No. _____

In the Supreme Court of the United States

CALIFORNIA HERBAL REMEDIES, INC.,

Petitioner,

v.

SARA PEREZ,

Respondent.

On Petition for a Writ of Certiorari to the California Court of Appeals, Second Appellate District, Division Four

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Transacting up to 50 kilograms results in prison for *up to* 5 years and a fine of *up to* $250,000. 21 U.S.C. § 841(b)(1)(D). There are likely over 425,000 cannabis employees in 41 States and U.S. Territories within licensed marijuana facilities engaging in 'prohibited acts' violating this Federal statute. Here, this petition arrives to this Good Court, likely as alluded to in the dissent in *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. ___, 139 S.Ct. 1743, 1752 (2019) pitting the greed of an unscrupulous plaintiff's lawyer and client who lied to gain employment against the unrecognized plight of likely 425,000 cannabis employees nationwide presented by a licensed cannabis facility and its hearing-impaired lawyer who were sanctioned $10,000 for upholding the privacy rights of third-party cannabis workers while Congress has yet to decriminalize their legal trade under 21 U.S.C. § 841.

The Questions Presented Are:

1. Does the Fourteenth Amendment Due Process Clause vindicate third-party privacy rights in State class action proceedings and prevent the State, like California, from creating regulatory judicial schemes touting civil litigation efficiency in favor of the class action plaintiff's bar when, in practice during COVID social distancing protocols, the programs actually violate third-party privacy, attorney-client confidentiality, and the preservation of attorney ethics and the integrity of the judicial system?

2. Did a California Court violate the due process clause of the Fourteenth Amendment when over a privacy objection it issued $10,000 in discovery sanctions and compelled disclosure of the class list of third-

party employees who earn a living wage in a licensed dispensary transacting in marijuana, a Schedule I Controlled Substance, and a prohibited act subjecting these third-party employees to imprisonment and monetary fine under 21 U.S.C. § 841?

3. Has a State of California trial court, the Los Angeles Superior Court, created a regulatory scheme, the Complex Civil Litigation Program, that in the name of efficiency violates the due process clause of the Fourteenth Amendment and sanctions a defendant seeking to uphold privacy, attorney-client confidentiality, and preservation of attorney ethics and the integrity of the judicial system? More specifically, the structural court-filing process where a plaintiff simply identifies a complex case divests due process of the defendant to exit the regulatory scheme of a plaintiff-controlled complex court to address privacy objections, attorney-client privilege, and barratry committed by plaintiffs?

4. Do mandatory social distancing COVID-19 protocols for remote videoconferencing with imperfect audio subject to Internet instability, sometimes without images, and lack of in-person dialogue violate the procedural due process of hearing-impaired participants, here, petitioner's counsel, who understood at the first instance the trial judge was willing to mediate discovery objections—but never did and without the mandated 'meet and confer process' under discovery statutes?

5. Do the circumstances depicted in this petition, State class action abuse, a flawed trial court efficiency program, disconnect between the now retired jurist and petitioner's hearing impaired attorney, with COVID protocols demonstrate a Fourteenth Amendment due

process clause violation, particularly, where, as here, the California courts indicated the third-party cannabis employee privacy objection was 'particularly meritless'– turning a blind eye to the obvious fact the class action defendant is a cannabis facility confronted with Congress unable to reconcile the Federal and State tension with the Controlled Substance Act?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellant below

- California Herbal Remedies, Inc.

  (Note: Petitioner was improperly named as California Herbal Remedies, LLC)

Respondents and Plaintiff-Respondent below

- Sarah Noel Perez, identified as Sara Perez, also misidentified/misnamed as Claudia Gomez Barrios in the body of that initial complaint

CORPORATE DISCLOSURE STATEMENT

California Herbal Remedies, Inc., has no parent company and no public company owns 10% or more of its stock.

LIST OF PROCEEDINGS

Supreme Court of California

No. S282987

Sarah Perez, *Plaintiff and Respondent*, v. California Herbal Remedies, LLC, *Defendant and Appellant*.

