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Superior Court of California
County of Fresno
By: Marta Sanchez, Deputy

7 Attorneys for Petitioner/Plaintiff
8 CATALYST - FRESNO LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF FRESNO

11 CATALYST - FRESNO LLC,

12 Petitioner/Plaintiff,

13 vs.

14 CITY OF FRESNO; and DOES 1-50, inclusive,

15 Respondents/Defendants,

16 1261 WISHON OPCO, LLC, a California limited
17 liability company; TAT FRESNO LLC, a
18 California limited liability company;
19 AUTHENTIC 559, LLC, a California limited
20 liability company; CRESCENT CONQUEST
21 LLC, a California limited liability company; and
22 DOES 51-100, inclusive,

23 Real Parties in Interest.

CASE NO. 21CECG03543

EX PARTE APPLICATION FOR ISSUANCE
OF A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
RE PRELIMINARY INJUNCTION

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that **March 29, 2022, at 8:30 a.m., or as soon thereafter as the**
3 **matter may be heard in Department 402 of the Fresno County Superior Court located at 1130**
4 **“O” Street, Fresno, California 93721**, Petitioner Catalyst-Fresno LLC (“Catalyst”) will and hereby
5 does move *ex parte* for an Order to Show Cause why a Preliminary Injunction should not be issued
6 barring prohibiting the City for Fresno (“City”) from: (1) Issuing a commercial cannabis business
7 permit (“CCB Permit”) to Real Party in Interest Authentic 559, LLC (“Authentic”) to open or operate a
8 cannabis dispensary in Fresno; and (b) Engaging in any act or omission intended to approve, authorize
9 or otherwise permit Authentic to open or operate a cannabis dispensary in Fresno, whether on an
10 informal, limited, conditional, or temporary basis, or based on a decision not to enforce applicable
11 cannabis-related ordinances or requirements against Authentic relating to the operation of an
12 unpermitted dispensary in the City of Fresno.

13 Catalyst also seeks the issuance of a Preliminary Injunction prohibiting the City, prior to entry
14 of the Court’s Order on the above-mentioned OSC, from: (a) Issuing a commercial cannabis business
15 permit (“CCB Permit”) to Real Party in Interest Authentic 559, LLC (“Authentic”) to open or operate a
16 cannabis dispensary in Fresno; and (b) Engaging in any act or omission intended to approve, authorize
17 or otherwise permit Authentic to open or operate a cannabis dispensary in Fresno, whether on an
18 informal, limited, conditional, or temporary basis, or based on a decision not to enforce applicable
19 cannabis-related ordinances or requirements against Authentic relating to the operation of an
20 unpermitted dispensary in the City of Fresno.

21 Finally, as part of its Application, Catalyst seeks to set a hearing date and briefing schedule
22 relating to the OSC set forth above.

23 Catalyst’s Application and Motion is made pursuant to, *inter alia*, California Code of Civil
24 Procedure Sections 525, 526, 527, and 529, California Rules of Court 3.1150, and the Court’s equitable
25 powers, and are designed to protect Catalyst against the infliction of irreparable harm pending the
26 Court’s determination of its pending First Amended Petition.

1 This Application is made based on this Notice of Application, the accompanying Memorandum
2 of Points and Authorities, the accompanying Declarations of Jeff Augustini and Damian Lewis, the
3 accompanying [Proposed] Order, all matters on which the Court may or must take judicial notice, as
4 well as all pleadings, filings and documents in the Court's file herein and any and all other evidence
5 and argument that may be presented to the Court prior to or during the hearing hereon.

6 Catalyst provided notice of this Application and the hearing date thereon on March 25, 2022, or
7 prior to 10:00 a.m. on the court day prior to the hearing. See Augustini Decl., Exh. A & ¶20.

8 DATED: March 28, 2022

LAW OFFICE OF JEFF AUGUSTINI

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10 By 
11 _____
12 JEFF AUGUSTINI

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28 Attorneys for Petitioner Catalyst-Fresno LLC

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 The basis for this Ex Parte Application is simple and straightforward. On February 16, 2022, the
3 City Council held an appeal hearing for the purpose of either confirming or rejecting the City Manager’s
4 December 17, 2021 written “Preliminary Approval”¹ of Authentic’s application for a commercial
5 cannabis business permit (“CCB Permit”) in Council District 1 of the City (the “Application”). See
6 Request for Judicial Notice (“RJN”), Exhs. 3, 4, 12-13 (Preliminary Approval List and appeal notices
7 and documents). Following the appeal hearing, the City Council confirmed approval of Authentic’s CCB
8 Permit); Declaration of Damian Martin (“Martin Decl.”), ¶¶2-4.

9 At the conclusion of the City’s CCB Permit application process, which Catalyst also is
10 challenging herein, Authentic was ranked third in District 1 for two available CCB Permits, while
11 Catalyst was ranked fourth. RJN, Exh. 5. Although not initially selected, Authentic subsequently
12 received Preliminary Approval after the second-ranked applicant in District 1, Respondent TAT Fresno
13 LLC (“TAT”), was rejected on appeal by the City Council. After the City’s Manager’s Preliminary
14 Approval of the top two ranked applicants in District 1, but before TAT’s rejection by the City Council
15 and Authentic’s ascension to replace it, Catalyst initiated this action, claiming all of the applicants ranked
16 above it legally were ineligible for a CCB Permit pursuant to the provisions of FMC Chapter 9, Article
17 33 (“Article 33”), and written Guidelines promulgated by the City Manager. Catalyst also named herein
18 as Real Parties in Interest the three higher-ranked applicants. RJN, Exhs. 1-2 (Article 33 and Guidelines).

