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11 Attorneys for Plaintiff  
12 CALIFORNIA GROWERS ASSOCIATION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

**FILE BY FAX**

CALIFORNIA GROWERS ASSOCIATION,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF FOOD  
AND AGRICULTURE, and DOES 1–10,

Defendant.

**CASE NO.:**

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(Gov. Code, § 11350; Code Civ. Proc., §  
1060)

**JUDGE:  
DEPT.:**

1 Plaintiff CALIFORNIA GROWERS ASSOCIATION (“CGA” or “Plaintiff”) files this  
2 action seeking judicial declaration regarding the validity of regulations pursuant to Code of  
3 Civil Procedure section 1060 and Government Code section 11350, alleging as follows:

4 1. In November 2016, California voters passed Proposition 64, the “Adult Use of  
5 Marijuana Act,” with 57.1 percent voter approval. One of Proposition 64’s expressly stated  
6 purposes is to “ensure[] the nonmedical marijuana industry in California will be built around  
7 small and medium sized businesses by prohibiting large-scale cultivation licenses for the first  
8 five years.” Defendant CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE has  
9 promulgated a regulatory loophole that eviscerates the statutory five-year prohibition  
10 overwhelmingly approved by California voters.

### 11 **PARTIES**

12 2. Plaintiff CGA is a non-profit, mutual benefit corporation organized under the laws  
13 of the state of California. CGA’s purpose is to advance the interests of small farms and  
14 businesses, including cannabis cultivation operations, within California.

15 3. Defendant CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
16 (“Department” or “Defendant”) is an administrative agency of the State of California. The  
17 Department promulgated regulations that are the subject of this action.

18 4. Plaintiff is currently unaware of the true names and capacities of Does 1 through  
19 10, inclusive, and therefore sues those parties by such fictitious names. Does 1 through 10,  
20 inclusive, are responsible in some manner for the conduct described in this complaint, or other  
21 persons or entities presently unknown to the Plaintiff who claim some legal or equitable interest  
22 in regulations that are the subject of this action. Plaintiff will amend this complaint to show the  
23 true names and capacities of Does 1 through 10 when such names and capacities become  
24 known.

### 25 **BACKGROUND FACTS**

26 5. The California legislature passed Senate Bill 94 on June 27, 2017, creating  
27 Division 10 of the California Business and Professions Code, otherwise known as the Medical  
28 and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The purpose of the

1 MAUCRSA was to harmonize the legislature-created Medical Cannabis Regulation and Safety  
2 Act (“MCRSA”) and the voter-approved Control, Regulation and Tax Adult Use of Marijuana  
3 Act (“AUMA”), including the respective cultivator licensing schemes within the two laws.

4 6. The Department is charged with creating regulations pursuant to the MAUCRSA.  
5 (Bus. & Prof. Code, § 26012, subd. (a), ¶ (2).)

6 7. MCRSA, consisting of 2015 Assembly Bill No. 243, 2015 Assembly Bill No. 266  
7 and 2015 Senate Bill No. 643, was the first regulatory scheme for licensure and regulation of  
8 medical cannabis. Under MCRSA, the largest cultivator license available allowed one acre of  
9 total canopy for outdoor cultivation. (Sen. Bill No. 643 (2015-2016 Reg. Sess.) as chaptered  
10 Oct. 9, 2015.) Generally, the MCRSA barred a single licensee from holding more than one  
11 license, save for specific exceptions. (Assem. Bill No. 266 (2015-2016 Reg. Sess.) as chaptered  
12 Oct. 9, 2015.)

13 8. The AUMA was later enacted via a voter initiative. AUMA incorporated much of  
14 MCRSA’s cultivator license scheme and expanded upon it. AUMA added a “large” cultivator  
15 license type, allowing total canopy size exceeding one acre for outdoor cultivation or 22,000  
16 square feet for indoor or mixed-light cultivation. However, under AUMA, the Department was  
17 not to issue any “large” cultivator licenses until January 1, 2023. (AUMA, Sec. 6, Ch. 6 (2016)  
18 as approved on Nov. 8, 2016.) AUMA section 2, Findings and Declarations, explicitly state:

19 The AUMA ensures the nonmedical marijuana industry in California will be built  
20 around small and medium sized businesses by prohibiting large-scale cultivation  
21 licenses for the first five years. The AUMA also protects consumers and small  
22 businesses by imposing strict anti-monopoly restrictions for businesses that  
participate in the nonmedical marijuana industry.

23 (AUMA, Sec. 2, Findings and Declarations, paragraph J (2016) as approved on Nov. 8, 2016.)