Date of Final Order: January 31, 2024

Court of Appeal of the State of California,
Second Appellate District, Division Four

No. B321576

Sarah Perez, *Plaintiff and Respondent*, v. California Herbal Remedies, LLC, *Defendant and Appellant*.

Date of Final Opinion: October 31, 2023

Date of Rehearing Denial: November 30, 2023

Superior Court of the State of California

No. 21STCV14519

Sarah Perez, individually, and on behalf of all others similarly situated, *Plaintiff*, v. California Herbal Remedies, LLC, a California corporation; and DOES 1 through 10, inclusive, *Defendants*.

Date of Final Order: May 27, 2022

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PETITION FOR A WRIT OF CERTIORARI

California Herbal Remedies, Inc. respectfully petitions for writ of certiorari to review the order of the LASC, affirmed with rehearing subsequently denied as untimely by the intermediary appellate tribunal; a petition for review was also denied by the California Supreme Court.

OPINIONS BELOW

The Opinion of the California Court of Appeals, Second Appellate District, Division Four, dated October 31, 2023 is included in the Appendix ("App.") at App.2a. The California Supreme Court order denying a petition for review on January 31, 2024 is included at App.1a. The Los Angeles Superior Court order granting motions to compel a response to interrogatories, dated May 27, 2022, is included at App.14a.

JURISDICTION

The California Supreme Court, the state court of last resort in California, denied a petition for review on January 31, 2024 (App.1a) and a remittitur was issued by the intermediary state appellate tribunal on February 2, 2024. This Court's jurisdiction is based upon 28 U.S.C. § 1257(a) and Sup. Ct. R. 10(c).

A Writ of Certiorari is appropriate in this case because privacy interests of third-parties are implicated and were wholesale disregarded by the state courts. The third-party employees in this petition are akin to likely over 425,000 cannabis employees in 37 States, DC, Puerto Rico, Guam and the U.S. Virgin Islands.[1] They work in licensed facilities committing prohibited acts violating 21 U.S.C. § 841. (App.34a, 56a, 60a, 63a, 65a, 71a, 73a). They presently enjoy a 'zone of privacy' pursuant to 'penumbra' safeguards from the Bill of Rights guaranteeing life and substance: First Amendment Right of Association, the Fourth Amendment protection against unreasonable searches, the Fifth Amendment protection against self-incrimination, and the Ninth Amendment; all combine to create a 'zone of privacy' impenetrable by government.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV

> The Due Process Clause of the Fourteenth Amendment to the United States Constitution states nor shall any State deprive any person of life, liberty, or property, without due process of law."

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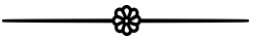
[1] Par. (3), Sec. 2 of HR 5601 Findings (118th Congress, 1st Session) 9/20/23—one of many attempts to reconcile the Schedule 1 listing of marijuana a Controlled Substance Act (CSA) and those States legalizing marijuana; *see* four Internet sources footnoted identifying over 425,000 American cannabis employees, *infra*.

U.S. Const. amend. XIV, § 1. The Prohibited Acts 21 U.S.C. § 841 identifies up to 5 years of imprisonment and fine of up to $250,000 per § 841(b)(1)(D) (App.41a):

21 U.S.C. § 841

> 21 U.S.C. § 841 appears *in toto* in the Appendix from 35a to 55a, without any recognized inapplicability (App.53a) for State licensed cannabis workers.



INTRODUCTION

This petition does not seek decriminalizing marijuana. It is a result of the separate tracks States have taken in licensing facilities to sell marijuana while Congress has not acted to delist marijuana as a controlled-substance and insulate licensed facilities from the numerous impacts of its criminalization. Here, a licensed cannabis business seeks to preserve cannabis worker privacy when faced with a class action by a potentially unscrupulous employee and her attorney. When the employer operating a licensed marijuana business raised the cannabis worker privacy objection, among other objections, it faced $10,000 in sanctions and was compelled to disclose employee data by the jurist who referred to the alleged unscrupulous attorney as a 'regular customer'.