19 Generally, Catalyst contends the applicants ranked ahead of it (including Real Parties) were/are
20 not legally qualified and thus should never have received Preliminary Approval, and that the City should
21 be ordered to reject their applications and/or revoke their CCB Permits for providing false/inaccurate
22 information -- an offense which under Article 33 *mandates* denial/revocation. In addition, Catalyst
23 contends certain Real Parties experienced changed circumstances since application submission which

24
25 ¹ Under the FMC, the City Manager’s “preliminary approval” is a final determination that can be appealed only
26 by the applicant itself, the Mayor, and the Council Member in the District in which the applicant was selected
27 for a license. So in reality, preliminary approval itself is a final determination that can be challenged via writ
28 petition. See Fresno Municipal Code (“FMC”), §9-3317(a) (preliminary approval is a “final determination
made by the City Manager”); §9-3317(c); Application Procedure Guidelines (“Guidelines”) at 6; Request for
Judicial Notice (“RJN”), Exhs. 1-2. Notably, Catalyst had no right to administratively appeal the City
Manager’s selection of TAT or Authentic, thereby necessitating this Action.

1 disqualify them from holding a CCB Permit. *See* FMC §9-3316(d). Finally, Catalyst is directly
2 challenging the City Council’s approval on appeal of CCB Permits for Wishon and Authentic.

3 For the reasons discussed in more detail below, the Court should issue a Temporary Restraining
4 Order (“TRO”) precluding the City from issuing a CCB Permit to Authentic or permitting it to open and
5 operate a cannabis dispensary pending determination of its Motion for Preliminary Injunction (“PI
6 Motion”), and also should issue an Order to Show Cause re Preliminary Injunction (“OSC”) setting a
7 hearing date for Catalyst’s PI Motion. Such orders are both necessary and warranted because (1) Catalyst
8 has a reasonable probability of prevailing on the merits of its claims; and (2) the failure to issue a TRO
9 and PI to preserve the status quo until final determination would cause irreparable interim harm to
10 Catalyst, which has no adequate claim for damages or other remedies at law. *Jamison v. Dept. of Transp.*
11 (2016) 4 Cal.App.5th 356, 362 (setting forth the standard for issuance of a PI); *Butt v. State of California*
12 (1992) 4 Cal.4th 668, 678 (discussing the court’s need to balance a mix of potential merit and interim
13 harm factors, and noting the greater the showing on one factor, the less that must be shown on the other);
14 *Major v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 624 (court abuses its discretion by
15 denying a PI Motion where plaintiffs establish a ‘reasonable probability’ of success on the merits and
16 will suffer more harm from its denial than the defendant will from its grant).

17 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

18 As noted above, this case arises from (1) the City Manager’s final determination on September 8,
19 2021 to issue Preliminary Approval to Real Parties TAT and 1261 Wishon OPCO, LLC (“Wishon”); and
20 (2) following TAT’s appeal, the City Manager’s December 2021 Preliminary Approval of Authentic
21 which was confirmed by the City Council on February 16, 2022. RJN, Exhs. 3-5; Martin Decl., ¶¶2-4.

22 **A. Overview of The City’s CCB Permit Application Process**

23 Generally, the application process as laid out in Article 33 and the City’s Guidelines was/is as
24 follows. Each application and all supporting materials were due by no later than 4:00 p.m. on December
25 4, 2020. RJN, Exh. 2 at 5. Once submitted, an applicant was not permitted to amend or supplement its
26 application, except as set forth in the ordinance/Guidelines or as specifically authorized in writing. *Id.*
27 at 1. In “Phase I,” City staff thereafter reviewed all submitted applications for completeness. *Id.* at 4-5.

1 If an application was missing a “major component,” it was summarily rejected. *Id.* at 1. Applicants
2 missing only “minor components” were given one week to rectify any stated minor deficiencies. *Id.*

3 Applications deemed complete by City staff advanced to “Phase II,” where the City evaluated the
4 applications and scored/ranked them based on a set of objective review criteria referenced in the
5 Ordinance and more specifically described in the Guidelines. *See* FMC §9-3316(a); RJN, Exh. 2 at 5, 7–
6 11 (setting out Phase II criteria). Initially only applicants scoring a minimum of 80% of the total possible
7 points would advance to Phase III, but the City Manager amended the Guidelines to remove the 80%
8 requirement, thereby permitting the City to unilaterally determine which “top applicants” would advance
9 to Phase III (he also removed the 80% threshold to advance to Phase IV). RJN, Exh. 2 at 5.

10 Phase III consisted of interviews conducted by City staff, wherein applicants were questioned
11 about aspects of the merit-based criteria referenced in the Guidelines. FMC §9-3316(a), 3317(a); RJN,
12 Exh. 2 at 5, 7-11. Following the interviews, applicants were scored on the stated objective criteria and
13 then ranked, with the top applicants (according to the City) advancing to Phase IV. RJN, Exh. 2 at 5.

14 In Phase IV, the top applicants in each district were referred to the City Manager, who then finally
15 determined which applicants would receive the two available CCB Permits in each District – a decision
16 dubbed “Preliminary Approval” because the City only formally issues a CCB Permit upon successful
17 completion of the post-selection land use approval process (building and occupancy permits, etc.). FMC
18 §§ 9-3316(j), 9-3317(d); Guidelines at 5. Notably, only the Mayor, the City Council member
19 representing the district where the applicant is located, and the successful applicant itself had the right to
20 appeal from the City Manager’s Preliminary Approval, with the City Council via appeal either confirming
21 or rejecting approval of the “appealed” applicant’s CCB Permit. FMC §9-3317(c); RJN, Exh. 2 at 6.