24 9. MAUCRSA, enacted by 2017 Senate Bill No. 94, established a “single system of  
25 administration for cannabis laws in California . . . pursuant to the Medical Cannabis Regulation  
26 and Safety Act . . . and the Adult Use of Marijuana Act[.]” (Sen. Rules Com., Off. of Sen. Floor  
27 Analyses, Sen. Floor Analysis of Sen. Bill No. 94 (2017-2018 Reg. Sess.) as amended June 9,  
28 2017, p. 1.) MAUCRSA includes the three tiers of cultivator license types found in MCRSA

1 and AUMA: “Small” cultivator licenses allowing up to approximately a quarter acre of total  
2 canopy size; “medium” cultivator licenses allowing up to one acre total canopy size for outdoor  
3 or 22,000 square feet for indoor or mixed-light; and “large” cultivator licenses allowing total  
4 canopy size exceeding one acre for outdoor cultivation or exceeding 22,000 square feet for  
5 indoor or mixed-light. (Bus. & Prof. Code, § 26061, subd. (a).) Consistent with AUMA,  
6 MAUCRSA also prohibits any “large” cultivator licenses from being issued until January 1,  
7 2023. (Bus. & Prof. Code, § 26061, subd. (c).)

8 10. MAUCRSA contains language reflecting the same purposes and intent of MCRSA  
9 and AUMA. Licensing authorities (including the Department) are charged with protecting the  
10 public as the highest priority when exercising their powers granted by the act. (Bus. & Prof.  
11 Code, § 26011.5.) Further MAUCRSA retained the provision of AUMA that granted the  
12 legislature the power to implement and enact laws “consistent with the purposes and intent of  
13 the Control, Regulate and Tax Adult Use of Marijuana Act.” (Bus. & Prof. Code, § 26013,  
14 subd. (a).) In light of the consistent language and common purposes and intent of the three laws,  
15 MAUCRSA prohibits aggregation of “small” cultivator licenses until January 1, 2023.

16 11. Pursuant to its statutory authority, the Department promulgated emergency  
17 regulations governing the licensing of commercial cannabis cultivation, codified at California  
18 Code of Regulations, title 3, section 8000 et seq. (“Regulations”), which are the subject of this  
19 action.

20 12. Consistent with the clear direction from the MAUCRSA, the Regulations prohibit  
21 a single person or entity from possessing more than one “medium” cultivator license. Section  
22 8209 of the Regulations provide, “A person shall be limited to one (1) Medium Outdoor, or one  
23 (1) Medium Indoor, or one (1) Medium Mixed-Light A-License or M-License. This section  
24 shall remain in effect until January 1, 2023.”

25 13. The Regulation’s prohibition on holding more than one “medium” cultivator  
26 license is to prevent a person or entity from aggregating such licenses for the purpose of  
27 operating a large cultivation prior to January 1, 2023.  
28

1           14.     However, the Regulations do not include an analogous limit on “small” cultivator  
2 licenses, or an aggregate acreage cap. Nothing prevents a single person or entity from holding  
3 unlimited “small” cultivator licenses for the purpose of establishing a large cultivation operation  
4 in violation of the acreage cap established in AUMA and MAUCRSA.

5           15.     The Department’s failure to cap the total number of “small” cultivator licenses  
6 issued to a single person or business violates the initial five-year prohibition on “large”  
7 cultivations set forth in MAUCRSA (Bus. & Prof. Code, § 26061, subd. (c)) as well as AUMA  
8 that any individual or entity may hold.

9           16.     The Department’s failure to cap the total number of “small” cultivator licenses that  
10 any individual or entity may hold also allows for violation of MAUCRSA’s prohibition on  
11 large-scale vertical integration. Business and Professions Code section 26061, subdivision (e)  
12 provides, “A Type 5, Type 5A, or Type 5B licensee shall not be eligible to apply for or hold a  
13 Type 8, Type 11, or Type 12 license.” Thus, MAUCRSA prohibits vertical integration of large  
14 cannabis cultivation with a testing laboratory, distributor or microbusiness license. The  
15 Regulations allow one to avoid this limitation by simply obtaining many “small” cultivation  
16 licenses in addition to the testing, distributor or microbusiness licenses in violation of  
17 MAUCRSA.

18           17.     Authorizing large cultivation operations prior to 2023 will have a devastating  
19 effect on small and medium cannabis businesses, local economies throughout the state, and the  
20 environment.

21           18.     The Department contracted with ERA Economics, LLC to prepare an “Economic  
22 Impact Analysis of Medical Cannabis Cultivation Program Regulations” (“Economic Study”).  
23 The Economic Study found that “[o]utdoor cultivators experience the highest regulatory costs  
24 due to lower productivity per square-foot of canopy.” With respect to these regulatory costs, the  
25 Economic Study concluded that “larger scale operations are able to spread regulatory costs over  
26 a greater quantity of production, making these entities more likely to participate in the regulated  
27 market.” Smaller outdoor cultivation operations, being less able to take advantage of economies  
28 of scale, are “least likely to participate in the regulated market.”