As a result of the inability of Congress to act, a patchwork of 41 States and Territories sprouted laws allowing for the legal trade of the herb, including California. Sources estimate over 425,000 similarly situated cannabis workers in this purgatory. What this Court is asked to consider is whether $10,000 sanctions may be upheld and disclosure over privacy

objection to move forward concerning third-party employee data. These are cannabis worker rights at licensed facilities much like nearly 425,000 similarly situated in those 41 other States and Territories who may also face similar challenges to their rights in a class action setting. Here, the employer-petitioner, and their attorney, were sanctioned and compelled to disclose. At this time, their privacy rights, including the right against self-incrimination, have not been jeopardized. If this writ is denied, and the order appealed enforced, it would appear that employee privacy is jeopardized along with their right against self-incrimination. Denying this writ may negatively impact the privacy rights of those estimated 425,000 or more cannabis workers in 41 States and Territories. Their due process rights under the Fourteenth Amendment are in jeopardy, along with what they likely believe to be an expectation of privacy and guarantees of the right against self-incrimination since they negotiate cannabis in the legal place of employment. Maintaining the *status quo* not only vests the Federal Executive Branch with the challenges of an ununiform enforcement authority across America but presents the exact 'mine run loophole' alluded to in the dissent of *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. ___, 139 S.Ct. 1743, 1752—this Court may appropriately intervene given the due process clause violation to reconcile that tension Congress created when class action reform still pushed the 'extortionate settlements' from Federal to State Court—State Courts have yet to create the due process protections for employers akin to petitioner.

STATEMENT OF THE CASE

A. Procedural Overview

On January 8, 2022, Petitioner objected to, among other things, that discovery would violate the constitutional right of privacy of the individual(s) contemplated. (App.16a). On January 10, 2022, Respondent counsel posted an electronic message concerning these objections for the complex trial court jurist Amy D. Hogue of the LASC; on January 13, 2022, Judge Hogue, advanced a previously set March 24, 2022 further status conference to February 22, 2022 after receipt of that message board posting. (App.17a). That video status conference took place and thereafter an order was issued where Judge Hogue compelled disclosure without acknowledging any objections or of what was perceived by Petitioner's hearing-impaired counsel as a videoconference statement indicating the jurist would informally mediate the discovery dispute as statutorily required because there was no meet and confer of counsel performed as compelled by the discovery statutes. (App.6a). *To-wit*, Petitioner's counsel understood from the videoconference Judge Hogue offered to mediate objections. On April 26, 2022, Judge Hogue unilaterally set a May 26, 2022 hearing for motions to compel production over the privacy objection along with various intervening orders since that February 22, 2022 'disconnect' and unsuccessful attempts to challenge Judge Hogue for bias, for, among other things, referring to Respondent's counsel as a 'regular customer.' (App.6a, 7a).

On May 27, 2022, Judge Hogue issued an order compelling production[2] of privacy-objected class action employee list and data and issued discovery sanctions of $10,000 against Petitioner and its counsel and indicated privacy objection was not well-grounded in both law and fact. (App.14a).

Since that time, Judge Hogue retired and now mediates class action matters. Lawrence Riff, Judge of the LASC now presides and stayed proceedings pending this petition. Numerous olive branches were extended to mediate the dispute without any successful engagement.

On October 31, 2023, the Second District Court of Appeal, affirmed the $10,000 in discovery sanctions, dismissed the appeal on the order granting motions to compel, as well as the privacy objection as outside the statutory appeal. (App.2a). A petition for rehearing was filed and denied as untimely on November 30, 2023. (App.33a). Petitioner sought review December 8, 2023 with the California Supreme Court which denied relief on January 31, 2024. (App.1a).

B. Background on Licensed Cannabis Workers: Cloistered and Monastic

Petitioner's employees, like those similarly situated across America[3] earn a living wage negotiating

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[2] All other Respondent personnel files were produced since May 27, 2022.