22 **B. The City Manager’s Preliminary Approvals in City Council District 1**

23 Both Catalyst and the Real Parties applied for a CCB Permit in City District 1. Catalyst’s
24 application was deemed complete in Phase I, advanced to and through Phases II and III, and ultimately
25 advanced to Phase IV, where it was ranked 4th. The City Manager thereafter issued Preliminary
26 Approval – a final administrative determination – to (i) Wishon and (ii) TAT. RJN, Exh. 6 (“Cannabis
27 Retail Permit Application - Final Scores”).
28

1 The Council Member for District 1 appealed the City Manager’s Preliminary Approval for both
2 Wishon and TAT. During a public appeal hearing on October 28, 2021, the City Council approved
3 Wishon’s CCB Permit but rejected TAT’s CCB Permit —thereby leaving one permit slot vacant in
4 District 1. At that point, the only remaining applicant ranked above Catalyst was Authentic. On
5 December 17, 2021, the City Manager in writing selected Authentic to replace TAT. *Id.*, Exh. 3.

6 While Catalyst herein is challenging CCB Permit Preliminary Approval for Wishon and TAT
7 (who is in default herein) and the City’s Council approval of Wishon’s and Authentic’s CCB Permits,
8 the present Application addresses *only* Authentic’s CCB Permit. As discussed below, Authentic was and
9 is not legally eligible for a CCB Permit, and thus never should have been selected by the City Manager
10 and both he and the City’s Council abused their discretion by approving Authentic’s CCB Permit.

11 **C. Because Tony Huang, One of Authentic’s Owners, Was/Is the Subject of**
12 **Administrative and Criminal Proceedings Relating to the Illegal Operation of**
13 **Cannabis Dispensaries and Theft, Authentic Legally is Barred from Holding a**
14 **CCB Permit**

15 Turning to an overview of the grounds for this Application and PI Motion, Authentic in its
16 Application listed an individual named Tony Huang (“Mr. Huang”) as both a 19.5% co-owner and also
17 as its Head of Operations. RJN, Exh. 7 at 3. After filing this Petition, Catalyst learned Mr. Huang was
18 the subject of a 2018 Abatement Order and a 2019 administrative appeal in the City Pasadena arising
19 from his unlawful operation of a cannabis dispensary, and also was and still is the subject of a civil
20 lawsuit filed by LA County arising from his illegal operation of a cannabis dispensary in Torrance. *Id.*,
21 Exhs. 15-18. So in short, prior to the date it submitted its CCB Permit application to the City, Mr. Huang,
22 one of Authentic’s listed owners: (1) was the subject of an administrative proceeding which culminated
23 in the issuance of an abatement order barring him from continuing to operate an illegal dispensary in
24 Pasadena; and (2) was and still is a named defendant in a lawsuit by the County of Los Angeles alleging
25 he also was involved in operating an illegal cannabis dispensary in Torrance. *Id.* Further, he was charged
26 in an ongoing criminal case in Anaheim, California with multiple criminal offenses stemming from the
27 illegal commercial operation of a marijuana business in violation of Anaheim Municipal Code Section
28 4.100.030. *Id.*, Exhs. 19-20.

1 Huang was listed in Authentic’s application as both a 19.5% owner and the Director of Operations
2 for Authentic, and thus is both an “owner” and an “applicant” under Article 33. Grounds for denial of a
3 permit/application include where an applicant “has been noticed, charged, cited, or convicted of violating
4 any law of ordinance relating to the operation of a commercial cannabis activity.” FMC §9-3318(a). In
5 such instances, the FMC expressly states the applicant “**shall** be prohibited from holding a commercial
6 cannabis business permit in the city.” *Id.* (emphasis added); *see id.* at §9-3318(d) (City Manager “shall
7 not issue a permit if grounds for denial of a permit listed above are found”).

8 As Mr. Huang is both an owner and applicant of Authentic and was noticed, cited, charged and/or
9 found by the Cities of Pasadena, Anaheim and/or Los Angeles County to have violated multiple laws and
10 regulations prohibiting the operation of commercial cannabis dispensaries, and also personally was the
11 subject of both an administrative proceeding and civil enforcement lawsuit arising from such conduct,
12 Authentic was and is not legally eligible for a license in Fresno, and more importantly the City had an
13 affirmative mandatory/ministerial duty to **deny** Authentic’s Application and **not** issue it a CCB Permit.

14 Further, in its application, Authentic under penalty of perjury answered “No” to this question:

15 Has the Applicant or any of its owners been the subject of any administrative action, including
16 but not limited to suspension, denial, or revocation of a cannabis business license at any time
17 during the past three years?

18 *See* RJN, Exh. 7 at 2. As set forth above, one or its owners, Mr. Huang, in fact *had* been the subject of
19 an administrative action within three years of Authentic’s application, thereby rendering its response
20 above knowingly and intentionally false (as the question was *not* limited to administrative actions
21 seeking to suspend, denial or revoke a license, as evidenced by the phrase “including but not limited
22 to”). *See also id.* at 2 (“I understand that a misrepresentation of fact is cause of rejection of this
23 application, denial of the permit, or revocation of a permit issued”; Authentic also representing “the
24 information contained within and submitted with the application is true, complete and accurate”).

