therein. BCC’s repeated justification for this position is because Cal. Bus.
18 & Prof. Code § 26050.2(h) states that no due process is required for the revocation of a provisional
19 license. There can be no question that §26050.2(h) cannot preempt the Federal or State constitutions
20 and that the State Legislature does not have the authority to legislate away the constitutional
21 protections of a property interest.

22 46. Authorization to operate, and to continue operating if straightforward evolving
23 regulatory requirements are met, is no different from the entitlement in any other professional or
24 business license that might be nominally “renewable,” but belongs perpetually to the individual or
25 business absent some egregious incurable fundamental violation. Vested property rights have value
26 business absent some egregious incurable fundamental violation. Vested property rights have value
27 business absent some egregious incurable fundamental violation. Vested property rights have value
28 business absent some egregious incurable fundamental violation. Vested property rights have value

1 because there is confidence among the people that such rights will be protected by the government,
2 not taken by the government without due process.

3 **D. U.S. Supreme Court Case Law Recognizes Property Interests in**
4 **“Entitlements” that “are Created and... Defined by Existing Rules or**
5 **Understandings that Stem from an Independent Source such as State Law.”**

6 47. U.S. Supreme Court case law recognizes property interests in “entitlements” that “are
7 created and... defined by existing rules or understandings that stem from an independent source
8 such as state law.” (Board of Regents v. Roth (1972) 408 U.S. 564, 577 (emphasis added.) Here, such
9 an “understanding” stems from Cal. Bus. & Prof. Code § 26050.2(a), which creates entitlements by
10 issuing “provisional” licenses identical in every way to permanent (annual) licenses, save for their
11 purported lack of due process protections asserted in subsections (c), (d), (e), and (h). It is subsection
12 (f) that explicitly states that in all other respects the license types are identical.

13 48. Effective, January 1, 2019, the state legislature created, through Cal. Bus. & Prof.
14 Code § 26050.2, its “provisional” licensing system. Originally intended to last for only a year, it was
15 then extended through 2021, and the legislature is now considering a bill to extend it through 2027,
16 which would make for a full decade of temporary and provisional licensing. Cannabis legalization
17 created a difficult regulatory conundrum: shut down an existing multi-billion dollar legacy medical-
18 use industry of thousands of operators and take years to license and re-open it, or allow it to continue
19 operating while simultaneously licensing it. The § 26050.2 system is the solution the legislature
20 devised to that problem.

21 49. SB 1459, the senate bill that created §26050.2 justified its “urgency” status as follows:

22 SEC. 4. This act is an urgency statute necessary **for the immediate preservation of the**
23 **public peace, health, or safety** within the meaning of Article IV of the California
24 Constitution and **shall go into immediate effect.** The facts constituting the necessity are:
25 **The significant number of cultivation license applications pending** with local authorities
26 that do not have adequate resources to process these applications before the applicants’
27 temporary licenses expire on January 1, 2019, **threatens to create a major disruption in the**
28 **commercial cannabis marketplace.**

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

1
2 50. Expiration of the “temporary” licenses, by rendering almost the entire industry illegal,
3 would have collapsed the whole scheme.

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

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

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

9 52. § 26050.2(a) grants “the licensing authority” (in this case, BCC) discretion to issue
10 provisional licenses (or not). That was clearly necessary: without authorized licensed operators the
11 entire \$3 Billion legal cannabis market might have instead operated underground as did many
12 unlicensed operators at that time, and which still do today. Current estimates are that the legal
13 aboveground California cannabis industry has annual gross receipts of around \$3 Billion. The
14 underground market is almost triple that at an estimated \$8.7 Billion.

15 53. There can be no legal marketplace of thousands of businesses without authorizing
16 them to legally engage in “commercial cannabis activity,” as the code defines it at Cal. Bus. & Prof.
17 Code § 26001(k). They must be authorized, legal, and entitled to continue doing what they are
18 doing—or else “the immediate preservation of the public peace, health, or safety” is threatened (SB
19 1459 (Stats. 2018, Chapter 857, Section 4), *supra*), and California is in danger of having no “**legal**
20 **cannabis market**” (AB 97 (Stats. 2019, Chapter 40, Section 20, emphasis added.), *supra*).