[3] According H.R. 5601, *supra*, 37 states, DC, Puerto Rico, Guam and the U.S. Virgin Islands adopted laws allowing access to cannabis. Letters in support of related legislation proposed in this 118th Congress describe similar numbers of States and Territories. Four sources identify over 425,000 cannabis workers nationwide. *See* footnote, *infra*.

marijuana in a State-licensed cannabis business and, at the same time, violate 21 U.S.C. § 841(b)(1)(D) by transacting in marijuana and face up to 5 years imprisonment and $250,000 in fines. (App.41a-42a). Because Congress has not acted[4] to reconcile this conflict, these cannabis workers are relegated to operate in all-cash environments, at risk of theft and robbery, without access to mortgages or basic banking because of their association with a controlled substance. (App.56a, 60a, 63a, 65a, 71a, 73a). They live figuratively and, most of the time, physically in the dark: literally cloistered and practically monastic because of the jeopardy they face by virtue of the listing of marijuana as a Schedule I controlled substance under Federal law. As time passes, more States legalize cannabis and the DC gridlock persists[5] without addressing their tension: earning an honest wage while violating 21 U.S.C. § 841. The workers nonetheless become complacent in this purgatory, not out of choice, but in reaction to the Federal inaction to their plight.

Because they transact a 'controlled-substance' marijuana, this involuntary 'underground' collective of cannabis workers associate with each other in the work place like others similarly relegated by society and its social mores; they resemble discrete and insular minorities as well as those within what many may describe as socially-marginalized lesbian, gay, bisexual, transgender, and queer or banned due to prurient inter-

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[4] Petitioner identified S1323 and H.R. 2891 by way of judicial notice to the intermediate tribunal to demonstrate; judicially noticed industry support letters are in the appendix.

[5] Since the 2nd District judicial notice, Congress introduced S2860 as well as H.R. 5601 and 6028.

ests incident to social mores like adult entertainment workers or those negotiating the sexual pleasure device industries.

The plight of cannabis workers, unlike LGBTQ+, the pornography industry, or sexual device trade, however, carries not only the moral majority and socially-placed stigma, but criminal punishment—up to five years imprisonment and a quarter of a million dollars in fines under 21 U.S.C. § 841(b)(1)(D). Given their dual existence—legal under State law and illegal under Federal law—they persevere and learn to exist, albeit repressed to fully identify and participate transparently in society because of the want of social acceptance and potential of becoming a victim of crime, fine, or incarceration. As a result, they cannot fully participate with the world outside of their licensed facilities; however, they do fully participate and live free and open within their workplace allowing them economic, experimental, sexual, and social freedom. They continue to do so while the gridlock in Congress maintains the *status quo*. At all times, they appear to transact within the *status quo* with an expectation of privacy tied to their guarantee against self-incrimination.

C. Complex Civil Litigation Program and COVID-19 Protocols

The LASC established a Complex Civil Litigation Program[6] so that cases designated 'complex' obtain

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[6] It shows the Central Civil West Courthouse designated as where Complex Civil Litigation cases are managed, however, the cryptic regulatory scheme sent it to Judge Hogue. Petitioner sought to extricate it without success despite the ethical issues raised, particularly the masking of plaintiff's identity, misrepresentation as to criminal record and work experience, the reference of class

continuous judicial management to avoid placing unnecessary burden on litigants, counsel and the Court. When combined with COVID-19 social distancing protocols, the regulatory scheme creates mechanisms where defendants and their attorneys are challenged to obtain due process. Months into a 'class action' complex designation, the court rules bootstrap the judiciary, creating the perception the trial judge is beholden to the plaintiff filing the 'class action' because the complex civil litigation program judges essentially do the 'bidding' for the plaintiffs and their counsel; defendants facing such apparently irrevocable 'class action' or 'complex case' designation, are without due process; these defendants and their counsel are forced to interact with the judiciary as the attorneys filing these actions and unilaterally selecting the 'complex case' designation have the judiciary conduct their bidding. Lawyering essentially does not exist and the judiciary typically assists plaintiff over defendant. *To-wit*, here, Judge Hogue asked Ms. Perez to file a motion to compel Petitioner with the express intent of sanctioning Petitioner and did not compel the parties to actually meet and confer. (App.6a-7a). No mediation or meet and confer prior to the motion to compel (App.17a), as required, as manifested with the trial court's branding of the objections as 'prolix.' (App.16a). When this was presented to Judge Hogue, the COVID-19 protocols created two perceptions of what happened further distancing the parties and creating a regulatory barrier to effectively allow

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counsel as a 'regular customer' before Judge Hogue and inability to verify whether class action counsel actually placed respondent as a plant to file this action. *See* link (https://www.lacourt.org/division/civil/CI0033.aspx)

litigants due process guarantees applicable against this California trial court under the Fourteenth Amendment.

