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6 Attorneys for United States

7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
9

10 UNITED STATES OF AMERICA,

11 Petitioner,

12 v.

13 THE BUREAU of CANNABIS  
14 CONTROL, a State of California  
agency,

15 Respondent.

Case No.: '20CV1375 BEN LL

**PETITION TO ENFORCE UNITED  
STATES DRUG ENFORCEMENT  
ADMINISTRATION  
ADMINISTRATIVE SUBPOENA**

16  
17 The United States hereby petitions the Court as follows:

18 1. This proceeding is brought pursuant to 21 U.S.C. § 876(c) to judicially  
19 enforce Drug Enforcement Administration (“DEA”) subpoena R6-20-252406  
20 (“Subpoena,” redacted and attached as Exhibit A) issued under the authority of  
21 21 U.S.C. § 876(a).

22 2. This Court has jurisdiction over this action pursuant to  
23 21 U.S.C. § 876(c) and 28 U.S.C. § 1345. Venue is proper in this district under  
24 21 U.S.C. § 876(c) and 28 U.S.C. § 1391.

25 3. Joshua Matas is a DEA Special Agent stationed in the DEA’s  
26 Sacramento District Office. He is authorized to serve DEA subpoenas pursuant to  
27 21 U.S.C. § 878. Christina L. Lopez, a Supervisory Intelligence Research Specialist,  
28 is a DEA Group Supervisor stationed in the San Diego Field Division, and she is

1 authorized to issue DEA subpoenas pursuant to 21 U.S.C. § 876 and 28 C.F.R. pt. 0,  
2 app. to subpart R, sec. 4.

3 4. Respondent is the Bureau of Cannabis Control, a State of California  
4 agency (“BCC”). The BCC is a California agency that regulates commercial  
5 cannabis licenses for medical and adult-use in California.

6 5. On January 8, 2020, Group Supervisor Lopez issued the Subpoena to  
7 the BCC. The next day, Special Agent Matas served the Subpoena on the BCC.

8 6. The Subpoena demands the production of specific documents (licenses,  
9 license applications, and shipping manifests), for six entities, from January 1, 2018  
10 to the “[p]resent.” The Subpoena requires the BCC to email or mail the documents  
11 to DEA Special Agent John Chase.

12 7. Special Agent Chase is located in the San Diego Field Division, which  
13 is also where the investigation related to the Subpoena is carried on.

14 8. On January 21, 2020, the BCC stated in a letter (redacted and attached  
15 as Exhibit B) that it would not produce the documents.

16 9. The BCC has not complied with the Subpoena and informed the  
17 United States multiple times that it will not produce the requested documents. The  
18 United States has made all efforts to obtain compliance short of litigation, but the  
19 BCC refuses to comply with the Subpoena.

20 10. The documents demanded in the Subpoena are not presently in the  
21 DEA’s possession.

22 11. De-identified information cannot be reasonably used for the  
23 investigation.

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WHEREFORE, Petitioner respectfully prays that:

A. this Court enter an order directing the BCC to comply with the Subpoena within seven days, in its entirety;

B. that the order granting the relief sought herein be served on the BCC by the DEA; and

C. that this Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

DATED: July 20, 2020

ROBERT S. BREWER, JR.  
United States Attorney

*s/ Dylan M. Aste*  
\_\_\_\_\_
DYLAN M. ASTE
Assistant United States Attorney

Attorneys for the United States

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
UNITED STATES OF AMERICA
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
DYLAN M. ASTE, AUSA, Office of the United States Attorney, 880 Front Street, Room 6293, San Diego, CA 92101; Tel: 619-546-7621

DEFENDANTS
THE BUREAU of CANNABIS CONTROL, a State of California agency
County of Residence of First Listed Defendant Sacramento
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'20CV1375 BEN LL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
X 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
21 U.S.C. § 876(c)
Brief description of cause:
Petition to Enforce United States Drug Enforcement Administration Administrative Subpoena

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 07/20/2020 SIGNATURE OF ATTORNEY OF RECORD s/ Dylan M. Aste

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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6 Attorneys for United States

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
11 UNITED STATES OF AMERICA,

12 Petitioner,

13 v.