1 19. MAUCRSA’s initial five-year prohibition on large cultivation operations allows  
2 small and medium businesses necessary time to establish their operations so that they may later  
3 compete with large cultivation operations that can “spread regulatory costs over a greater  
4 quantity of production.”

5 20. Approving large cultivation operations in 2018 will significantly reduce the ability  
6 of small and medium businesses to compete economically in the regulated market. As a result,  
7 more small and medium cultivators will choose not to enter the regulated market and will  
8 instead stay in the illegal market.

9 21. One of the claimed public benefits of the Regulations is the “[c]reation of  
10 legitimate businesses and tax revenue sources,” yet the cumulative individual decisions of small  
11 and medium cultivators to remain in the illegal market due to an inability to compete with large  
12 cultivators will harm the local economies of traditional cultivation regions of the state by  
13 reducing tax revenue in these areas.

14 22. One of the claimed objectives of the Regulations is to “[e]stablish regulatory  
15 licensing and enforcement programs to ensure that cannabis cultivation will be performed in a  
16 manner that protects the environment.” However, incentivizing small and medium operators to  
17 stay in the illegal market due to overwhelming economic competition will harm the environment  
18 because these existing illegal operators will not notify regulatory agencies of their activities,  
19 much less voluntarily comply with environmental regulations, best practices and performance  
20 standards.

### 21 **JURISDICTION AND VENUE**

22 23. This Court has jurisdiction over this action pursuant to Government Code section  
23 11350 and Code of Civil Procedure section 1060.

24 24. Venue for this action properly lies in the Sacramento County Superior Court  
25 because the Department’s headquarters is located in Sacramento County. Also, the Attorney  
26 General, who will be representing the Department in this action, has an office in Sacramento  
27 County. (Code Civ. Proc., § 401, subd. (1).)

### 28 **STANDING**

1 25. Plaintiff has standing to assert the claims raised in this complaint because CGA’s  
2 members are subject to the Regulations, and have a direct and beneficial interest in the  
3 Department’s promulgation of cannabis regulations that are consistent and within the scope of  
4 the applicable enabling statutes. CGA’s members are directly and adversely affected by  
5 regulations that will authorize operation of large cannabis operations in violation of California  
6 statute.

7 26. Plaintiff has exhausted administrative remedies to the extent required by law.  
8 Although not required under Government Code section 11350, CGA raised the issues alleged  
9 herein in a comment letter submitted to the Department on November 29, 2017 and another  
10 letter to the Office of Administrative Law on December 4, 2017.

11 **FIRST CAUSE OF ACTION**

12 **Declaratory Relief**

13 27. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1  
14 through 26 as if fully set forth herein.

15 28. An actual controversy has arisen and now exists between Plaintiff and the  
16 Department. As described above, Plaintiff contends that Defendant’s Regulations are  
17 inconsistent with MAUCRSA, MCRSA, and AUMA because the regulations allow unlimited  
18 “small cultivator” licenses to be issued to a single person or entity thereby authorizing large  
19 cultivations prior to January 1, 2023.

20 29. A judicial determination of these issues and of the respective duties of Plaintiff  
21 and Defendant is necessary and appropriate at this time under the circumstances because the  
22 Regulations have been promulgated by the Department, approved by the California Office of  
23 Administrative Law, and are presently being implemented by the Department for purposes of  
24 issuing cannabis licenses. A judicial determination is necessary to prevent the issuance of  
25 cannabis licenses in violation of MAUCRSA, MCRSA, and AUMA.

26 **PRAYER**

27 WHEREFORE, Plaintiff prays for relief as follows:  
28

1           1.     For a declaration that the Department’s Regulations are inconsistent with  
2 MAUCRSA and other applicable laws;

3           2.     For a stay, temporary restraining order, preliminary injunction, and permanent  
4 injunction prohibiting the Department from issuing “small cultivation” licenses pursuant to the  
5 Regulations in violation of the acreage cultivation cap provided by MAUCRSA and other  
6 applicable laws;

7           3.     For costs of the suit;

8           4.     For attorneys’ fees pursuant to the Code of Civil Procedure section 1021.5; and

9           5.     For such other and further relief as the Court deems just and proper.

10 Dated: January 22, 2018

SOLURI MESERVE,  
A LAW CORPORATION

11  
12 By:   
13 Patrick M. Soluri



1 **VERIFICATION**

2 I, Hezekiah Allen, am the executive director for Plaintiff CALIFORNIA GROWERS  
3 ASSOCIATION in the above-entitled action, and am authorized to execute this verification on  
4 its behalf. I have read the foregoing complaint and know the contents thereof. The same is true  
5 of my own knowledge, except as to those matters which are therein alleged on information and  
6 belief, and as to those matters, I believe it to be true.

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct.

9 Executed this 22nd day of January 2018, in Sacramento, California.

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12 Hezekiah Allen  
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