The jurist and program appear to essentially move the case along without heeding the lacking merit in the designation, case, and likely unscrupulous counsel pressing the bogus claim. This structural issue demonstrates tension in the class action setting and it appears to have substantive and procedural impacts addressed by this Court in *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 406 (2010) (it made no difference whether the rule was technically one of substance or procedure; the touchstone was whether it significantly affects the result of a litigation).

The complex courtroom assigned, as likely most courts in the country, adopted COVID-19 protocols where essentially all attorneys appeared by video-conference without any video of their faces and the jurist held proceedings in chambers and not on the bench further distancing the litigants from efficient and effective due process, particularly for hearing-impaired[7] litigants and attorneys who require accurate, clear, and live audio—*i.e.* without delays—and the ability to read lips to assure who is talking and confirm verbal understanding. The circumstances presented herein demonstrate a Fourteenth Amendment due process clause violation incident to the exact issue identified in *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. ___, 139 S.Ct. 1743, 1752; here Judge Hogue was presented

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[7] Counsel for Petitioner, Gustavo Lamanna, has used hearing aids for about 2 decades without ever having had to ask for reasonable accommodations.

with allegations of lacking attorney ethics and barratry by her 'regular customer' and turn a blind eye with the report of attorney misconduct[8] as the jurist approached transitioning from the bench to mediating such 'class action' disputes.

D. COVID-19 Economic Impacts

The onset of the global pandemic caused all to pivot. This includes employers, like Petitioner, along with candidates for employment. The pandemic also produced what appears to be a new breed of unscrupulous attorneys: those coaching the downtrodden to manufacture claims and file vexatiously to cog in the courts. The impacts of the pandemic created a dire need for labor for employers and employment disputes for attorneys; Los Angeles was not isolated from COVID social distancing; combined with an apparently flawed Complex Civil Litigation Program added to the recipe for due process violation.

Here a candidate for employment appears to have been coached by unscrupulous attorneys and the employer was outright duped by their scheme. When suspicions were raised, no investigation or inquiry or explanation followed—from anyone, the jurist with the 'complex' proceeding or the attorney accused pressing the bogus claim. The jurist would appear to have the power of inquiry but elected to only help the class action plaintiff and not defendant further demonstrating the

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[8] In the wake of another unscrupulous attorney, rule 8.3 of the California Rules of Professional Conduct was adopted imposing a duty effective this year for attorneys to report under the 'Thomas Girardi Rule 8.3.' However, when presented to Judge Hogue before the rule effectiveness, it fell upon deaf ears suggesting it's a 'dead letter.'

uneven hand of the LASC rules and judiciary under the Complex Civil Litigation Program. *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.* 559 U.S. 393, 445, n.3 (unfair pressure on the defendant to settle even unmeritorious claims). The employment relationship appears to have been established during the height of COVID-19 in Los Angeles. Petitioner is an essential business under local guidelines.

Looking back with evidence provided in discovery, Respondent appears to have not only lied about her qualifications but about her criminal history. It also appears Respondent may have been improperly 'coached' by her counsel, class action representative counsel, to simply get hired and fired so that she may qualify as a representative to bring a suit which would be automatically and apparently irrevocably designated 'complex' and assigned to Judge Hogue where class action representative counsel has the 'regular customer' designation by Judge Hogue—this retired jurist who now mediates class action matters akin to this proceeding made no secret and would utter those words to Petitioner's counsel when veracity and legitimacy of the proceeding as 'complex' was presented. Respondent attorneys desire a class list to likely replace Ms. Perez as a class representative because of her challenged veracity. That class list may also serve this ulterior motive which further demonstrates a want of ethics before the Courts.