14 THE BUREAU of CANNABIS  
15 CONTROL, a State of California  
agency,

16 Respondent.  
17

Case No.: '20CV1375 BEN LL

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITION TO ENFORCE UNITED  
STATES DRUG ENFORCEMENT  
ADMINISTRATION  
ADMINISTRATIVE SUBPOENA**

18  
19 ///

20 The Bureau of Cannabis Control, a State of California agency (“BCC”), has  
21 not complied with a lawful administrative subpoena issued by the United States  
22 Department of Justice, Drug Enforcement Administration (“United States” or  
23 “DEA”). Accordingly, the United States petitions the Court to enter an order  
24 requiring the BCC to comply with the subpoena. *See* 21 U.S.C. § 876(c).

25 **BACKGROUND**

26 In January of this year, as part of its criminal investigation, the DEA lawfully  
27 issued administrative subpoena R6-20-252406 (“Subpoena”) and personally served  
28 it on the BCC. Pet. Ex. A. The Subpoena demands the production of specific

1 documents for six entities, from January 1, 2018 to the “[p]resent.”<sup>1</sup> About two  
2 weeks later, the BCC stated in a letter that it would not produce the documents  
3 because the Subpoena “does not specify the relevancy” and requests information that  
4 is confidential, protected, and part of pending licensing investigations. Pet. Ex. B.<sup>2</sup>  
5 The BCC’s letter also cited to California state laws and one federal law to support  
6 its non-compliance position. *Id.*

7 Over the next two months, the United States spoke with BCC attorneys and  
8 attempted to assure them of the Subpoena’s validity and the necessity for  
9 compliance, but the BCC’s position did not change. The United States sent a letter  
10 to the California Attorney General (and BCC Counsel) in May and provided an  
11 opportunity to respond prior to filing this action. The BCC stated that its position  
12 had not changed, and it has not complied with the Subpoena to date.

13 The authorities cited on the face of the Subpoena preclude the BCC’s refusal  
14 to comply with the lawful Subpoena. The United States has made good faith efforts  
15 to negotiate compliance and has provided further information to the BCC regarding  
16 legal authority for compliance and law enforcement relevance of the requested  
17 information. The United States now requests that the Court enter an order requiring  
18 the BCC’s compliance with the Subpoena without further delay.

### 19 **LEGAL STANDARD**

20 The scope of judicial inquiry in an agency subpoena enforcement proceeding  
21 is “quite narrow.” *United States v. Golden Valley Elec. Ass’n*, 689 F.3d 1108, 1113  
22 (9th Cir. 2012). The three-part inquiry is: “(1) whether Congress has granted the  
23 [agency] authority to investigate; (2) whether procedural requirements have been

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24  
25 <sup>1</sup> The DEA served an administrative subpoena on the BCC in November 2019  
26 that contained the same document requests. To avoid protracted litigation and to  
27 relieve the BCC’s expressed concerns regarding that subpoena’s service, the  
28 United States withdrew that subpoena and served the subject Subpoena.

<sup>2</sup> This letter is offered to provide the Court a complete and fair account of the  
stated reasons for non-compliance as summarized by the United States.