25 By responding falsely to the above question – which it did to conceal proceedings that
26 automatically would have disqualified it – Authentic violated, *inter alia*, FMC Sections 9-318(a) and 9-
27 318(d), and also provided false information which itself automatically disqualifies it from holding a CCB
28 Permit. FMC §9-3318(a), (d); *see also id.* at §9-3316(d) (if it is later discovered an applicant supplied

1 false information, “the application **shall be** denied, and if a commercial cannabis business permit was
2 granted, it **shall be revoked** with no opportunity for an appeal”) (emphasis added); §9-3318(a)(8) (if
3 applicant makes a knowingly false statement in the application, the applicant **shall be prohibited** from
4 holding a CCB Permit); §9-3318(d) (if grounds for denial exist, City Manager **shall not** issue a CCB
5 Permit); *Cf Walt Rankin & Associates, Inc. v. City of Murrieta*, 84 Cal. App. 4th 605, 614 (2002) (in
6 California Codes, the “usual rule” is “shall” is mandatory and “may” is permissive); *Daniels v. Turgeson*,
7 211 Cal. App. 3d 1204, 1207 (1989) (“‘Shall’” means the requirement imposed is mandatory”).

8 Simply Authentic *legally is disqualified* from holding a CCB Permit, and both the City Manager
9 and City Counsel failed to perform their *mandatory legal duty* to deny it a CCB Permit.

10 **D. Departure of Brian Mitchell, Authentic’s Co-CEO, Owner and Manager**

11 Further, in its application Authentic listed Brian Mitchell (“Mitchell”) as both a co-owner and co-
12 CEO. RJN, Exh. 7 at 3; Exh. 8 (Statement of Information (“SOI”) listing Mitchell as Manager;
13 Application listing Mitchell as Co-Owner and primary contact); Exh. 9 (Articles of Organization listing
14 Authentic 559 LLC as a single manager LLC). However, in November 2, 2021, Authentic *amended* its
15 SOI to remove Mitchell as manager and to replace him with “SGI Management LLC.” *Id.*, Exh. 10.

16 Mitchell resigned because he was about to be indicted on criminal fraud charges, which he
17 ultimately was on or about September 28, 2021. More specifically, Mitchell resigned from Shryne
18 Group, the company behind Authentic, in an effort to protect its existing licenses and license applications
19 from being revoked/denied due to a criminal conviction or plea bargain on Mitchell’s fraud charges.
20 While Authentic contends it removed Mitchell from all of its corporate entities, including Authentic, it
21 never provided the City with any documentation showing it in fact had removed him, and more
22 significantly made no effort to actually remove him from its CCB Permit application in Fresno. *See* RJN,
23 Exh. 13 at Exh. I (Authentic’s naked claim Mitchell was removed in December 2021 but not claiming he
24 was removed as co-owner, co-CEO and/or manager in its submitted application).

25 Article 33 requires all owners be listed on the application– including all individuals who will
26 participate in the direction, control, or management of the applicant. *See* FMC §§9-3304 at “Owner”; *id.*
27 at “Applicant” (defining an owner applying for license). Despite being the new manager (and thus an
28

1 owner) of Authentic, SGI is *not* listed in Authentic’s application. *See* RJN, Exh. 7. A comparison of its
2 original and updated SOIs reveals Authentic materially changed both its management and ownership by
3 removing Mitchell and purporting to replace him with SGI. That violates the Guideline’s prohibition on
4 application amendment or supplementation after application submission. RJN, Exh. 2 at 1; Exhs. 8, 10.
5 Authentic’s replacement of SGI for Mitchell also constitutes a change of ownership, which is not
6 permitted prior to Permit renewal -- which does not occur until one year *after* permit issuance (which in
7 Authentic’s case has not yet occurred). FMC §§9-3318(a)(7); 9-3318(c); 9-3325(a)(1) (change of
8 ownership “shall only be considered at the same time as a renewal application and with the filing
9 requirements as stated in section 9-3322”; such changes must be submitted to the City via reapplication).²

10 Based on the appellate materials submitted to the City Council, it is clear Authentic never
11 reapplied based on a change of managers/owners, and also never informed the City of Mitchell’s
12 departure or its appointment of SGI as its new corporate manager as required (SGI’s principals also never
13 completed a required background check). RJN, Exh. 13. These violations also mandate the denial of
14 Authentic’s application. FMC §9-3318(a)(7); RJN, Exh. 2 at 1 (no amendments or supplementation
15 permitted after December 4, 2020); *id.* at 3 (each owner, operator, investor or manager must undergo
16 background check); FMC §§9-3318(a)(7); 9-3318(c); 9-3325(a)(1) (change of ownership “shall only be
17 considered at the same time as a renewal application and with the filing requirements as stated in section
18 9-3322”; such changes must be made via reapplication).

19 **E. Relevant Procedural Background**

20 In September 2021, following its final scoring of the submitted applications, the City Manager
21 issued Preliminary CCB Permit Approval to TAT and Wishon – which pursuant to ordinance was/is a
22 final administrative determination. *See* FMC §§9-3316(a); 9-3316(d); 9-3316(j); 9-3317(c). The City
23 Manager’s selections were appealed by the Council Member in District 1, and the City Council on appeal
24 confirmed Wishon but rejected TAT, thereby leaving one District 1 slot vacant. The City Manager then
25 issued Preliminary Approval to Authentic. That decision also was appealed, and on February 16, 2022,
26

27 ² The Ordinance also requires all changes *other than* ownership or location be disclosed via an updated
28 registration within 15 days. FMC §9-3325(b). Authentic also violated the update requirements of FMC §9-3325(b)
by failing to update its ownership/management information with the City. RJN, Exhs. 7, 8, 10, 12 at Exh. A. .

