

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: JEFF AUGUSTINI FIRM NAME: Law Office of Jeff Augustini STREET ADDRESS: 9160 Irvine Center Drive, Suite 200 CITY: Irvine TELEPHONE NO.: 949-336-7847 E-MAIL ADDRESS: jeff@augustinilaw.com ATTORNEY FOR (name): HNHPC, INC	STATE BAR NUMBER: 178358 STATE: CA ZIP CODE: 92618 FAX NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana CA 92701 BRANCH NAME: Central Justice Center		
PLAINTIFF/PETITIONER: HNHPC, INC. DEFENDANT/RESPONDENT: DEPARTMENT OF CANNABIS CONTROL ET AL. OTHER PARENT/PARTY: NICOLE ELLIOT		
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>		SUPERIOR COURT CASE NUMBER: 30-2021-01221014-CU-WM-CJC
RE: Appeal filed on (date): April 14, 2022		COURT OF APPEAL CASE NUMBER (if known): G061298
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>		

**1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

I choose to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a.  A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section (item 4) on pages 2 and 3 of this form.)
  - (1)  I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
  - (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
    - (a)  An order granting a waiver of court fees and costs under rules 3.50-3.58; or
    - (b)  An application for a waiver of court fees and costs under rules 3.50-3.58. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b.  An appendix under rule 8.124.
- c.  The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate (agree) to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d.  An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

**2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

I choose to proceed (you must check a or b below):

- a.  WITHOUT a record of the oral proceedings (what was said at the hearing or trial) in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in deciding whether an error was made in the superior court proceedings.

CASE NAME: CONNECTED MORRO BAY BLVD., LLC V. CITY OF MORRO BAY

SUPERIOR COURT CASE NUMBER:  
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2. b.  WITH the following record of the oral proceedings in the superior court (*you must check (1), (2), or (3) below*):
- (1)  A reporter's transcript under rule 8.130. (*You must fill out the reporter's transcript section (item 5) on pages 3 and 4 of this form.*) I have (*check all that apply*):
- (a)  Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit with this notice as provided in rule 8.130(b)(1).
- (b)  Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c)  Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (*check either (i) or (ii)*):
- (i)  all of the designated proceedings.
- (ii)  part of the designated proceedings.
- (d)  Attached a certified transcript under rule 8.130(b)(3)(C).
- (2)  An agreed statement. (*Check and complete either (a) or (b) below.*)
- (a)  I have attached an agreed statement to this notice.
- (b)  All the parties have stipulated (agreed) in writing to try to agree on a statement. (*You must attach a copy of this stipulation to this notice.*) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3)  A settled statement under rule 8.137. (*You must check (a), (b), or (c) below, and fill out the settled statement section (item 6) on page 4.*)
- (a)  The oral proceedings in the superior court were not reported by a court reporter.
- (b)  The oral proceedings in the superior court were reported by a court reporter, but I have an order waiving fees and costs.
- (c)  I am asking to use a settled statement for reasons other than those listed in (a) or (b). (*You must serve and file the motion required under rule 8.137(b) at the same time that you file this form. You may use form APP-025 to prepare the motion.*)

### 3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE COURT OF APPEAL

- I request that the clerk transmit to the Court of Appeal under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (*give the title and date or dates of the administrative proceeding*):

Title of Administrative Proceeding	Date or Dates
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### 4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(*You must complete this section if you checked item 1a above indicating that you choose to use a clerk's transcript as the record of the documents filed in the superior court.*)

- a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed, or if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	April 14, 2022
(2) Notice designating record on appeal ( <i>this document</i> )	April 25, 2022
(3) Judgment or order appealed from	March 2, 2022
(4) Notice of entry of judgment ( <i>if any</i> )	March 25, 2022
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order ( <i>if any</i> )	
(6) Ruling on one or more of the items listed in (5)	
(7) Register of actions or docket ( <i>if any</i> )	

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**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include in the transcript the following documents that were filed in the superior court proceeding. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)	PETITION FOR WRIT OF MANDATE	September 15, 2021
(9)	RESPONDENTS' DEMURRER TO PETITION FOR WRIT OF MANDATE	October 29, 2021
(10)	RESPONDENTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER	October 29, 2021
(11)	DECLARATION OF ETHAN TURNER IN SUPPORT OF DEMURRER	November 2, 2021

See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start with number (12).)

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			

See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start with number (5).)

**5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

You must complete both a and b in this section if you checked item 2b(1) above indicating that you choose to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

a. **Format of the reporter's transcript**

I request that the reporters provide (check one):

- (1)  My copy of the reporter's transcript in electronic format.
- (2)  My copy of the reporter's transcript in paper format.
- (3)  My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271.)

CASE NAME: CONNECTED MORRO BAY BLVD., LLC V. CITY OF MORRO BAY	SUPERIOR COURT CASE NUMBER: 30-2021-01221014-CU-WM-CJC
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5. b. Proceedings

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1) 1/19/2022	C-26	Partial	Hearing on Demurrer	Jane Hong-Elsey, CSR 11975	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages. (Check here if you need more space to list additional proceedings. List these exhibits on a separate page or pages labeled "Attachment 5b," and start with number (5).)

6. NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT

(You must complete this section if you checked item 2b(3) above indicating you choose to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

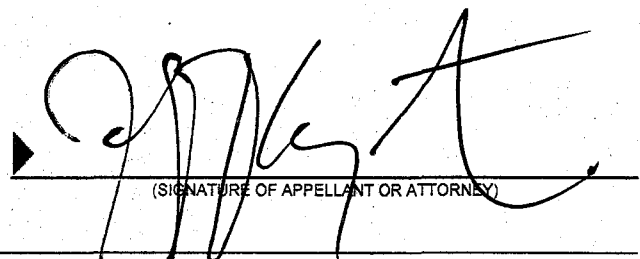
See additional pages. (Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 6," and start with number (5).)

7. a. The proceedings designated in 5b or 6  include  do not include all of the testimony in the superior court.

b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (Rule 8.130(a)(2) and rule 8.137(d)(1) provide that your appeal will be limited to these points unless the Court of Appeal permits otherwise.) Points are set forth:  Below  On a separate page labeled "Attachment 7."