E. "Regular Customer" Counsel

The firm bringing the action for Ms. Perez, Moon Yang, now simply Moon Law after the defection of attorneys following the order in this petition was appealed; they appear to have curried favor enough to be referred to as a 'regular customer' in open court

by Judge Amy Hogue. To date, the Moon Law attorneys accused of barratry were, and remain, lacking in disclosure of their pre-employment relationship and have refused to mediate on any matter, likely because they choose to leverage their 'regular customer' status and not acknowledge the privacy rights of cannabis employees. It is ironic as employment lawyers should take heed of the worker privacy and Moon Law has fallen below the standard to defend worker privacy when confronted herein. It chose greed. Emboldened, the lawyers filed a second action, an alleged sexual harassment claim, which appears to not move to settlement because Moon Law demands the third-party employee data that is the subject of this appeal—further demonstrating the overreach of the class action jurist power, designation under the LASC program, and potential for unscrupulous attorney abuse to simply recruit another from the list to push forward given the questionable activity in presenting Ms. Perez' claim. Moon Yang lawyers appear to still be withholding the true employment history of Ms. Perez who took advantage of the COVID pandemic to feign skills she simply did not have and lie about her criminal history.

F. February 22, 2022 Teleconference Court Proceeding

As Petitioner sought to question 'regular customer' law firm lawyers' scruples and their alleged coached litigant through objections and attempts to transfer out the case from the Complex Civil Litigation Program, the matter came for hearing on February 22, 2022. (App.5a-8a, 16a-17a). Petitioner left with the perception Judge Hogue would mediate the matter; hence the disconnect, (App.6a), because the order issued by the

Court did not coincide with that perception. The order compelled disclosure of the third-party employee data without any consideration of the privacy objection lodged the month before. Instead, further confusion was added when Judge Hogue issued an order to show cause which was ultimately discharged. (App.17a).

Given the appearance of bias by Petitioner's hearing-impaired counsel and uneven scales implemented by the jurist without measured application—*see generally Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 445, n.3 ("When representative plaintiffs seek statutory damage, pressure to settle may be heightened because a class action poses the risk of massive liability unmoored to actual injury")—Petitioner's counsel sought to disqualify Judge Hogue without success. The proceeding further spiraled downward because after the sting of an unsuccessful jurist disqualification, Judge Hogue essentially pre-set a discovery sanctioning process by setting motions to compel and sanctions and ordering the Moon Yang to queue up the sanctions and order compelling the cannabis employee data over objection. (App.6a-7a, 17a)

There is no ability to turn back the clock and essentially eliminate the teleconferencing COVID-19 social distancing protocols. Had there been, it is unlikely the chain of events would not have transpired. In other words, lawyers could have convened in a room to actually meet and confer. This did not take place and Judge Hogue and the LASC Program prevented this given the protocols. In addition, mandatory meet and confer statutes and precedent appear to nullify the sanctions and motions to compel, but given the Program, there was a want of due process on that

additional procedural safeguard further highlighting the excess in judicial discretion conferred; "the trial court must also expressly identify any potential abuses of the class action procedure that may be created if the discovery is permitted, and weigh the danger of such abuses against the rights of the parties under the circumstances." *Parris v. Superior Court*, 109 Cal.App.4th 285, 300-30 (2003). We are left to ask, in a post-COVID setting, are hearing-impaired required to ask for 'reasonable accommodations' to get a live in person hearing before a judge? It would seem the due process clause of the Fourteenth Amendment would require that as a minimal threshold today.

The combination of facts demonstrates not only a want of due process, but a likely discovery meet and confer rule violation had this been brought up to this Court as in *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance*, 559 U.S. 393 and alluded to in *Parris v. Superior Court*, 109 Cal.App.4th 285, 300-301; *Howard Gunty Profit Sharing Plan v. Superior Court*, 88 Cal.App.4th 572, 580 (2001). This Court may entertain a 'full reset' and return it the trial court for a recalibrated February 22, 2022 hearing.