21 54. That is the only logical way of understanding the provisional system created by SB
22 1459 and extended by AB 97: it must be swift and sustainable, and it must authorize and license
23 businesses to operate legally and in compliance with all applicable regulations, or else face
24 enforcement measures coupled with due process protections, like any other licensed business, or else
25 the system cannot work as intended and as empowered by Cal. Bus. & Prof. Code § 26050.2(a).
26
27
28

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

6
7 **E. Business & Professions Code § 26050.2 is unconstitutional on its face,**
8 **and as applied to Petitioners, because it purports to grant to the cannabis**
9 **licensing authorities two irreconcilable powers: 1) the power of the agencies to**
10 **exercise their discretion to issue “provisional” licenses that authorize licensees**
11 **to engage in commercial cannabis activity; and 2) the power subsequently to**
12 **revoke or suspend those entitlements in their “sole discretion” without notice**
13 **and hearing.**

14 56. In the BCC letter, the agency claims that its revocation is effective immediately, and
15 that pursuant to BPC § 26050.2, Petitioners are “not entitled to a hearing or appeal of this decision.”

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

25 58. Both subsections (c) and (d) use the phrase “in its sole discretion” in authorizing a
26 licensing agency to suspend or revoke the “provisional” licenses (subsection (d)), and to renew them
27 until they issue or deny the licensee’s “annual” license (subsection (c)). That annual license is really a
28 permanent license that the Bus. & Prof. Code, and the agencies in their regulations, concede is a

1 property interest entitled to notice and hearing before deprivation. For those applicable due process
2 procedures, see, Chapter 2 (commencing with § 480) of Division 1.5 and Chapter 4 (commencing
3 with § 26040) of this division and §§ 26031 and 26058—all of the sections that § 26050.2(h) purports
4 to deny to provisional licenses. See also, the BCC Regulations Chapter 7, Enforcement, 16 California
5 Code of Regulations 42 §§ 5800 et seq.

6
7 59. The only difference between a provisional license and an annual license is the
8 purported denial of due process found in § 26050.2 generally, and as it bluntly specifies in §26050.2(f)
9 which reads in its entirety: “Except as specified in this section, the provisions of this division shall
10 apply to a provisional license in the same manner as to an annual license.” A provisional licensee is
11 fully authorized to engage in commercial cannabis activity—and of course also is required to follow
12 the hundreds of pages of applicable statute and regulations. (Cal. Bus. & Prof. § 26050.2(f)).

13
14 60. Statutory authorization to act “in its sole discretion” does not authorize an agency to
15 deprive any person of their property without due process of law. (U.S. Const., XIV Am.; Cal. Const.
16 Art. I, §7(a)). In *Board of Regents v. Roth*, the U.S. Supreme Court cited one of its earlier cases,
17 *Goldsmith v. Bd. of Tax Appeals*, 270 U.S. 117 (1926), in which the U.S. Board of Tax Appeals’ rules
18 allowed it to deny applicants admission to practice before it “in its discretion” and to likewise
19 subsequently suspend or disbar admittees. In the context of the “discretionary” denial of an
20 admission application, the *Goldsmith* decision says that the board’s discretionary power "must be
21 construed to mean the exercise of a discretion to be exercised after fair investigation, with such a
22 notice, hearing and opportunity to answer for the applicant as would constitute due process." (Board
23 of Regents, 408 U.S at 577, n15).

24
25 61. Given that due process is required for the exercise of discretion to deny an initial
26 admission, logically, due process is likewise required for the revocation of a license issued and relied
27 on as in Petitioners’ case with a licensee operating for 3 years with a \$5 million investment, and with
28 18 employees’ families’ livelihoods dependent upon it.

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

7
8 63. Inserting the word “sole” into the phrase “in its discretion” does not alter the
9 protections forever codified into the Constitutions. The licensing authorities have issued 7,000
10 provisional licenses, including one to the Petitioners, with the clear understanding that the licensees
11 would actually operate licensed businesses thereunder to further the government’s purpose of
12 bringing cannabis into control and regulation, and that they would rely on them by investing
13 significant sums of money and by employing workers.