1 followed; and (3) whether the evidence [sought] is relevant and material to the  
2 investigation.” *Id.*; *see also Oklahoma Press Publ’g Co. v. Walling*, 327 U.S. 186,  
3 209 (1946) (discussing that a court may enforce an administrative subpoena upon a  
4 showing that “the investigation is authorized by Congress, is for a purpose Congress  
5 can order, and the documents sought are relevant to the inquiry”). Courts “must  
6 enforce administrative subpoenas unless the evidence sought by the subpoena is  
7 plainly incompetent or irrelevant to any lawful purpose of the agency.”  
8 *EEOC v. Federal Express Corp.*, 558 F.3d 842, 854 (9th Cir. 2009). Relevance is  
9 determined in terms of the investigation rather than as prospective trial evidence,  
10 and courts have emphasized that this prong of the inquiry is “not especially  
11 constraining.” *Id.* And as a court in this district recently stated, the agency does not  
12 have to file a declaration when enforcing an administrative subpoena.  
13 *See United States v. State of California*, 3:18-cv-2868, 2019 WL 2498312, at \*2  
14 (S.D. Cal. May 9, 2019) (holding that the State of California must produce  
15 documents demanded in a DEA administrative subpoena).

16 Even if all three parts are satisfied, “a Fourth Amendment reasonableness  
17 inquiry must also be satisfied.” *Golden Valley Elec. Ass’n*, 689 F.3d at 1113. But  
18 in the context of administrative subpoenas, the Fourth Amendment’s restrictions are  
19 limited. *Id.* at 1115. The only additional inquiry required by the Fourth Amendment  
20 is whether the “specification of the documents to be produced [is] adequate, but not  
21 excessive, for the purposes of the relevant inquiry.” *Id.*

## 22 ARGUMENT

### 23 1. The Subpoena Satisfies the Recognized Enforcement Requirements

24 The United States is not aware of any court that has invalidated DEA’s use of  
25 administrative subpoenas to obtain material relevant to an investigation. The Court  
26 should now enforce this Subpoena because it meets the narrow requirements.  
27 *See id.* at 1113.

28 ///



1 First, the DEA has authority to investigate. Congress enacted the  
2 Controlled Substances Act (“CSA”) as part of the Comprehensive Drug Abuse  
3 Prevention and Control Act of 1970 to “strengthen law enforcement tools against the  
4 traffic of illicit drugs.” 21 U.S.C. § 801 *et seq.*; *Gonzales v. Raich*,  
5 545 U.S. 1, 10 (2005). The CSA’s main objectives are “to conquer drug abuse and  
6 to control the legitimate and illegitimate traffic in controlled substances.”  
7 *Gonzales*, 545 U.S. at 12. The CSA gives the Attorney General the authority to issue  
8 administrative subpoenas relevant or material to an investigation.  
9 21 U.S.C. § 876(a). This authority has been delegated to the DEA.  
10 *See* 28 C.F.R. § 0.100 and pt. 0, app. to subpart R, sec. 4.

11 Second, the DEA followed the procedural requirements. A DEA Group  
12 Supervisor properly issued the Subpoena. A DEA Special Agent then properly  
13 served it on the BBC at its office near Sacramento at BCC Counsel’s demand. To  
14 resolve any misinterpretation, this Subpoena states that personal appearance is not  
15 required for document production and to email the documents to a specified  
16 Special Agent.<sup>3</sup> The BCC has not disputed a failure to follow procedural  
17 requirements during its discussions with the United States regarding the Subpoena.

18 Third, the evidence is relevant and material to a DEA investigation. As a court  
19 in this district recently held when it enforced a DEA administrative subpoena, “the  
20 Court finds that ‘the [not] especially constraining’ relevance standard could have  
21 been satisfied upon a facial reading of the subpoena itself.” *State of California*,  
22 2019 WL 2498312, at \*2 (The subpoena at issue in this action stated there was an

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23  
24 <sup>3</sup> BCC Counsel stated that the BCC would not comply with the previous  
25 subpoena because of procedural issues including that the document production  
26 location is located more than 500 miles away from the place of service, which may  
27 have been based on 21 U.S.C. § 876(a). *See id.* (stating that witness attendance and  
28 document production may be any place in the United States, but a witness does not  
have to appear at a hearing more than 500 miles distant from the service location).  
The BCC presumably has accepted that this provision does not apply here because  
it has not raised this issue since receiving the Subpoena at issue.