1 the City Council confirmed a permit for Authentic. RJN, Exhs. 3, 4, 5, 12 at Staff Report; Martin Decl.,
2 ¶¶2-4.

3 In connection with the appeal, the City Council received, *inter alia*, a copy of Authentic’s
4 application, Catalyst’s Amended Petition herein, a separate written submission from Catalyst challenging
5 Authentic’s eligibility for a CCB Permit, and Authentic’s own written appellate presentation. *See* RJN,
6 Exhs. 12-13. Those documents were combined with public comments and provided to the City Council
7 prior to the hearing. Notably, Authentic’s presentation failed to mention let alone address the Huang
8 proceedings, and focused instead on Mr. Mitchell. *Id.*, Exh. 12 at Exh. 1. In response to Mr. Mitchell’s
9 fraud issues, Authentic claimed only (without evidence) that he was removed in **December 2021**, but did
10 not address his indictment or his continued inclusion on its application. *Id.*

11 During the appeal hearing held on February 16, 2021, the City Attorney announced that, after
12 consulting with the City Manager, he had determined Mr. Mitchell’s departure did not constitute an
13 impermissible change in ownership, but rather was merely a withdrawal of an owner which was not
14 statutorily prohibited. *See* Declaration of Damian Martin, ¶¶2-4. Notably, the City refused to even
15 discuss Mitchel’s replacement with SGI – an inconvenient fact the City ignored because it did not fit its
16 desired outcome. FMC §§9-3318(a)(7); 9-3318(c); 9-3325(a)(1) (change of ownership “shall only be
17 considered at the same time as a renewal application and with the filing requirements as stated in section
18 9-3322”; requiring that such changes be submitted via reapplication); FMC §9-3318(a)(7); RJN,. Exh. 2
19 at 1 (no application amendments or supplementation permitted after December 4, 2020); *id.* at 3 (each
20 owner, operator, investor or manager must undergo a background check, which SGI did not). Simply
21 put, the City Attorney’s position, adopted by the City Council, was and is legally incorrect and not
22 supported by the actual facts/evidence presented on appeal.

23 Although the City Council did not consider let alone substantively address the mandatory denial
24 issues relating to Mr. Huang, to the extent an argument is later made that it implicitly rejected the Huang-
25 related claims by approving Authentic’s CCB Permit, it is beyond any reasonable doubt that such a
26 determination was and is legally erroneous, was an abuse of discretion, lacked substantial evidence in
27 the record and also was overwhelming against the weight of the evidence presented on appeal.

1 **III. CATALYST IS LIKELY TO PREVAIL ON THE MERITS SINCE AUTHENTIC**
2 **LEGALLY IS NOT ELIGIBLE TO HOLD A CCB PERMIT**

3 As noted above, to obtain a TRO/PI, Catalyst must satisfy a two-prong test addressing two inter-
4 related factors: (1) likelihood of prevailing on the merits; and (2) the interim harm it would likely sustain
5 if a PI was denied compared to the harm the defendant would likely suffer if the PI was issued. *Smith v.*
6 *Adventist Health System/West* (2010) 192 Cal. App. 4th 729, 749. The weighing of these factors is left to
7 the trial court’s discretion, and where there is a strong showing on one factor, a lesser showing on the
8 other is required. *Id.*; *Jamison*, 4 Cal. App. 5th at 362; *Butt*, 4 Cal. 4th at 678; *Major*, 7 Cal. App. 4th at
9 624. Here, both prongs of the PI analysis have been more than amply satisfied.

10 A peremptory writ of mandamus may issue “to compel the performance of an act which the law
11 specially enjoins[.]” *See* Cal. Civ. Proc. Code §1085(a). The writ must issue if the petitioner has a
12 beneficial interest in the outcome of the matter and there is no “plain, speedy and adequate remedy” at
13 law. *Id.*, at §1086; *Common Cause v. Board of Supervisors* (1989) 49 Cal. 3d 432, 442 (“Mandamus will
14 lie to compel a public official to perform an official act required by law”); *California Hospital Assn v.*
15 *Maxwell-Jolly* (2010) 188 Cal. App. 4th 559, 570 (“It is well settled that mandamus will lie to correct an
16 abuse of discretion by a public official or agency”). Here, as discussed below, Catalyst has alleged
17 several mandatory duties on the part of the City Manager and the City Council to reject Authentic’s
18 Application and CCB Permit, and also has identified several abuses of discretion arising from their failure
19 to do so. Further, as the fourth ranked applicant, Catalyst has a direct and substantial “beneficial interest”
20 in the outcome of this case – since it is “next in line” for a CCB Permit if Authentic’s approval is revoked.
21 Finally, there is no other plain, speedy or adequate remedy available to Catalyst other than via writ to
22 challenge the City Manager’s and City Council’s insupportable decisions. *Martin Decl.*, ¶¶2-5. So the
23 requirements of CCP §1085 et seq. more than amply have been satisfied.

24 Catalyst also challenges the City Council’s appellate approval, which Authentic itself has
25 suggested falls within the purview of administrative mandamus (CCP §1094.5).³ If true, Catalyst has

26 ³ While Catalyst assumes for purposes of this Application/Motion that the City Council appeal
27 theoretically might implicate the administrative mandamus procedures of CCP §1094.5, it does so solely out of
28 an abundance of caution, since the City Council appeal hearing does not appear to satisfy two critical
prerequisites for administrative mandamus: (1) a mandatory evidentiary hearing; and (2) formal written and
reasoned findings justifying its appellate decision. *See* FMC §9-3317(c); Cal. Civ. Proc. Code §1094.5(a);

1 satisfied the requirements of that section also, in that the City Council’s appellate determination is a final
2 decision, and the City Council abused its discretion by not comply with governing law and also by making
3 determinations that were not supported by substantial evidence in the appellate record.