14
15 64. Petitioners, and all other provisional licensees, have a legitimate right to assume that
16 barring any glaring unresolvable issues, their applications for “annual” (really permanent) licenses will
17 be granted in due course, and that in the meantime, while waiting for the licensing authorities to
18 process the 7,093 pending license applications, their provisional licenses will be renewed regularly in
19 due course—as they were and have been.

20 65. If Respondents take issue with any provisional licensee’s compliance with the statutes
21 and regulations, they are free to take disciplinary action against them provided that they first provide
22 notice and a hearing.

23
24 66. On its face § 26050.2(c) does not offend the Constitutions, unless “sole discretion” is
25 interpreted to mean that Respondents have the grant of authority to exercise their discretion a
26 second time after granting a provisional license and revoke that license without due process of law.
27 That reading does offend both Constitutions and is impermissible because it permits the government
28 to decide on its own authority that some property rights are more equal than others. A system of

1 property rights, protected by the government, does not function if the government is authorized to
2 decide that some property rights are different than others.

3 67. § 26050.2(d) authorizes a licensing agency “in its sole discretion” to revoke or
4 suspend the “provisional” licenses if it “determines the licensee failed to actively and diligently
5 pursue requirements for the annual license.” The constitutional analysis is the same as that
6 immediately above. And it is even clearer here that due process is not only required in context, but
7 also contemplated by the plain language of the statute itself. The agency cannot “determine” this
8 alleged failure, except through the “exercise of a discretion to be exercised after fair investigation,
9 with such a notice, hearing and opportunity to answer for the applicant as would constitute due
10 process.” (Board of Regents, 408 U.S. at 577, n15). This sub-section’s mandatory requirement of a
11 determination before revocation legally implies the making of factual findings based on substantial
12 evidence subject to administrative due process. The conclusion must be the same, a reading of this
13 sub-section that would allow revocation without due process is impermissible.

14
15
16 68. § 26050.2(f), as noted in the analyses of §26050.2(c) and (d), above, explicitly provides
17 that the provisional license is indistinguishable from a fully protected annual license save for its
18 purported statutory deprivation of any due process protection. It states, in *toto*: “Except as specified
19 in this section, the provisions of this division shall apply to a provisional license in the same manner
20 as to an annual license.” (Cal. Bus. & Prof. Code § 26050.2(f)). It is functionally the exact same
21 license: the Business & Professions Code Division 10 Cannabis license to engage in commercial
22 cannabis activity. The “provisional” licensees include approximately 7,100 of the 8,800 or so licensed
23 business that currently make up (and have for over three years) the multi-billion dollar California
24 cannabis industry, representing that much in investment and in annual gross receipts, and employing
25 many thousands of Californians. These licensed businesses cultivate, manufacture, test, distribute,
26 and sell to the public, cannabis and cannabis products—strictly subject to hundreds of pages of
27 administrative regulation.
28

1 69. To assert that a governmental agency can issue a license identical to a slightly
2 differently named license, for exactly the same activity under exactly the same regulations, for years
3 on end, and yet one license has procedural due process protection and the other does not has no
4 precedent in California history. Again, the plain language of the statute makes the case for due
5 process, save for the initial phrase, “Except as specified in this section.” That phrase purports to
6 deny due process through other sub-sections and, on that basis, must be stricken from the statute as
7 unconstitutional for the reasons given herein.
8

9 70. § 26050.2(h) is the crux of the matter. And it is at least partially invalid, including
10 under the facts presented here, as to purported revocation (same analysis for suspension) of a license
11 granted and relied on. (The question of its constitutionality as regards “[r]efusal to issue” a
12 provisional license, is a different issue than the one that concerns us here.)

13 71. § 26050.2(h) is two sentences long. The first states that revocation or suspension of a
14 provisional license “shall not entitle the applicant or licensee to a hearing or an appeal of the
15 decision.” The second sentence specifies four BPC sections that shall not apply provisional
16 licenses—all related to due process.
17

18 72. The first BPC section excluded from application to provisional licensees is from
19 Division 1.5 “Denial, Suspension and Revocation of Licenses,” Chapter 2 “Denial of Licenses”
20 (commencing with §480). But notably § 26050.2(h) does not specify the non-applicability of Div. 1.5,
21 Chapter 3 “Suspension and Revocation of Licenses” which therefore still applies to provisional
22 licenses. That is separate grounds for Petitioners right to notice and an appeal hearing, separate and
23 apart from the unconstitutionality of the whole scheme to treat legal cannabis businesses as second-
24 class citizens.
25

26 73. The other three excluded BPC sections are from Division 10 “Cannabis” itself:
27 Chapter 4 “Appeals;” Chapter 3 “Enforcement,” §26031 (revocation process including notice and
28

1 hearing); and Chapter 5 “Licensing” §26058 (appeals process after denial of license application—not
2 relevant to the present matter).