1 ongoing investigation.); *see also EEOC*, 558 F.3d at 854 (“the relevance requirement  
2 is not especially constraining” (internal quotation marks omitted)). Like the  
3 subpoena in *State of California*, the Subpoena here reads that there is a “criminal  
4 investigation being conducted.” Pet. Ex. A. The Subpoena actually goes beyond  
5 the *State of California* subpoena and specifically reads that “[t]he information  
6 sought . . . is relevant and material to a legitimate law enforcement inquiry.” *Id.* The  
7 evidence is thus relevant and material to a DEA investigation as provided by a facial  
8 reading of the Subpoena.

9 Finally, the Subpoena’s “not excessive” document request satisfies the  
10 Fourth Amendment reasonableness requirement. *See Golden Valley Elec. Ass’n*,  
11 689 F.3d at 1113. The narrowly-tailored Subpoena seeks the production of three  
12 specific document types: “unredacted cannabis license(s), unredacted cannabis  
13 license application(s), and underacted shipping manifest(s)”; it seeks the documents  
14 for only six entities, which include three corporations and each corporation’s  
15 presumed owner; and it seeks the documents for a limited period of roughly two  
16 years, stated as “January 1, 2018 to Present” (otherwise known as the date of  
17 production). *See* Pet. Ex. A. Thus, the Subpoena satisfies the narrow inquiry and  
18 the Court should enforce it.

## 19 **2. No Law Prevents the BCC from Complying with the Subpoena**

20 The United States is aware of no authority holding that a state entity may rely  
21 on state law-based privacy interests to refuse to respond to a federal subpoena, issued  
22 pursuant to federal law. And the BCC has not presented any federal law that permits  
23 non-compliance with this federal subpoena.

### 24 **A. State Laws Do Not Prevent Compliance**

25 In refusing to comply with the Subpoena, the BCC asserted that California  
26 state laws prevent disclosure of the requested documents. These state laws,  
27 however, either permit disclosure or do not apply. Yet even if a state law does  
28 purport to prevent production, the Supremacy Clause would preempt such law.

1 i. The cited state laws support compliance or do not apply

2 The BCC cited four state laws (below). *See* Pet. Ex. B. These state laws either  
3 actually support disclosure to law enforcement, which includes the DEA, or do not  
4 apply to disclosure to the DEA.

- 5 • *California Civil Code § 1798.24*: This pertains to the unauthorized disclosure  
6 of personal data. It supports disclosure to law enforcement when required for  
7 an investigation. *See* Cal. Civ. Code § 1798.24(o).
- 8 • *California Penal Code § 11142*: This pertains to the unlawful furnishing of  
9 criminal history information to a person or agency not authorized by law to  
10 receive such information. The DEA is authorized by law to access criminal  
11 history information. *See generally*, 28 U.S.C. § 534, 28 U.S.C. § 0.85(a)-(b),  
12 and 28 U.S.C. § 0.100.
- 13 • *California Government Code § 6254(f), (k), and (n)*: This pertains to the  
14 California Public Records Act's exceptions to the disclosure of records to the  
15 public, which includes non-disclosure of investigatory files for licensing  
16 purposes (subsection f), of records when prohibited by law or privilege  
17 (subsection k), and of personal worth or financial data (subsection n). It is  
18 unclear how the California Public Records Act pertains to disclosing records  
19 to the DEA.
- 20 • *California Business and Professions Code § 26067(b)(6)*: This pertains to a  
21 track-and-trace program for the movement of cannabis, and it prevents  
22 disclosure pursuant to the California Public Records Act when necessary. It  
23 supports disclosure to state or local law enforcement agencies. Cal. Bus. &  
24 Prof. Code § 26067(b)(7).

25 The BCC also generally references trade secrets and proprietary information  
26 protections along with privacy laws, but it did not provide the specification or  
27 application of these general references.

28 ///

1           ii. Federal law preempts state law

2           None of the cited state laws prevent producing the documents to the DEA.  
3 But it also would not matter. That is because when state law does contradict federal  
4 law that requires production, federal law, not state law, controls. And federal law  
5 requires production of information in response to Section 876 subpoenas in CSA  
6 investigations.