Date: April 25, 2022

JEFF AUGUSTINI  
\_\_\_\_\_  
(TYPE OR PRINT NAME)

  
\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTACHMENT 4(b)

12. FIRST AMENDED PETITION FOR WRIT OF MANDATE	November 12, 2021
13. RESPONDENTS' DEMURRER TO FIRST AMENDED PETITION	December 13, 2021
14. RESPONDENTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO FIRST AMENDED PETITION	December 13, 2021
15. DECLARATION OF ETHAN TURNER IN SUPPORT OF DEMURRER TO FIRST AMENDED PETITION	December 13, 2021
16. PETITIONER'S OPPOSITION TO DEMURRER TO FIRST AMENDED PETITION	December 27, 2021
17. PETITIONER'S OPPOSITION TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO FIRST AMENDED PETITION	December 27, 2021
18. PETITIONER'S REPLY IN SUPPORT OF DEMURRER TO FIRST AMENDED PETITION	January 3, 2022
19. RESPONDENTS' REPLY TO OPPOSITION TO REQUEST FOR JUDICIAL NOTICE	January 3, 2022
20. NOTICE OF RULING ON DEMURRER	January 26, 2022

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE

DEPT C-26 HON. GREGORY LEWIS, JUDGE

HNHPC, INC., )  
)  
PETITIONER, )  
VS ) CASE NO.: 2021-01221014  
)  
DEPARTMENT OF CANNIBIS CONTROL, )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS  
WEDNESDAY, JANUARY 29, 2022

FOR THE PETITIONER:

LAW OFFICE OF JEFF AUGUSTINI  
BY: JEFF AUGUSTINI, ESQ.  
9160 IRVINE CENTER DRIVE; SUITE 200  
IRVINE, CA 92618  
(VIA ZOOM)

FOR THE DEFENDANT:

CALIFORNIA DEPARTMENT OF JUSTICE  
BY: ETHAN TURNER, ESQ.  
PO BOX 944255  
1300 I STREET  
SACRAMENTO, CA 94244  
(VIA ZOOM)

REPORTED REMOTELY BY:

JANE HONG-ELSEY, CSR 11975  
OFFICIAL COURT REPORTER PRO TEM

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MASTER INDEX

CHRONOLOGICAL WITNESS INDEX

PLAINTIFF'S	DIR	CROSS	REDIR	RECROSS
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(NONE)

ALPHABETICAL WITNESS INDEX

WITNESS	DIR	CROSS	REDIR	RECROSS
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(NONE)

EXHIBITS INDEX

NO.	DESCRIPTION.	MARKED FOR I.D.	RECEIVED TO EVID.
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(NONE)

1 SANTA ANA, CALIFORNIA; WEDNESDAY, JANUARY 19, 2022  
2 DEPT. C-26 HON. GREGORY H. LEWIS, JUDGE

3  
4 (THE FOLLOWING PROCEEDINGS WERE HELD VIA ZOOM  
5 VIDEOCONFERENCE WITH THE COURT REPORTER IN A REMOTE  
6 LOCATION, SEPARATE AND APART FROM THE ATTORNEYS AND THE  
7 COURT. THE PROCEEDINGS WERE REPORTED AND TRANSCRIBED TO THE  
8 BEST ABILITY OF THE COURT REPORTER TO HEAR AND UNDERSTAND  
9 THE PROCEEDINGS.)

10 \*\*\*

11 THE COURT: NOW, HNHPC, INC. VERSUS DEPARTMENT OF  
12 CANNABIS CONTROL. YOUR APPEARANCES, IF YOU PLEASE.

13 MR. TURNER: ETHAN TURNER FOR THE DEPARTMENT OF  
14 CANNABIS CONTROL.

15 THE COURT: MR. TURNER, GOOD MORNING.

16 MR. AUGUSTINI: JEFF AUGUSTINI FOR THE PETITIONER,  
17 HNHPC, INC.

18 THE COURT: THANK YOU, MR. AUGUSTINI.

19 AND WE HAVE A COURT REPORTER, JANE HONG, IS IT?

20 THE REPORTER: YES. GOOD MORNING, YOUR HONOR.

21 THE COURT: THANK YOU. I PUT MY MASK UP SO IT'S  
22 DIFFICULT SOMETIMES FOR PEOPLE TO HEAR. SO IF THAT OCCURS,  
23 PLEASE, LET ME KNOW.

24 WOULD YOU LIKE TO BE HEARD, MR. AUGUSTINI?

25 MR. AUGUSTINI: I WOULD, YOUR HONOR, THANK YOU,  
26 VERY MUCH.



1 I HAVE REVIEWED YOUR TENTATIVE AND IT'S HELPFUL IN  
2 CRAFTING THE ARGUMENT THIS MORNING. SO I APPRECIATE THAT.  
3 I WANT TO START WITH WHAT I THINK IS A FUNDAMENTAL  
4 MISUNDERSTANDING ABOUT THE BASIS OF THE FIRST AMENDED  
5 PETITION -- THAT I THINK THE COURT RULED ON AN ISSUE THAT  
6 HASN'T BEEN -- WASN'T ALLEGED. AND I'M NOT GOING TO SAY  
7 IT'S THE COURT'S FAULT, BECAUSE YOU WERE REPEATEDLY INVITED  
8 TO SUSTAIN THE DEMURRER ON THAT GROUND BY THE RESPONDENT.

9 IF YOU LOOK AT YOUR HONOR'S TENTATIVE, ESSENTIALLY,  
10 WHAT YOU SAY IN THE FIRST PARAGRAPH IS YOU IDENTIFY THE DUTY  
11 AS THE DUTY TO CREATE AN IMPLEMENTED TRACK AND TRACE  
12 PROGRAM, AND YOU SPECIFICALLY REFERENCE THIS IS B.P. SECTION  
13 26067(B)(1). AND THEN IF YOU GO INTO THE VERY BACK OF THE  
14 TENTATIVE, AT THE LAST FULL PARAGRAPH, THE COURT STATES THE  
15 REASONS FOR SUSTAINING THE DEMURRER AND DOING SO WITHOUT  
16 LEAVE TO AMEND BECAUSE IT FOUND THAT BASED UPON JUDICIALLY  
17 NOTICED MATERIALS, THAT THE RESPONDENT HAD COMPLIED WITH THE  
18 DUTY TO IMPLEMENT A TRACK AND TRACE ELECTRONIC DATABASE.

19 THE COURT: JUDICIAL NOTICE OF THE FACTS ESTABLISH  
20 THAT RESPONDENT COMPLIED WITH STATUTORY OBLIGATIONS.  
21 EXHIBITS A AND B ARE CONTRACTS FOR THE TRACK AND TRACE  
22 SYSTEM.