3 74. Again, under the constitutional analysis given supra for sub-sections (c) and (d), to the
4 extent that this sub-section (h) purports to allow deprivation of the entitlement in the provisional
5 license through revocation (or suspension) without prior notice and hearing, it offends the due
6 process clauses of the Constitutions and is impermissible.
7

8 75. The government cannot arbitrarily set rules for one industry that apply to no other
9 industry. These licensed businesses and individuals who have staked time (literally, liberty) and
10 treasure (property) in carrying out the state’s mandate to rescue the “the commercial cannabis
11 marketplace” from “major disruption,” must have the entitlement that comes with that authorization
12 and the appropriate due process rights. No businesses will invest capital in a system that gives them
13 authorization and a license, lures them into detrimental reliance at grand scale, but then pulls the plug
14 at its “discretion.” That cannot be the logical “understanding...that stem[s]” from the provisional
15 licensing system. Rather, the logical understanding that stem[s]” from the provisional licensing
16 system is that licensed legally operating cannabis businesses have the same measure of constitutional
17 due process protection as everyone else like situated. Board of Regents v. Roth (1972) 408 U.S. 564,
18 577.
19

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

27 76. In Saleeby v. State Bar, 39 Cal.3d 547 (Cal. 1985) the California Supreme Court
28 applied procedural due process requirements to the exercise of discretionary decision-making powers
granted to the State Bar by the legislature in statute, similarly to that discretion facially apparent in

1 Cal. Bus. & Prof. Code § 26050.2. The Court found that the California Constitution required that
2 they:

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

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

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

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

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

21 79. The private interest affected by the BCC letter and forcible deprivation of the right to
22 engage in cannabis economic activity has a monetary value of approximately \$20 Million dollars, the
23 estimated market value of Harrens Labs before revocation. 18 full-time employees’ livelihoods are at
24 stake, as is Mr. Li’s personal and professional reputation, standing, his position, and his business
25 interests. The property interest at stake is highly significant in a number of dimensions. Petitioners
26 meet this part of the Saleeby test and are entitled to due process under the California Constitution.
27

28 “(2) the risk of an erroneous deprivation of such interest through the procedures used,

1 and the probable value, if any, of additional or substitute procedural safeguards”

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

9
10 81. BCC has a robust disciplinary and appeal hearing process with clear notice and
11 hearing requirements following the Administrative Procedures Act, and with a 5-member Cannabis
12 Controls Appeals Panel that responds to due process requests in enforcement issues with the annual
13 licensees, whose due process rights they recognize and provide for. If any modicum of that process
14 were available to Petitioners they would be vastly better off. If BCC would even communicate with
15 them, they are eager to find common ground and understand the agency’s concerns (or the concerns
16 of its investigators). Petitioners meet this part of the Saleeby test and are entitled to due process
17 under the California Constitution.

18
19 “(3) the dignitary interest in informing individuals of the nature, grounds and consequences
20 of the action and in enabling them to present their side of the story before a responsible
21 governmental official”

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

1 in its callous, abusive, unilateral “revocation” without notice and hearing. Petitioners meet this part of
2 the Saleeby test and are entitled to due process under the California Constitution.