7           The Supremacy Clause precludes state law from interfering with the  
8 enforcement of federal law. U.S. Const., art. VI, cl. 2. The Supremacy Clause gives  
9 Congress the power to preempt state law expressly. *Hillman v. Maretta*, 569 U.S.  
10 483 (2013). “Where enforcement of . . . state law would handicap efforts to carry  
11 out the plans of the United States, the state enactment must, of course, give way.”  
12 *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 103-104 (1940). Likewise, when  
13 “compliance with both federal and state regulations is a physical impossibility,” the  
14 “state law is nullified to the extent that it actually conflicts with federal law.”  
15 *See Hillsborough Cnty., Fla. v. Automated Med. Labs.*, 471 U.S. 707, 713 (1985).

16           The United States Congress drafted the CSA to expressly preempt state law  
17 when “the two cannot consistently stand together.” *See* 21 U.S.C. § 903. Any state  
18 law on which the BCC relies to prevent compliance with the Subpoena cannot  
19 consistently stand with the CSA.<sup>4</sup> Such state law would create a physical  
20 impossibility or a sufficient obstacle to the operation of the CSA. *See Gade v. Nat’l*  
21 *Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (discussing both types of conflict  
22 preemption: physical impossibility and sufficient obstacle); *see also United States v.*  
23 *Zadeh*, 820 F.3d 746, 750–52 (5th Cir. 2016) (applying the sufficient obstacle test  
24 to hold that 21 U.S.C. § 876 preempts a provision of the Texas Occupations Code  
25 barring compliance with administrative subpoena absent patient consent or  
26 application of an enumerated exception under state law).

27 \_\_\_\_\_  
28           <sup>4</sup> This also includes any state laws on which the BCC may attempt to rely,  
such as requiring a warrant or Grand Jury subpoena.

1 This principle has already been applied in conflicts within the Ninth Circuit  
 2 specifically involving DEA administrative subpoenas under 21 U.S.C. § 876.  
 3 *See Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*,  
 4 860 F.3d 1228 (9th Cir. 2017) (involving a DEA subpoena demand for patient  
 5 prescription records from Oregon's prescription drug monitoring program). And a  
 6 court in this district directly addressed this issue with respect to state privacy laws,  
 7 stating that "[t]o the extent any privacy protections under California conflict with  
 8 the [CSA], the CSA expressly preempts state law." *See State of California*,  
 9 2019 WL 2498312, at \*3 (citing 21 U.S.C. § 903). Thus, no California state law can  
 10 prevent the BCC from producing the documents because federal law would preempt  
 11 it, and the state laws that the BCC cited either do support disclosure to law  
 12 enforcement or do not apply.

#### 13 B. Federal Law Does Not Prevent Production

14 The BCC references federal law when providing a reason for non-compliance,  
 15 specifically stating that 26 U.S.C. § 6103 limits disclosure of taxpayer return  
 16 information, including taxpayers' identifying numbers. *See* Pet. Ex. B. It is unclear  
 17 what type of applicants' Internal Revenue Service ("IRS") taxpayer return  
 18 information the BCC possesses.<sup>5</sup> *See* 26 U.S.C. § 6103(b)(3) (defining "taxpayer  
 19 return information" as information that the taxpayer provides to the IRS). But for  
 20 purposes of enforcing compliance with the Subpoena, it likely does not matter for  
 21 two key reasons.