23 MR. AUGUSTINI: CORRECT. THAT IS -- THAT WASN'T  
24 OUR ALLEGATION. OUR ALLEGATION IS NOT THAT THEY FAILED TO  
25 CREATE AND IMPLEMENT A TRACK AND TRACE PROGRAM. THE  
26 ALLEGATION IS PURSUANT TO BUSINESS AND PROFESSION SECTION

1 26067(B)(2) A, COMPLETELY DIFFERENT PROVISION -- AND THAT'S  
2 LISTED IN THE TENTATIVE -- THAT THEY FAILED TO CREATE SUCH A  
3 PROGRAM BY ENSURING THAT IT WAS DESIGNED TO FLAG IRREGULAR  
4 TRANSACTIONS. SO IT WASN'T THAT THEY DID NOT DESIGN AND  
5 CREATE AND IMPLEMENT A TRACK AND TRACE PROGRAM. THE TRACK  
6 AND TRACE PROGRAM THEY DID IMPLEMENT DID NOT SATISFY THE  
7 LEGAL MANDATORY DUTY TO DESIGN AND SO FLAG IRREGULAR  
8 TRANSACTIONS.

9 AND THAT'S SORT OF THE CONFLATION BY THE RESPONDENT  
10 OF THE DUTY I THINK CONTRIBUTED TO THE CONFUSION IN THE  
11 TENTATIVE BECAUSE WE NEVER CONTENTED THEY NEVER CREATED A  
12 TRACK AND TRACE PROGRAM. WE SAID BASED ON A SEPARATE  
13 PROVISION OF THE BUSINESS AND PROFESSIONS CODE THAT SYSTEM  
14 WAS REQUIRED BY LAW TO BE DESIGNED TO FLAG IRREGULAR  
15 TRANSACTIONS. AND OUR ALLEGATION WAS THAT SYSTEM DOES NOT,  
16 AS DESIGNED NOW, DOESN'T FLAG IRREGULAR TRANSACTIONS AS  
17 LEGALLY REQUIRED, AND MANDATED BY THE LEGISLATURE.

18 SO THAT'S -- I'LL TALK ABOUT THE OTHER ASPECT,  
19 ABUSE OF DISCRETION IN A MINUTE, BUT THE DEMURRER ACTUALLY  
20 -- ESSENTIALLY SUSTAINED OUR DEMURRER TO OUR FIRST AMENDED  
21 PETITION ON A GROUND THAT WE DID NOT ALLEGE. WE DID NOT  
22 ALLEGE AND IT DOES NOT ADDRESS THE GROUND WE ALLEGE WHICH  
23 WAS WHETHER OR NOT THE SYSTEM THAT WAS DESIGNED AND  
24 IMPLEMENTED CONTAINS THIS CAPABILITY OF FLAGGING IRREGULAR  
25 TRANSACTIONS.

26 NOW, TURNING TO WHAT YOUR HONOR SAID INITIALLY

1 ABOUT THE JUDICIALLY NOTICEABLE MATERIALS, I HAVE A TWOFOLD  
2 ARGUMENT ON THAT. THE FIRST WE'LL TALK ABOUT IS WHETHER OR  
3 NOT YOU CAN ACTUALLY TAKE JUDICIAL NOTICE, ESSENTIALLY, OF  
4 THE CONTENTS OF THE CONTRACT, WHICH WAS WHAT'S REQUIRED.  
5 AND WHETHER OR NOT EVEN IF YOU DO SO WHETHER OR NOT IT  
6 CLEARLY DEMONSTRATES THAT THEY ACTUALLY DESIGNED THE SYSTEM  
7 TO FLAG IRREGULARITIES.

8 NOW, IF YOU LOOK AT THE SCOTT DECISION, WHICH WAS  
9 ONE OF THE ONES -- THE CASES -- THE COURT REFERENCED IN THE  
10 TENTATIVE THAT ESSENTIALLY MOVES ON THE GENERAL RULE. BY  
11 GENERAL RULE WITH A CONTRACT, YOU MIGHT BE ABLE TO  
12 JUDICIALLY NOTICE THE EXISTENCE OF A CONTRACT BUT NOT THE  
13 TERMS OR ANY OF THE STATEMENTS THEREIN. THAT'S SORT OF THE  
14 GENERAL RULE.

15 WHEN YOU TALK ABOUT OFFICIAL DOCUMENTS, THE COURTS,  
16 LIKE SCOTT AND OTHERS, WILL SAY NOT ONLY CAN YOU JUDICIALLY  
17 NOTICE THE EXISTENCE, BUT YOU ALSO POTENTIALLY COULD  
18 JUDICIALLY NOTICE ITS LEGAL EFFECT IF THE LEGAL EFFECT OR  
19 LEGALLY OPERATIVE LANGUAGE IS CLEAR ON THE FACE OF THE  
20 DOCUMENT.

21 NOW, IF YOU LOOK AT CASES LIKE SCOTT AND OTHERS  
22 WHERE THAT'S FOUND, THERE'S ONLY A VERY LIMITED AMOUNT OF  
23 DOCUMENTS WHERE THAT OCCURS; USUALLY IT RELATES TO RECORDED  
24 DOCUMENTS RELATING TO PROPERTY DEEDS OF TRUST AND  
25 ASSIGNMENTS. THAT'S BECAUSE THOSE AGREEMENTS OR ASSIGNMENTS  
26 BY THEMSELVES HAVE LEGALLY OPERATIVE LANGUAGE IN THEM.

1 LIKE, YOU MAKE AN OFFER. THE FACT YOU MAKE IT, MAKES IT AN  
2 OFFER. DOESN'T MAKE EXACTLY WHAT YOU SAY.

3 SIMILARLY IN A CASE WHERE YOU HAVE AN ASSIGNMENT,  
4 LIKE IN SCOTT, THE LANGUAGE OF THE DOCUMENT ITSELF IS  
5 LEGALLY OPERATIVE BY SAYING: I ASSIGN TO YOU X. THAT'S NOT  
6 HEARSAY. THAT'S CAPABLE OF QUICK VERIFICATION BECAUSE THE  
7 LANGUAGE ITSELF IS LEGALLY OPERATIVE. THAT'S WHAT THE CASE  
8 OF SCOTT SAYS.

9 IN THIS PARTICULAR CASE, THERE'S NO LEGALLY  
10 OPERATIVE LANGUAGE IN ANY OF THE JUDICIALLY NOTICEABLE  
11 MATERIAL SUBMITTED BY RESPONDENT BECAUSE IF YOU HAVE A  
12 CONTRACT TO DESIGN A SYSTEM, DOESN'T MEAN IT WAS ACTUALLY  
13 DESIGNED AND IT DOESN'T MEAN IT WAS DESIGNED PURSUANT TO THE  
14 TERMS AND STATEMENTS SET FORTH IN THE CONTRACT.

15 FOR INSTANCE, THERE COULD BE AN AMENDMENT. PARTIES  
16 COULD FORMALLY AGREE NOT TO DO CERTAIN THINGS AND IN THIS  
17 PARTICULAR CASE, THE DESIGNER DID NOT HAVE AN OBLIGATION  
18 UNDER THE CONTRACT TO ACTUALLY DESIGN THE SYSTEM TO FLAG  
19 IRREGULARITIES. UNDER THE LANGUAGE CITED BY RESPONDENT, IT  
20 WAS THE RESPONDENT'S OBLIGATION TO PROVIDE THE CRITERIA FOR  
21 FLAGGING TO THE DEVELOPER, FOR THE DEVELOPER TO USE IN THE  
22 SYSTEM.