4 **A. Catalyst’s Challenge to City Manager’s “Preliminary Approval” Determination**

5 First, Catalyst seeks an order compelling the City Manager to perform his mandatory ministerial
6 duty and deny and/or revoke Authentic’s CCB Permit, since Authentic’s application violated and/or
7 triggered several different mandatory denial/revocation provisions in the FMC and Guidelines. Those
8 provisions, which include, *inter alia*, FMC §§9-3317(a)-(c), 9-3318(a)(7)-(9), 9-3318(c), 9-3318(d), 9-
9 3325, and Guideline Sections on Amendment (p.1) and Background Check (p.3), serve to eliminate any
10 possible discretion the City Manager otherwise may have had to approve a permit for Authentic, and
11 those disqualification provisions by their terms continue to apply after City Council appellate approval.

12 But for the City Manager’s failure to perform his legislatively mandated ministerial duty to deny
13 Authentic’s Application – a failure Catalyst raised prior to Preliminary Approval and which the City
14 Manager literally ignored – there never would have been a City Council appeal. Rather, the ministerial
15 denial of Authentic’s application would have placed Catalyst “first in line” for the open District 1 CCB
16 Permit slot. Martin Decl., ¶5; RJN Exh. 5; *Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 442
17 (1989) (“Mandamus may issue . . . to compel an official both to exercise discretion (if he is required by
18 law to do so) and to exercise it under a proper interpretation of the applicable law”); *Anderson v. Philips*,
19 13 Cal. 3d 733, 737 (1975) (where mandamus respondent refuses to act based on interpretation of law,
20 “the writ will lie if that determination is erroneous”); *Inglin v. Hoppin*, 156 Cal. 483, 491 (1909)
21 (mandamus “will lie to correct abuses of discretion, and will lie to force a particular action by the inferior
22 tribunal or officer, when the law clearly establishes the petitioner’s right to such action”); *Ellena v.*
23 *Department of Ins.* 230 Cal. App. 4th 198, 205 (2014) (where an ordinance defines the specific duties or course
24 of conduct a governing body must take, that course becomes mandatory and eliminates any element of

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26 *Bunnett v. Regents of UC* (1995) 35 Cal. App 4th 843, 848; *See Topanga Assn for a Scenic Community v. County*
27 *of Los Angeles* (1974) 11 Cal. 3d 506, 514-515 (City Council must prepared written findings that “bridge the gap
28 to action); *Hadly v. City of Ontario* (1974) 43 Cal. App. 3d 121, 128-129 (failure to make factual findings can be
prejudicial error requiring a new hearing be held with appropriate findings). Martin Decl., ¶6.

1 discretion); *Alameda County Deputy Sheriff's Assn v. Alameda County Employees' Retirement Assn.* (2020)
2 9 Cal. 5th 1032, 1060 (agencies have “no authority to act inconsistently” with governing legislation or to
3 pursue a practice contrary thereto); *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.
4 3d 1379, 1389 (“An administrative agency cannot by its own regulations create a remedy which the
5 Legislature withheld”; “Administrative regulations that alter or amend the statute or enlarge or impair its
6 scope are void and courts not only may, but it is their obligation to strike down such regulations”);
7 *Marken v. Santa Monica-Malibu Unified School Dist.* (2012), 202 Cal. App. 4th 1250, 1266 (“mandamus
8 should be available to prevent a public agency from acting in an unlawful manner”); *Morris v. Harper*
9 (2001) 94 Cal. App. 4th 52, 58 (Mandamus long recognized as the “appropriate means by which to
10 challenge a government official’s refusal to implement a duly enacted legislative measure”); *Summit*
11 *Media LLC. v. City of Los Angeles* (2012) 211 Cal. App. 4th 921, 937 (mandamus available “to correct
12 those acts and decisions of administrative agencies which are in violation of law”).

13 In the Staff Report sent to the City Council and again during the City Council appeal, the City
14 Manager took the position based on *then-available information* at the time of Preliminary Approval that
15 Authentic had satisfied all of the necessary requirements. RJN, Exh. 12 at Staff Report. The City
16 Manager’s apparent belief he can ignore false information provided by Authentic and instead continue
17 to rely on Authentic’s application information even after it has been debunked is a far cry from
18 performing his *actual* duty – which is where Authentic made false statements and otherwise triggered
19 automatic disqualification provisions/requirements, the City Manager *cannot* ignore his duty to reject
20 Authentic’s CCB Permit because he granted Preliminary Approval *before* learning the true facts. The
21 duty to reject Authentic’s Application/CCB Permit continues *even after* Preliminary Approval.

22 A case in point is the City Attorney’s claim during the appeal hearing (and after consulting with
23 the City Manager) that the removal of Mr. Mitchell from ownership/management *after application*
24 *submission, and at a time when the application could not be amended or supplement and its ownership*
25 *could not be altered*, constituted the mere removal of an owner and was not an ownership change. Yet
26 he did not mention, let alone deny, that in addition to removing Mr. Mitchell, Authentic also *added* a new
27 manager not listed in its Application and did not disclose the change to the City as required; nor could he
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1 deny SGI had failed to submit to a background check at time of application submission or even after its
2 ascension as manager. The City Manager’s willful disregard of such facts constitutes both a failure to
3 perform a ministerial duty and a clear yet correctable abuse of discretion subject to writ of mandate.