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23 <sup>5</sup> The BCC possibly refers to information it may receive from California state  
 24 tax entities (not IRS) regarding whether applicants pay their state tax obligations.  
 25 *See, e.g.*, Bureau of Cannabis Control, Cannabis Distributor  
 26 License Application, at p. 4, (rev. Feb. 2020) (available at  
 27 [https://www.bcc.ca.gov/clear/distributor\\_application.pdf](https://www.bcc.ca.gov/clear/distributor_application.pdf) (last visited  
 28 July 9, 2020)). This application also provides that the applicant's "information may  
 be disclosed . . . to another government agency as required by state or federal law  
 . . . in response to a subpoena." *Id.*

1 First, the disclosure limitation in Section 6103 of the Internal Revenue Code  
2 applies to only “the release by the IRS of information received from taxpayers.”  
3 *Stokwitz v. United States*, 831 F.2d 893, 895 (9th Cir. 1987) (emphasis in original)  
4 (involving a dispute over tax return information in the taxpayer’s possession that  
5 was obtained without legal service). The IRS presumably does not provide BCC  
6 applicants’ taxpayer return information to the BCC, so any IRS taxpayer return  
7 information that the BCC may possess likely did not “pass through” or “flow . . .  
8 through the IRS.” *See id.* at 896.

9 Second, the Subpoena does not seek IRS taxpayer return information.  
10 *See* Pet. Ex. A. The United States asked BCC Counsel whether the BCC has such  
11 information in its responsive documents, and BCC Counsel said she is not aware of  
12 specific records received from the IRS. In the event that the BCC received such  
13 information from the IRS and currently possesses it in documents responsive to the  
14 Subpoena, the United States would be happy to discuss necessary accommodations  
15 for production.

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**CONCLUSION**

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2 The DEA is authorized to investigate and issue subpoenas under the CSA.  
3 The Subpoena at issue meets the procedural requirements, is relevant and material  
4 to a DEA investigation, and is specific and narrow in accordance with the  
5 Fourth Amendment reasonableness requirement. The United States addressed every  
6 non-compliance reason the BCC stated (directly and indirectly). Not one reason  
7 permits the BCC to refuse to comply with the Subpoena. And even if a state law  
8 does purport to prevent compliance, the Supremacy Clause would preempt such law.  
9 The United States, therefore, respectfully requests the Court to enter an order  
10 requiring compliance with the Subpoena.

11 Respectfully submitted,

12  
13 DATED: July 20, 2020

ROBERT S. BREWER, JR.  
United States Attorney

14  
15 *s/ Dylan M. Aste*  
16 DYLAN M. ASTE  
Assistant United States Attorney

17 Attorneys for the United States  
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## **Exhibits Table of Contents**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Page</u></b>
A	DEA Administrative Subpoena No. R6-20-252406 [Redacted]	2
B	BCC Letter (Jan. 21, 2020) [Redacted]	4



# Exhibit A

**U.S. DEPARTMENT OF JUSTICE/DRUG ENFORCEMENT ADMINISTRATION  
SUBPOENA**

In the matter of the investigation of  
Case No: [REDACTED]  
Subpoena No. R6-20-252406

**TO:** Bureau of Cannabis Control

Attn: [REDACTED]

AT: [REDACTED]

**PHONE:** [REDACTED]

**FAX:**

**Please EXPEDITE this request.**

**GREETING:** By the service of this subpoena upon you by Special Agent Joshua Matas who is authorized to serve it, you are hereby commanded and required to produce for examination the following books, records, and papers to Special Agent John Chase, an officer of the Drug Enforcement Administration, at the time and place hereinafter set forth:

Pursuant to an investigation of violations of 21 U.S.C. 801 et seq., you are to provide all documents including unredacted cannabis license(s), unredacted cannabis license application(s), and underacted shipping manifest(s) for the below California Bureau of Cannabis Control licensees from January 1, 2018 to Present:

[REDACTED]

The information sought in this subpoena is relevant and material to a legitimate law enforcement inquiry; the request is specific and limited to the extent reasonably necessary for the purpose of this request; and de-identified information could not reasonably be used.

Personal appearance is not required for the production of these documents. You may e-mail copies of all requested documents to Special Agent John Chase at [REDACTED] or you may send all requested documents, via United States mail, to Special Agent John Chase at the following location: [REDACTED]

Please do not disclose the existence of this request or investigation for an indefinite time period. Any such disclosure could impede the criminal investigation being conducted and interfere with the enforcement of the Controlled Substances Act.