23 THERE'S NO EVIDENCE OF ANY KIND -- WHETHER IT'S  
24 JUDICIALLY NOTICEABLE OR NOT -- THAT THE DEPARTMENT OR THE  
25 RESPONDENT EVER, IN FACT, DID SO -- EVER GAVE THEM CRITERIA  
26 TO BE USED. AND WE'VE ALSO NOTED IN EVIDENCE CODE 412, FROM

1 AN EVIDENTIARY STANDPOINT, PRESUMABLY IF THEY DO SO THEY  
2 WOULD HAVE JUDICIALLY NOTICEABLE MATERIAL TO PROVIDE TO THE  
3 COURT SHOWING THEY, IN FACT, DID SO, AND THE SYSTEM, IN  
4 FACT, WAS DESIGNED THAT WAY WHEN IMPLEMENTED.

5 THEY DID NOT DO SO AND UNDER EVIDENCE CODE, THE  
6 FACT THEY HAD THE ABILITY TO PROVIDE STRONGER, MORE  
7 SATISFACTORY EVIDENCE, BUT DID NOT, MEANS THE EVIDENCE THAT  
8 WAS SUBMITTED SHOULD BE VIEWED WITH DISTRUST.

9 THAT'S SORT OF THE MAIN GIST. ALSO, YOU MADE A  
10 COMMENT IN THE TENTATIVE, YOUR HONOR, ABOUT US NOT BEING  
11 ABLE TO MICROMANAGE THE DISCRETION OF THE DEPARTMENT IN  
12 IMPLEMENTING THAT. MY ARGUMENTS ARE TWOFOLD ON THAT ISSUE.

13 FIRST, WE CITED CASES TO THE EFFECT THAT THE  
14 RESPONDENTS HAD NO DISCRETION TO DISREGARD THE LEGALLY  
15 MANDATED REQUIREMENT OF BUSINESS AND PROFESSIONS  
16 26067(B)(2)(A). AND SO IN OUR ALLEGATIONS, THEY EXACTLY DID  
17 SO, WHICH WOULD BE AN ABUSE OF DISCRETION, NOT A  
18 MICROMANAGEMENT ISSUE.

19 THE SECOND ASPECT OF THAT IS, TO THE EXTENT YOUR  
20 HONOR NOTED THAT DEMURRER IS NOT FOR THE PURPOSE OF  
21 DETERMINING THE TRUTH OF THE ALLEGATIONS OR THE ABILITY TO  
22 PROVE THOSE ALLEGATIONS DOWN THE ROAD, BUT ASSUMING THAT  
23 SOMEWHERE DOWN THE ROAD, THEY COME UP WITH SOME DOCUMENT  
24 SHOWING THEY'VE PROVIDED SOME SORT OF FLAGGING CAPABILITY IN  
25 THE SYSTEM, THEN AT THAT POINT, WE WOULD BE OBLIGATED AND  
26 HAVE THE RIGHT TO DEMONSTRATE WHY THE DECISIONS THAT IT MADE

1 AS TO WHAT TO FLAG OR NOT TO FLAG CONSTITUTED AN ABUSE OF  
2 DISCRETION. AT THIS POINT, ONLY THE RESPONDENTS WOULD KNOW  
3 WHAT FLAGGING CAPABILITY THEY DID OR DID NOT INSERT INTO THE  
4 DATABASE.

5 YOU KNOW, THE LAW BECOMES LESS SPECIFIC AS TO WHAT  
6 THIS IS -- IS REQUIRED WHEN THE DEFENDANTS IN THIS CASE HAVE  
7 SUPERIOR KNOWLEDGE AS TO WHETHER OR NOT THEY DID, IN FACT,  
8 FLAG, AND WHAT THEY DID FLAG. AT THAT POINT, WE WOULD BE  
9 ENTITLED TO SHOW THEIR DECISIONS ON THAT ISSUE CONSTITUTED  
10 AN ABUSE OF DISCRETION, WHICH IS -- AS YOUR HONOR HAS  
11 DEFINED AS ARBITRARY, BEYOND THE BOUNDS OF REASON, OR  
12 DEROGATION OF THE APPLICABLE LEGAL STANDARD.

13 SO WITH THAT BE IF THE RESPONDENTS, AT SOME POINT  
14 IN THE FUTURE, WERE ACTUALLY ABLE TO DEMONSTRATE THAT THEY  
15 FULLY INCORPORATED SOME SORT OF FLAGGING CAPABILITY INTO THE  
16 SYSTEM THEY IMPLEMENTED.

17 THE COURT: MR. AUGUSTINI, THANK YOU.

18 MR. TURNER, WOULD YOU LIKE TO RESPOND?

19 MR. TURNER, WE CAN'T HEAR YOU. YOU HAVE TO TAKE  
20 THE MUTE OFF. YOU'RE MUTED.

21 MR. TURNER: MY APOLOGIES, YOUR HONOR. CAN YOU  
22 HEAR ME NOW?

23 THE COURT: YES, LOUD AND CLEAR.

24 MR. TURNER: THANK YOU, YOUR HONOR.

25 A FEW POINTS TO MAKE THERE. THE PRINCIPLE ONE IS  
26 THAT THE COURT'S POINT ABOUT MICROMANAGING IS EXACTLY THE

1 CORE ISSUE HERE. THE STATUTE IN QUESTION WITH RESPECT TO  
2 FLAGGING THE IRREGULARITIES CAN BE LOOKED AT, AND ON THE  
3 FACE OF THE STATUTE, CAN BE DETERMINED THAT IT IS A COMMAND  
4 DISCRETIONARY FUNCTION TO BE CARRIED OUT, NOT A MINISTERIAL  
5 DUTY TO BE EXECUTED. THAT'S BECAUSE THE STATUTE REQUIRES  
6 THAT THE DATABASE BE DESIGNED TO FLAG IRREGULARITIES; AND  
7 THAT IT BE AN ELECTRONIC DATABASE; BUT IT DOESN'T SAY WHAT  
8 AN IRREGULARITY IS, HOW THE DATABASE IS TO FLAG  
9 IRREGULARITIES. IT DOESN'T SAY ANYTHING AT ALL ABOUT WHAT  
10 THE DEPARTMENT'S ENFORCEMENT PRIORITIES SHOULD BE, AND  
11 WHETHER OR NOT THE DEPARTMENT NEEDS TO TAKE, AS ITS  
12 PRINCIPLE ENFORCEMENT GOAL, HNHPC'S PET PROJECT, WHICH IS  
13 THE ELIMINATION OR SUBSTANTIAL REDUCTION OF BURNER DISTROS,  
14 WHICH IS KIND OF CRIMINAL OPERATORS IN THE COMMERCIAL  
15 CANNABIS SECTOR.