4 **B. Catalyst’s Challenge to the City’s Counsel’s Final Appellate Determination**

5 Second, Catalyst challenges the City Council’s approval/confirmation on appeal of Authentic’s
6 CCB Permit. Specifically, other than a short discussion of the Mitchell issue – which was notably lacking
7 in *any supporting documentary or other evidence* – the City Council failed to address any of the Huang
8 disqualification issues, and there is no evidence in the appellate record to refute the merits of those issues.
9 Unable to deny the Pasadena and Los Angeles proceedings legally mandated disqualification under
10 Article 33, the City Council instead simply ignored the issue altogether. Martin Decl., ¶¶2-4.
11 Unfortunately, not even the City Council can disregard a governing ordinance it enacted. Cal. Civ. Proc.
12 Code §§1094.5 (b), (c); *American Coatings Assn v. South Coast Air Quality Management Dist.* (2012)
13 54 Cal. 4th 446, 461 (discussing different standards under CCP Sections 1085 and 1094.5, but noting that
14 both require a reasonable basis for the decision made); *Harris v. Civil Service Com.* (1998) 65 Cal. App.
15 4th 1356, 1364 (abuse of discretion for administrative mandamus includes where: (1) the agency does not
16 proceed in the manner required by law, (2) the decision is not supported by its findings; and/or (3) the
17 findings are not supported by substantial evidence in the record); *Donald Schriver, Inc. v. Fair*
18 *Employment & Housing Com.* (1986) 220 Cal. App. 3d 396, 404.

19 Here, and as noted above, to the extent CCP Section 1094.5 applies, the City Council, sitting as
20 an appellate board, failed to proceed in the manner required by law, and its findings/decision are not
21 documented let alone supported by substantial evidence in the record. Further, the City Council’s
22 decision itself is legally infirm, since it failed not only to follow its own ordinance but also failed to
23 provide a written determination that “bridge[d] the gap between the raw evidence and ultimate decision”
24 and to show the analytic route it traveled to get from evidence to action,” so that it could be properly
25 reviewed under CCP §1094.5. See *Topanga* 11 Cal. 3d at 514-515; *Hadly*, 43 Cal. App. 3d 121, 128-
26 129 (failure to make factual findings can be prejudicial error requiring a new hearing be held).

1 It is beyond legitimate dispute Mr. Huang’s legal and administrative proceedings, as well as
2 Authentic’s false denial thereof in its Application, legally disqualified Authentic from holding a CCB
3 Permit. Similarly, the replacement of Mitchell with SGI also mandated disqualification, since applicants
4 are not permitted to change ownership prior to permit renewal let alone prior to issuance. And the fact
5 Authentic failed to disclose the ownership change also requires disqualification. *See* FMC §9-3318(a)(7).

6 Based on the foregoing facts and evidence, Catalyst has more than amply satisfied the “likelihood
7 of prevailing on the merits” prong of the TRO and PI assessment.

8 **C. Authentic’s Contention that This Action is Premature/Not Ripe is Baseless**

9 Since first appearing, Authentic has repeatedly claimed Catalyst’s action is premature/not ripe,
10 arguing there is no final decision or determination to challenge. Authentic’s argument is without merit.
11 As an initial matter, Catalyst is challenging the City Manager’s Preliminary Approval determination.
12 Pursuant to both Article 33 and the Guidelines, that *is* a final administrative determination. FMC §9-
13 3316(j); 9-3317(a)-(c); RJN, Exh. 2 at 7 (Preliminary Approval decision is a “final determination
14 regarding the Applicants to be awarded permits” and referring to such recipients as “Permit awardees”).
15 Similarly, there is no legitimate claim the City Council’s CCB Permit approval decision was not a final
16 determination – indeed, assuming administrative mandamus applies, Catalyst would be required to
17 challenge that decision within 90 days, as there is no provision for reconsideration of the City Council’s
18 decision of further administrative appeals. *See* Cal. Civ. Proc. Code §1094.6.

19 Moreover, Authentic has argued that because it still needs to obtain required building permits,
20 fire/safety inspections etc., before the City will formally issue it a CCB Permit, the entire process is not
21 yet final and thus no decision made prior to permit issuance can be challenged until it actually either
22 receives or is denied a CCB Permit. Setting aside the fact its argument flies in the face of Article 33,
23 which expressly authorizes an appeal from the Preliminary Approval determination (the appellate
24 provision itself clearly connotes *finality* of that decision), just because permit issuance (as opposed to
25 approval) is conditioned on obtaining land use approvals (including building permits, occupancy
26 permits, and inspections all *businesses* must satisfy to do business in the City) does *not* make the
27 challenged determinations non-final. *See* FMC §9-3326, §9-3327, §9-3328; RJN, Exh. 2 at 5-6.

1 Finally, Authentic has claimed that Catalyst’s challenge is premature because its own
2 application has not been finally denied and theoretically it could still be approved in the future. This
3 argument seeks to recast the gravamen of Catalyst’s Petition, which challenges as improper the
4 *approvals* given by the City Manager and City Council of CCB Permits for Wishon and Authentic. As
5 Catalyst has alleged in its FAP and again above, if one or both of the prior approvals are revoked,
6 Catalyst is “next in line” for an open license slot in District 1 – which is why its challenge focuses on
7 approvals improvidently issued to applicants allegedly ranked *above it* in final scoring in District 1.
8 Simply put, whether *the denial of Catalyst’s* application is final or not has no bearing on the finality of
9 the City Manager’s and City Council’s *approvals vis-à-vis* Authentic that it is challenging herein.