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

5 83. The government has an interest in licensing and regulation—and enforcing
6 regulations—and in successfully implementing the legal cannabis system on which the jury is still out.
7 The underground market is still three times larger than the aboveground market. The government
8 function is critical, and Petitioners support it and wish to contribute to its success. This relationship
9 can be collaborative; it need not be adversarial. As for fiscal and administrative burdens, BCC already
10 has a whole division committed to enforcement, discipline, appeals, hearings, and due process, with
11 many pages of specific regulation and of course the Administrative Procedures Act. See, Bus. & Prof.
12 Code Chapter 2 (commencing with Section 480) of Division 1.5, Chapter 4 (commencing with
13 Section 26040) of Division 10, and Sections 26031 and 26058. There is no additional burden on BCC
14 in affording, and it is already well equipped to afford, Petitioners with reasonable notice and an
15 appeal hearing. That is all that Petitioners ask: the basic level of respect and due process for a
16 government-authorized-and-licensed professional organization with numerous scientific certifications
17 and a track record of excellent service. Petitioners meet this part of the Saleeby test and are entitled
18 to due process under the California Constitution.
19
20

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

24 85. In the present matter, Petitioners have made a strong factual showing that they have
25 property and liberty rights that they have been deprived of with neither compensation nor a shred of
26 procedural due process. Quite the opposite.
27
28

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

7 **G. Petitioners have no adequate remedy at law.**

8 87. Injunctive relief is available when future pecuniary compensation would not provide
9 adequate relief or it would be difficult to ascertain such damages. (Cal. Code Civ. Proc. § 526(a)(4)-
10 (5); Dodge, Warren & Peters Ins. Servs. V. Riley (2003) 105 CA4th 1414). In the present case, it is
11 unclear whether the legal remedy sought even provides Petitioners with an avenue to recover
12 damages, and on this basis alone, injunctive relief is proper. Even if Petitioners were entitled to
13 pecuniary relief, many of the elements of the harm they face, such as loss of long-term contracts and
14 an entire highly trained workforce, are impossible to meaningfully quantify in advance. Even if the
15 government ultimately had to pay the \$20 million market value of the business prior to the illegal
16 revocation, Petitioners do not want sell their business. Nor has the government followed the proper
17 procedures to exercise eminent domain, condemn, appraise, and purchase the business at fair market
18 value. On the basis that the harm faced is difficult or impossible to monetarily quantify, Petitioners
19 are entitled to injunctive relief.
20
21

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

25 88. Respondents have alleged no public harm at any point in the factual record. The BCC
26 letter generally alleges, without any specific facts, details, dates, or circumstances, six general types of
27 regulatory violations as grounds for revocation in a conclusory fashion. None of these include any
28

1 allegation that Harrens Lab in any way threatens the public health and safety through alleged
2 deficiencies in process or inaccurate testing protocols or results.

3 89. The alleged grounds for revocation include only the following, from the second
4 paragraph of the three-paragraph BCC letter here numbered, listed, and with added emphases, all for
5 ease of discernment, but otherwise quoted verbatim:

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

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

21 91. Harrens Lab refutes each of these allegations as either being false, too vague to be
22 admitted or denied, previously cured, or easily cured if given specific details of violation actually
23 occurring. And this refutation is not relevant to the immediate issue of whether there is any imminent
24 harm to Respondents or the public in maintaining the status quo ante while the Court determines if
25 Respondent must allow Petitioners an opportunity to have these issues heard by an impartial decision
26 maker prior to revocation of their valuable license and the execution of the death sentence on their
27 corporate business entity and their individual professional reputation, standing, position, and salary.
28

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

4 **WHEREFORE, PETITIONERS PRAY FOR RELIEF AS FOLLOWS:**

5 1. A peremptory writ of mandate be issued ordering respondents to provide Petitioners with
6 an administrative hearing for the purposes of hearing Petitioners' appeal of Respondents' revocation
7 of its letter;

8 2. An *ex parte* order (application filed under separate cover) be issued providing a stay of
9 enforcement against Petitioners on the basis of the arguments therein and that such stay be in effect
10 until such administrative hearing and any timelines for appeal thereof have elapsed;

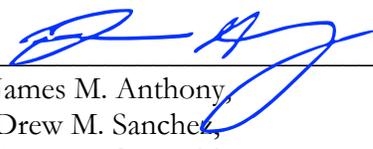
11 3. Petitioners recover their costs in this action, including attorney fees according to law; and;

12 4. Such other relief be granted that the Court considers proper.

13
14
15 **Respectfully submitted,**

16 Date: February 25, 2021

17 **ANTHONY LAW GROUP, PC**

18
19 
20 _____
21 James M. Anthony,
22 Drew M. Sanchez,
23 Attorney for Petitioners, Harrens Lab Inc., and Ming
24 Li