16 IF THE COURT WERE ABLE TO FIGURE OUT WHAT  
17 AUGMENTING OR UPGRADING TO THE SYSTEM WOULD MEAN, AND  
18 OVERSEE THE DEPARTMENT'S AND DIRECTOR'S EXERCISE OF THE  
19 STATUTORILY GRANTED DISCRETION TO CARRY OUT THE  
20 DISCRETIONARY FUNCTION, IT STILL WOULD NOT DO ANYTHING FOR  
21 THE PETITIONER AND THE PLAINTIFFS HERE, BECAUSE IT WOULD  
22 REQUIRE FURTHER THAT THE COURT COMMAND THE DEPARTMENT TO  
23 UNDERTAKE ENFORCEMENT ACTION AGAINST BURNER DISTROS, WHICH  
24 IS THE FOCUS OF HNHPC, AND WHICH IS WELL BEYOND WHAT THE  
25 COURT SHOULD BE GRANTING IN GRANTING A PERMANENT INJUNCTION.

26 AND THERE'S A NUMBER OF CASES THAT SUPPORT THAT;

1 THE FIRST BEING ELLISON VERSUS VENTURA PORT DISTRICT; A 1978  
2 CASE; 80 C.A. 3RD, 573, IN WHICH A PERMANENT INJUNCTION  
3 SHOULD BE DENIED WHEN IMPOSES ON THE COURT THE IMPOSSIBLE  
4 TASK OF SUPERVISING CONTINUANCE PERFORMANCE OVER THE  
5 ENJOINED PARTY.

6 AND THAT IS WHAT'S REQUIRED IF THE BENEFICIAL  
7 INTEREST THAT HNHPC CLAIMS IT HAS IN THIS CASE WERE TO BE  
8 ACHIEVED, NAMELY THE ELIMINATION OR SUBSTANTIAL REDUCTION IN  
9 THE EXISTENCE OF A PARTICULAR TYPE OF ILLEGAL ACTOR, BURNER  
10 DISTROS. AND IF THOSE ILLEGAL ACTORS WERE REMOVED FROM THE  
11 MARKETPLACE, IT WOULD THEN ACCRUE A BENEFICIAL INTEREST IN  
12 THE FORM OF FINANCIAL BENEFIT AND A COMPETITIVE EDGE FOR  
13 HNHPC AGAINST SUCH ACTORS.

14 SO THERE'S TWO THINGS IN THERE, YOUR HONOR. THE  
15 FIRST IS THAT THE STATUTE ON ITS FACE IS A DISCRETIONARY  
16 FUNCTION NOT A MINISTERIAL DUTY. AND IF THE ENTIRE  
17 ENTERPRISE IS CREATING A DATABASE, AND COMING UP WITH WHAT  
18 IRREGULARITIES SHOULD BE FLAGGED, HOW THEY SHOULD BE  
19 FLAGGED, WHAT IRREGULARITIES SHOULD BE INVESTIGATED, AND  
20 WHAT ENFORCEMENT PRIORITIES SHOULD BE THE FOCUS OF THE  
21 AGENCY ARE ALL DISCRETIONARY ACTS, ALL OF WHICH WOULD HAVE  
22 TO BE DIRECTED IN A PARTICULAR MANNER AT EVERY STAGE IN  
23 ORDER TO ACHIEVE THE BENEFICIAL INTEREST THAT HNHPC CLAIMS  
24 IT HAS IN THIS MATTER.

25 SINCE THE BENEFICIAL INTEREST IS SO ATTENUATED AND  
26 NOT EVEN LOGICALLY CONNECTED FROM THE REQUESTED ORDER THAT



1 THE COURT UPGRADE OR AUGMENT THE DATABASE SOMEHOW IN A  
2 MANNER THAT THE COURT IS LEFT TO FIGURE OUT ON ITS OWN, THAT  
3 THEY DON'T HAVE ANY BENEFICIAL INTEREST IN THIS CASE.  
4 THERE'S NO HARM TO BE AVOIDED, NO INJURY TO BE PREVENTED, NO  
5 REMEDY TO BE AFFORDED THAT WOULD ACTUALLY FLOW FROM THE  
6 UPGRADE OR AUGMENTATION OF THE DATABASE.

7 SO FOR THAT REASON, THERE'S NO STANDING, NO  
8 JUSTICIABLE CONTROVERSY, THERE'S NO RIPE CONTROVERSY AT ALL  
9 IN THIS MATTER.

10 FURTHER, YOUR HONOR, THEY JUST -- THEY'VE NOTHING  
11 GAINED BY THIS CONTROVERSY. THEY CLAIM THAT THEY WOULD GET  
12 BENEFICIAL INTEREST IF ALL OF THOSE THINGS WERE TO FALL INTO  
13 LINE.

14 AND FINALLY, ONE MORE POINT BEFORE I ADDRESS ANY  
15 QUESTIONS THE COURT HAS. IF THE COURT WERE TO SOMEHOW  
16 FASHION AN ORDER THAT AUGMENTS AND UPGRADES THE DATABASE  
17 SUCH THAT BURNER DISTRO ACTIVITY IS INDICATED IN THE REPORTS  
18 GENERATED BY THE TRACK AND TRACE PROGRAM, AND THEN ORDERED  
19 THE DEPARTMENT AND DIRECTOR TO UNDERTAKE INVESTIGATION  
20 ENFORCEMENT ACTION AGAINST BURNER DISTROS, THE FOCUS OF THIS  
21 MATTER, IT WOULD BE DOING SO AT THE EXPENSE OF EXISTING  
22 ENFORCEMENT PRIORITIES AND OTHER ENFORCEMENT PRIORITIES.

23 SO THE INJUNCTIVE RELIEF REQUESTED HAS THE EFFECT  
24 OF PREVENTING THE DIRECTOR FROM CARRYING OUT PUBLIC OFFICE  
25 IN THE MANNER WHICH SHE DECIDES PURSUANT TO DISCRETION  
26 AFFORDED BY THE STATUTE, AND PREVENTS THE DEPARTMENT FROM

1 EXECUTING 26067 IN ACCORDANCE WITH THE DISCRETION THAT IT'S  
2 AFFORDED BY THE LEGISLATURE.

3 AND THE TWO STATUTES FOR INJUNCTIVE RELIEF THAT  
4 COULD BE RELIED ON BY THE PETITIONER IN THIS MATTER --  
5 WELL, IN RESPONSE 26, SUB B -- JUST A MINUTE. I'M SORRY,  
6 YOUR HONOR. 26(B), 4, AND 6, AND CIVIL CODE 3423(D) AND (F)  
7 PROHIBIT THE ISSUANCE OF INJUNCTIVE RELIEF THAT WOULD  
8 INTERFERE OR PREVENT THE EXECUTION OF A PUBLIC OFFICE BY THE  
9 DIRECTOR OF CANNABIS CONTROL, AND EXECUTION OF PUBLIC  
10 STATUTE BY THE DEPARTMENT OF CANNABIS CONTROL, NAMELY 26078.