10 **IV. CATALYST ALSO SATISFIES THE INTERIM HARM REQUIREMENT**

11 Due to the strength of its merits-based arguments, Catalyst legally is not required to make a
12 particularly strong showing of interim harm to obtain an injunction. Yet it easily satisfies that
13 requirement too, as it will be harmed *far more* relative to the City or Authentic if an injunction is denied.

14 Specifically, and as noted above, there are only three available licenses in District 1, and two of
15 them previously were approved (to a social equity applicant and to Wishon). Approving and then issuing
16 a CCB Permit to Authentic both legally and practically *forecloses* Catalyst from obtaining a CCB Permit.
17 Further, there is no legal remedy (in damages or otherwise) that can adequately compensate Catalyst for
18 the harm it will incur prior to final resolution of this case, since generally cities cannot be held liable in
19 damages for actions taken on a permit. *See* Martin Decl., ¶5.

20 In contrast, preventing the City in the interim from issuing a CCB Permit to Authentic would not
21 harm the City at all, particularly since (as discussed above) Authentic was never entitled to obtain one in
22 the first instance. Similarly, while Catalyst is certain Authentic will cry foul and claim it will lose money
23 and also lose the ability to operate in the interim, again it was never legally eligible for a CCB Permit in
24 the first instance. It should not be permitted to evade injunctive relief based on the argument that granting
25 interim status quo relief to Catalyst would preclude it from profiting from a CCB Permit to which it
26 legally and factually is not entitled. Further, issuance of a TRO/PI might actually assist Authentic, who
27 might in response decide based on the risk *not* to spend significant money on a dispensary build-out until
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1 it is first assured it actually will receive a CCB Permit. So the “balance of harms” clearly favors Catalyst,
2 and supports issuance of a TRO and Preliminary Injunction.

3 **V. RULE ON RESTRAINT OF GOVERNMENT OFFICERS DOES NOT APPLY**

4 Finally, Catalyst anticipates the City and Authentic both may argue public policy prohibits
5 enjoining the City Manager and City Council from performing their respective duties “for the public
6 good.” *O’Connell v. Superior Court* (2006) 141 Cal. App. 4th 1452, 1471-1472 (where injunction sought
7 to prevent public officers from performing their duties, court must consider public policy considerations
8 of the injunction request); Cal. Civ. Proc. Code §526(b)(4). To be clear, Catalyst is **not** seeking to enjoin
9 government officials from performing their mandatory legal duties. Rather, it is seeking to *compel them*
10 *to perform their ministerial duty to reject Authentic’s CCB Permit. See Thompsen v. City of Escondido*
11 (1996) 49 Cal. App. 4th 884, 890 (“A court may properly enjoin an attempt to apply a valid ordinance to
12 conduct not within its terms”); *Novar Corp. v. Bureau of Collection & Investigative Services* (1984) 160
13 Cal. App. 3d 1, 6 (doctrine does not apply where “the conduct sought to be enjoined does not fall within
14 the terms of the statute”); *MacLeod v. City of Los Altos* (1960) 182 Cal. App. 2d 364, 369-370 (same;
15 injunction warranted where officials act “without authority” because ordinance does not apply);
16 *Crittenden v. Superior Court of Mendocino County* (1964) 61 Cal. 2d 565, 569 (“The illegal activity of
17 the state can no more find a haven in ‘public’ benefit that can that of a private person; its interest in
18 engaging in illegal activities deserves no greater protection than like conduct of private persons”).

19 **VI. CONCLUSION**

20 For all the foregoing reasons, the Court should grant the present Application and provide the relief
21 contained in the Notice above and in the accompanying [Proposed] Order filed concurrently herewith.

22 DATED: March 28, 2022

LAW OFFICE OF JEFF AUGUSTINI

23 By: 
24 _____

25 JEFF AUGUSTINI
26 Attorneys for CATALYST – FRESNO LLC
27
28

1 **CERTIFICATE OF SERVICE**

2 I, [Jeff Augustini](#), declare as follows:

3 I am employed in the County of Orange, State of California; I am over the age of eighteen years and am
4 not a party to this action; my business address is 9160 Irvine Center Drive, Suite 200, Irvine, California 92618,
in said County and State. On [March 28, 2021](#), I served the following document(s):

5 **EX PARTE APPLICATION FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER**
6 **AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

7 on the following parties:

8 **SEE ATTACHED SERVICE LIST**

9 by the following means of service:

- 10 **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-
11 mentioned date. I am familiar with the firm's practice of collection and processing correspondence
12 for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of
business. I am aware that on motion of party served, service is presumed invalid if postal
13 cancellation date or postage meter date is more than one day after date of deposit for mailing in
14 affidavit.
- 15 **BY PERSONAL SERVICE:** I emailed a true copy of this document to a messenger with
16 instructions to personally deliver it to each person[s] named at the address[es] shown before 5:00 p.m.
17 on the above-mentioned date.
- 18 **BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above
19 mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or
20 package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) as
indicated above and deposited same in a box or other facility regularly maintained by FedEx or
delivered same to an authorized courier or driver authorized by FedEx to receive documents.
- 21 **BY ELECTRONIC SERVICE:** On the above-mentioned date, I caused each such document to be
transmitted by electronically mailing a true and correct copy through One Legal's electronic service
function to the e-mail address(s) set forth above.
- 22 **(STATE)** I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on [March 28, 2021](#), at Irvine, California.

24 

25 [Jeff Augustini](#)

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