Please direct questions concerning this subpoena and/or responses to Special Agent John T. Chase, [REDACTED]

Failure to comply with this subpoena will render you liable to proceedings in the district court of the United States to enforce obedience to the requirements of this subpoena, and to punish default or disobedience.

Issued under authority of Sec. 506 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law No. 91-513 (21 U.S.C. 876)

**ORIGINAL**

Signature: 

Cristina L. Lopez  
Intelligence Research Specialist

Issued this 8th day of Jan 2020

# **Exhibit B**



[REDACTED]

[REDACTED] | www.bcc.ca.gov



**Via Email**

January 21, 2020

DEA ICDO

ATTN: Special Agent John T. Chase

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Case No. [REDACTED] - Subpoena No. R6-20-252406

Special Agent Chase,

The Bureau of Cannabis Control (Bureau) has received the U.S. Department of Justice/Drug Enforcement Administration Subpoena, In the matter of the investigation of Case No. [REDACTED], Subpoena N. R6-20-252406 (Subpoena). The Subpoena requests all unredacted cannabis license(s), unredacted cannabis license applications(s), and unredacted shipping manifest(s) from January 1, 2018 to present for Bureau licensees [REDACTED].

[REDACTED]. The Bureau objects to the subpoena and will not produce the requested documents as the subpoena does not specify the relevancy of the subpoena and requests information that is confidential, protected from disclosure, and part of pending licensing application investigations.

First, an administrative subpoena must seek records that are relevant to the subpoenaing agency investigation. (21 U.S.C. § 876(a); *U.S. v. Golden Valley Elec. Ass'n* (9<sup>th</sup> Cir. 2012) 689 F.3d 1108.) In this instance, the Subpoena only states that the information sought is "relevant and material to a legitimate law enforcement inquiry." This fails to meet the appropriate standard of establishing that the records are in fact relevant to this particular investigation.

Additionally, the subpoena seeks information that is confidential and not subject to disclosure. Application materials contain private personal identifying information, such as social security numbers, dates of birth, personal contact information, bank account details, loan and investment disclosures, revenue information, insurance information, vehicle information, and criminal history information. This information is protected by the right to privacy and California Civil Code section 1798.24. A California state agency may not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains. In addition to state law protections, federal law limits disclosure of taxpayer return information, including taxpayer identifying number, by a state officer or employee. (26 U.S.C. §6103; Cal. Gov. Code § 6254(n).) The Bureau also receives criminal history information as part of its licensing process,

To: Special Agent John T. Chase

Date: January 21, 2020

RE: Case No. [REDACTED] - Subpoena No. R6-20-252406

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which is governed by California Penal Code section 11142. This section provides that any person authorized by law to receive state summary of criminal history information who furnishes that information to anyone not authorized by law to receive it is guilty of a misdemeanor. The application information is utilized for the Bureau to investigate whether the person and premises location are suitable for licensure; thus, are part of pending investigations.

In addition to the personal information provided to the Bureau, an applicant or licensee must provide procedures for the business and a diagram of the businesses premises. These operating procedures contain information concerning trade secrets or other proprietary information protected from disclosure. Additionally, both the procedures and diagram of the premises contain information that could impact the security of the business. (Cal. Gov. Code, § 6254, subds. (f) and (k) [incorporating Evid. Code, § 1060 protections of trade secrets].)

Further, shipping manifests for cannabis licensees are confidential pursuant to California Business and Professions Code section 26067, subdivision (b)(6). These shipping manifests are part of the track and trace program used to follow the movement of cannabis goods through the regulated supply chain; thus, subject to the confidentiality provisions for information maintained as part of that system.

Thank you for your cooperation. If you would like to further discuss this matter, please contact me at [REDACTED].

Sincerely,

[REDACTED]  
Attorney III