11 SO THERE'S NO BENEFICIAL INTEREST. THERE'S NO  
12 HARM, NOTHING TO BE GAINED BY THE DEPARTMENT. THERE'S NO  
13 STANDING. COURT DOESN'T NEED TO REACH THE ISSUE OF WHETHER  
14 OR NOT THE DATABASE CURRENTLY FLAGS IRREGULARITIES. AND  
15 EVEN IF IT WANTED TO RAISE THAT ISSUE, THE INJUNCTIVE RELIEF  
16 REQUEST IS TO VIOLATE THE TWO STATUTORY PROVISIONS I JUST  
17 CITED.

18 I'D ALSO POINT OUT ONE THING REGARDING THE R.J.N.  
19 AND MR. AUGUSTINI'S OPPOSITION; NAMELY THAT THE LANGUAGE IN  
20 THE CONTRACT IS LEGALLY OPERATIVE. THE DEPARTMENT AND THE  
21 PREDECESSOR, THE DEPARTMENT OF FOOD AND AGRICULTURE, GAVE  
22 THE CONTRACTOR, FRAMEWELL INC., AND SUBSEQUENTLY METRIC,  
23 L.L.C., A DUTY. AND WHEN IT SET FORTH BUSINESS NEEDS IN THE  
24 CONTRACT, THAT CREATED A DUTY IN THE CONTRACTOR TO CREATE A  
25 DATABASE THAT CAN FLAG IRREGULARITIES.

26 AND MR. AUGUSTINI'S POINT THAT THE KIND OF

1 IRREGULARITIES THAT MUST BE FLAGGED ARE SUBJECT TO THE  
2 DIRECTION OF THE DEPARTMENT IS WELL TAKEN. BUT ON THAT  
3 FRONT, WHAT KINDS OF IRREGULARITIES THAT NEEDS TO BE FLAGGED  
4 ARE IN THE DISCRETION OF THE DEPARTMENT AND THE DIRECTOR  
5 BASE. THE STATUTORY DOESN'T DEFINE WHAT THEY ARE. AND THE  
6 STATUTORY DOESN'T REQUIRE WHAT ENFORCEMENT PRIORITIES HAVE  
7 TO BE MET, AND ALSO, WHAT TYPE OF IRREGULARITY NEED TO BE  
8 FLAGGED THAT IS NECESSARILY SUBJECT TO ONGOING CHANGE AND  
9 ADAPTATION, BECAUSE ALL REGULATORY ENFORCEMENT AND CRIMINAL  
10 ENFORCEMENT IS NECESSARILY A COMPETITIVE ENTERPRISE THAT  
11 INVOLVES VAST CHANGING ACTIVITIES OF ILLEGAL ACTORS.

12 SO THIS IS -- DESIGNING A DATABASE TO FLAG  
13 REGULARITIES IS AN ONGOING AND NEVER ENDING ENTERPRISE FOR  
14 WHICH THE STATUTE CREATES NO DEADLINE. THE DATABASE DID NOT  
15 NEED TO SPRING INTO EXISTENCE CAPABLE OF FLAGGING BURNER  
16 DISTROS. IT NEEDED TO COME TO EXIST AND CARRY OUT ITS  
17 STATUTORY FUNCTION.

18 I GUESS THAT RESOLVES -- CONCLUDES MY ARGUMENTS,  
19 YOUR HONOR.

20 THE COURT: MR. AUGUSTINI, DO YOU HAVE ANYTHING TO  
21 ADD? PLEASE TAKE YOUR TIME AND DO SO AT THIS POINT.

22 MR. AUGUSTINI: YEAH, I JUST WANT TO -- I'LL TRY TO  
23 BE BRIEF, YOUR HONOR.

24 THE ALLEGATIONS IS THIS: THE OPERATIVE STATUTE,  
25 YOU KNOW, THAT IS THE SUBJECT OF THIS COMPLAINT, STATES THE  
26 DATABASE SHALL BE DESIGNED TO FLAG IRREGULARITIES FOR ALL

1 LICENSING AUTHORITIES IN THIS DIVISION TO INVESTIGATE.  
2 THAT'S THE OPERATIVE DUTY. THE WORD "SHALL," I THINK, YOUR  
3 HONOR AWARE, IS A HARBINGER OF A MANDATORY DUTY.

4 THE COURT: THAT'S THE SECOND DAY OF LAW SCHOOL.

5 MR. AUGUSTINI: YES. PARAGRAPH 26, THE OPERATIVE  
6 CHARGING PARAGRAPHS OF OUR WRIT OF MANDAMUS CLAIM STATES:

7 HERE SET FORTH ABOVE RESPONDENTS VIOLATED INTERALIA  
8 BOTH THE MINISTERIAL DUTIES AND THE EXPRESS PROVISION OF THE  
9 BUSINESS AND PROFESSIONS CODE BY FAILING TO CREATE A TRACK  
10 AND TRACE SYSTEM THAT'S DESIGNED TO FLAG, IS CAPABLE OF  
11 IDENTIFYING FLAGGING, IRREGULARITIES AND/OR QUESTIONABLE  
12 TRANSACTIONS WITH FURTHER INVESTIGATION AS MANDATED BY THE  
13 LEGISLATURE IN BUSINESS AND PROFESSIONS CODE 26067.

14 SIMPLY, YOUR HONOR, IT DOESN'T COME DOWN TO, WELL,  
15 JEEZ, IT'S NOT DEFINED; AND WHAT DOES IRREGULARITIES MEAN?  
16 AND I HAVE THAT DISCRETION. OUR ARGUMENT IS THEY HAD A  
17 LEGAL DUTY TO DO IT, AND THEY DID NOT DO IT, PERIOD. THEY  
18 DON'T HAVE DISCRETION NOT TO DO IT. WE CITED SOME CASES ON  
19 THAT, YOUR HONOR. ALAMEDA COUNTY; 9 CAL 5TH, AT 1060. IT  
20 SAYS: AN AGENCY HAS NO AUTHORITY TO ACT INCONSISTENTLY WITH  
21 GOVERNING LEGISLATION PURSUANT TO PRACTICE CONTRARY TO SUCH  
22 LEGISLATION.

23 THAT'S WHAT OUR ALLEGATION IS.

24 THE ELLENA CASE, 230 CAL.APP. 4TH, 205. IN THAT  
25 CASE, AN ORDINANCE DEFINES A SPECIFIC COURSE OF CONDUCT  
26 BECAUSE IT'S MANDATORY, AND ELIMINATES ANY ELEMENT OF

1 DISCRETION.

2 MR. TURNER HAS PUT THE CART BEFORE THE HORSE. IF  
3 YOU LOOK AT THE THREE EXHIBITS THEY SOUGHT JUDICIAL NOTICE  
4 OF, NOT ANY OF THEM EVER DEMONSTRATE THAT, IN FACT, THE  
5 SYSTEM THEY DESIGNED AND IMPLEMENTED EVER CONTAINED THE  
6 ABILITY TO FLAG IRREGULAR TRANSACTIONS.

7 IN MULTIPLE POINTS IN THEIR DEMURRER -- PAGES 8 TO  
8 9, 11, 16 TO 18 -- THEY MAKE A SERIES OF ARGUMENTS THAT  
9 SUGGESTS THAT WHAT WE'RE SAYING IS TRUE. THEY ARGUE THAT  
10 THERE WAS NO DEADLINE FOR COMPLIANCE. THEY ARGUE THEY'RE  
11 WILLING TO COMPLY. THEY ARGUE THEY'VE UNDERTAKEN  
12 SIGNIFICANT STEPS TOWARD COMPLIANCE. ALL OF THOSE ARGUMENTS  
13 ARE CONTRADICTORY TO THE NOTION THAT THREE AND A HALF YEARS  
14 AGO, WE MADE -- WHEN THIS PROGRAM WENT LIVE, OR EVEN TODAY  
15 -- THAT THAT, IN FACT, AS LEGALLY REQUIRED, FLAGS IRREGULAR  
16 TRANSACTIONS FOR FURTHER INVESTIGATION.

17 THAT'S THE ALLEGATION. ALL THE OTHER STUFF IS JUST  
18 SORT OF, YOU KNOW, WATER UNDER THE BRIDGE, RIGHT? WHETHER  
19 WE CAN PROVE THAT AND WHETHER THAT ALLEGATION IS TRUE, AS  
20 YOUR HONOR NOTED IN THE TENTATIVE, IS NOT THE PROPER SUBJECT  
21 OF THE DEMURRER.

22 WITH THAT, UNLESS YOUR HONOR HAS ANY QUESTION, I'M  
23 READY TO SUBMIT.

24 THE COURT: THANK YOU. MATTER STANDS SUBMITTED,  
25 MR. TURNER?

26 MR. TURNER: IF I CAN HAVE ONE THING, YOUR HONOR?

1 APOLOGIES. I'M SORRY.

2 WITH RESPECT TO THE DEADLINE ISSUE, I THINK I  
3 ADDRESSED THAT BECAUSE DESIGN AND IRREGULARITY IS AN ONGOING  
4 MATTER. THERE IS NO DEADLINE. THAT'S ADDRESSED IN OUR  
5 PLEADINGS ON PAGE 17 AND 18, AND POINTS AND AUTHORITIES.

6 MR. AUGUSTINI JUST PUT THE CART BEFORE THE HORSE  
7 HERE. THEY FAILED TO ESTABLISH ANY INTEREST IN THE  
8 RESOLUTION OF THIS MATTER. SO THAT NEEDS TO BE ESTABLISHED  
9 BEFORE THE CASE -- THE COURT SHOULD BOTHER ADDRESSING THE  
10 QUESTION THEY ASK THE COURT TO ADDRESS.

11 THE COURT: SUBMITTED?

12 MR. TURNER: YES, YOUR HONOR.

13 THE COURT: MR. AUGUSTINI, IS THE MATTER SUBMITTED?

14 MR. AUGUSTINI: YES, YOUR HONOR.

15 THE COURT: OKAY. I'LL GIVE YOU SOME OF MY  
16 THOUGHTS. WE HAVE A COURT REPORTER SO LET'S GO AHEAD AND  
17 GET TO IT.

18 FIRST OF ALL, THE REQUEST FOR JUDICIAL NOTICE,  
19 WHICH IS THE BASIS FOR MOST OF THE ARGUMENTS, RESPONDENT  
20 REQUESTED THAT THE COURT TAKE JUDICIAL NOTICE OF THE  
21 FOLLOWING DOCUMENTS:

22 ONE. A TRUE AND CORRECT CERTIFIED COPY OF THE  
23 CONTRACT ENTERED INTO BETWEEN THE CALIFORNIA DEPARTMENT OF  
24 FOOD AND AGRICULTURE AND FRAMEWELL, INC., ON JUNE 30, 2017,  
25 WHICH IS ATTACHED AS EXHIBIT A TO THE DECLARATION OF MELISSA  
26 EIDSON, WHICH IS ATTACHED.

1 TWO. A TRUE AND CORRECT COPY OF THE CONTRACT  
2 ENTERED INTO BETWEEN THE CALIFORNIA DEPARTMENT OF FOOD AND  
3 AGRICULTURE AND MEKRT, INC., ON MAY 5, 2021, WHICH IS  
4 ATTACHED AS EXHIBIT E TO THE DECLARATION OF MELISSA EIDSON,  
5 WHICH IS ATTACHED HERETO.

6 THREE. A TRUE AND CORRECT COPY OF THE DEPARTMENT'S  
7 BUDGET REQUEST FOR THE 2021 TO 2022 FISCAL YEAR, WHICH IS  
8 ATTACHED TO THIS REQUEST AS EXHIBIT C.

9 EVIDENCE CODE 452(C) -- BECAUSE THE DOCUMENTS ARE  
10 OFFICIAL ACTS AND RECORDS OF THE RESPONDENT, A STATE AGENCY,  
11 UNDER EVIDENCE CODE 452(H), THE DOCUMENTS ARE NOT REASONABLY  
12 SUBJECT TO DISPUTE AND ARE CAPABLE OF READY DETERMINATION.

13 WHEREAS HERE, JUDICIAL NOTICE IS REQUESTED OF A  
14 LEGALLY OPERATIVE DOCUMENT, LIKE THE CONTRACT, A COURT MAY  
15 TAKE NOTICE NOT ONLY OF THE FACT OF THE DOCUMENT IN ITS  
16 RECORDING OR PUBLICATION, BUT ALSO FACTS THAT CLEARLY DERIVE  
17 FROM THE LEGAL EFFECT; MOREOVER, WHETHER THE FACT DERIVES  
18 FROM THE LEGAL EFFECT OF THE DOCUMENT, OR FROM A STATEMENT  
19 WITHIN THE DOCUMENT, THE FACTS MAY BE JUDICIALLY NOTICED,  
20 WHEREAS HERE, THE FACT IS NOT REASONABLY SUBJECT TO DISPUTE.

21 THAT'S WHAT MR. AUGUSTINI HAS ALREADY REFERRED TO  
22 AS THE SCOTT VS. J.P. MORGAN CHASE BANK CASE; 2013, CAL.APP.  
23 4TH, 743 AT 754.

24 IF ANY JUDICIALLY NOTICED FACT CONTRADICTS THE  
25 CONCLUSORY ALLEGATIONS, THEN THOSE ALLEGATIONS MAY BE  
26 DISREGARDED.

1 INTENGAN VERSUS B.A.C. HOMEOWNERS LOAN SERVICING;  
2 2013 CASE. 2013 AT 214 CAL.APP. 3RD, 1037, ON PAGE 1055.

3 THESE JUDICIALLY NOTICED DOCUMENTS DEMONSTRATE THAT  
4 RESPONDENT COMPLIED WITH ITS MANDATORY DUTY. DESPITE  
5 PETITIONER'S ALLEGATIONS, THE JUDICIALLY NOTICED DOCUMENTS  
6 DEMONSTRATE THAT RESPONDENT COMPLIED WITH ITS MINISTERIAL  
7 DUTY. PETITIONER DOESN'T HAVE STANDING TO MICROMANAGE THE  
8 RESPONDENT'S COMPLIANCE. THE MANNER OF COMPLIANCE IS LEFT  
9 TO RESPONDENT'S DISCRETION.

10 REGARDING THE BALANCE OF INTERIM HARM, THE  
11 PRELIMINARY INJUNCTION CANNOT BE ALLOWED TO STAND UNLESS  
12 THERE IS SOME POSSIBILITY PETITIONER WILL PREVAIL ON THE  
13 MERITS OF THIS ACTION.

14 COSTA MESA CITY EMPLOYEES ASSOCIATION VERSUS CITY  
15 OF COSTA MESA; 2012 209 CAL.APP 4TH, 298, PAGE 309.

16 SINCE RESPONDENT COMPLIED WITH ITS MANDATORY DUTY,  
17 THERE COULD BE NO PRELIMINARY INJUNCTION.

18 AS FOR LEAVE TO AMEND, IT GENERALLY IS AN ABUSE OF  
19 DISCRETION TO SUSTAIN A DEMURRER WITHOUT LEAVE TO AMEND IF  
20 THERE'S ANY REASONABLE POSSIBILITY THAT THE DEFECT CAN BE  
21 CURED BY AMENDMENT. HOWEVER, THE BURDEN IS ON THE PLAINTIFF  
22 TO DEMONSTRATE THAT THE TRIAL COURT ABUSED ITS DISCRETION.  
23 PLAINTIFF MUST SHOW HE CAN AMEND THE COMPLAINT AND HOW THAT  
24 AMENDMENT WOULD CHANGE THE LEGAL EFFECT OF THE PLEADINGS.

25 GOODMAN VERSUS KENNEDY; 1976, 18 CAL 3RD, 335 ON  
26 PAGE 349.



1           HERE, THE REQUESTED LEAVE TO AMEND, MOST OF  
2       RESPONDENT'S ARGUMENTS WERE BASED ON UNCERTAINTY, AMBIGUITY,  
3       AND/OR INCONSISTENCIES; HOWEVER, THE SUSTAINING OF THE  
4       DEMURRER IS BASED UPON RESPONDENT'S COMPLIANCE WITH THE DUTY  
5       TO IMPLEMENT A TRACK AND TRACE ELECTRONIC DATABASE, WHERE  
6       THERE DOES NOT APPEAR TO BE AN AVENUE FOR PETITIONER TO CURE  
7       HIS CRITICAL DEFECT.

8           THE TENTATIVE IS THE FINAL. THOSE ARE MY THOUGHTS.  
9       THANK YOU FOR YOUR ARGUMENTS.

10          MR. AUGUSTINI: THANK YOU, YOUR HONOR.

11          MR. TURNER: THANK YOU, YOUR HONOR.

12                               (ADJOURNED.)

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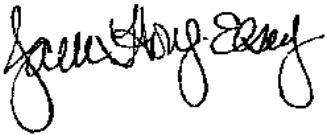
REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )  
  )   SS.  
COUNTY OF ORANGE        )  
    \_\_\_\_\_  )

I, JANE HONG-ELSEY, C.S.R. NO. 11975, OFFICIAL COURT REPORTER PRO TEMPORE IN AND FOUR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY:

          THAT THE FOREGOING REPORTER'S TRANSCRIPT IS A FULL, TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES THEREOF; AND IS A FULL, TRUE, AND CORRECT STATEMENT OF THE REMOTE PROCEEDINGS HELD IN SAID CAUSE.

DATED: FEBRUARY 1, 2022.



\_\_\_\_\_  
JANE HONG-ELSEY; C.S.R., 11975

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 [April 25, 2022](#), I served the following document(s):

5 **APPELLANT’S NOTICE DESIGNATING RECORD ON APPEAL**

6 **on the following parties:**

7 ROB BONTA  
8 HARINDER K. KAPUR  
9 ETHAN A. TURNER  
10 1300 I Street, Suite 125  
11 P.O. Box 944255  
12 Sacramento, CA 94244-2550E-mail:  
13 [Ethan.Turner@doj.ca.gov](mailto:Ethan.Turner@doj.ca.gov)  
14 [Harinder.kapur@doj.ca.gov](mailto:Harinder.kapur@doj.ca.gov)

15 **by the following means of service:**

- 16  **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-  
17 mentioned date. I am familiar with the firm's practice of collection and processing correspondence  
18 for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of  
19 business. I am aware that on motion of party served, service is presumed invalid if postal  
20 cancellation date or postage meter date is more than one day after date of deposit for mailing in  
affidavit.
- 21  **BY PERSONAL SERVICE:** I emailed a true copy of this document to a messenger with  
22 instructions to personally deliver it to each person[s] named at the address[es] shown before 5:00 p.m.  
on the above-mentioned date.
- 23  **BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above  
24 mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or  
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.
- 25  **BY ELECTRONIC SERVICE:** On the above-mentioned date, I caused each such document to be  
26 transmitted by electronically mailing a true and correct copy through One Legal’s electronic service  
function to the e-mail address(s) set forth below.
- 27  **(STATE)** I declare under penalty of perjury under the laws of the State of California that the  
28 foregoing is true and correct.

Executed on [April 25, 2022](#), at Irvine, California.

*Jeff Augustini*

[Jeff Augustini](#)