G. No Waiver of Cannabis Worker Privacy Rights

In the opinion affirming the $10,000 in discovery sanctions by Justice Collins of the Second Appellate District Court of Appeal, the intermediary tribunal opined the Petitioner should have filed an extraordinary writ separately on only the third-party employee rights privacy issue and failure to have done so appears to be a waiver. Failure to object on privacy grounds does not automatically waive a right to privacy. *Pearce v. Club Med Sales, Inc.*, (1997) 172 F.R.D. 407, 410

(citing to *Heda v. Superior Court*, 225 Cal.App.3d 525, 529 (1990) where objections were made only on other grounds no waiver was made of privacy rights as well as the case cited by Petitioner in the discovery objections *Board of Trustees v. Superior Court*, 119 Cal.App.3d 516, 525 (1981)) Justice Collins also did not recognize that the there was substantial justification for the blanket privacy objection which would disallow the discovery sanctions. Privacy objection is well-grounded in both law and fact. *Pearce v. Club Med Sales, Inc.,* (1997) 172 F.R.D. 407, 410 (citing to *Boler v. Superior Court*, 201 Cal.App.3d 467, 472, fn1 where third-party rights are at issue no waiver will be found). Failure to file an extraordinary writ would therefore not have amounted to a waiver. The intermediary tribunal did not entertain rehearing on substance, despite highlighting this want of waiver and other grounds; it denied rehearing because of untimeliness and did not grant a likely warranted application for late rehearing petition. (App.33a).

REASONS FOR GRANTING THE PETITION

At the time of filing this petition, a review of the legislative activity has confirmed the 118th Congress has yet to decriminalize marijuana possession—a prohibited act under 21 U.S.C. § 841 which impacts the privacy of third parties that have yet to join this proceeding. So long as transacting in marijuana remains punishable by fine and imprisonment, the cannabis workers in licensed facilities remain subject to punishment. There is also no case on point on any State level or Federal level on this issue. Industry support letters in the appendix highlight the plight faced nationwide.

This petition is ripe for consideration and has impacts not only for the third-party employees of the Petitioner, but others similarly situated; those would be the employees of the licensed facilities of 41 other States and Territories. They may face similar violation in State class action proceedings alluded to by this Court. Petitioner asks the Court to grant certiorari and review this matter of significance, concerning the Constitutional privacy of likely over 425,000[9] employ-

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9 The following sources identify over 428,000 nationwide, rounded to 425,000 for ease, given the sources below:

1. Flowhub https://flowhub.com/cannabis-industry-statistics. New Cannabis Jobs Report . . . 440,445 full-time equivalent jobs supported by legal cannabis.

2. Forbes https://www.forbes.com/sites/ajherrington/2022/02/23/new-cannabis-jobs-report-reveals-marijuana-industrys-explosive-employment-growth/?sh=250e217a23f2. U.S. cannabis industry supports 428,059 full-time equivalent jobs.

ees nationwide. Maintaining the *status quo* subject them not only to a privacy violation in the civil class action setting but heightens their potential for criminal punishment by the Federal Executive Branch's enforcement arm.

I. As Long as Marijuana Remains Criminalized, Petitioner's Employees, Along with Those Throughout California and the 40 Other States and Territories Will Face a Serious Invasion of Privacy Without Any Safeguards Because Their Work Is a Prohibited Act Under 21 U.S.C. § 841; Disclosure of the Number Along with Current and Former Employee Name and Contact Information of These Cannabis Workers Would Violate Their Protected Privacy Under the Fourteenth Amendment, Subject Them to Federal Prosecution, and Face an Increase in the Prevalent Stigma Associated with the Discrete and Insular Minority Class of Cannabis Industry Employees Akin to LGBTQ+ and Employees in Adult Entertainment and the Sexual Device Trade.

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3. MJBizDaily:

https://mjbizdaily.com/marijuana-industry-jobs-dipped-by-2-percent-in-2022-vangst-report/#:~:text=States%20where%20adult%2Duse%20cannabis,of%20cannabis%20jobs%20at%2083%2C593. The cannabis industry had 417,493 full-time equivalent jobs as of February 2023 . . . down from 428,059 in 2022.

4. Leafly:

https://leafly-cms-production.imgix.net/wp-content/uploads/2022/02/18122113/Leafly-JobsReport-2022-12.pdf.

2022 Leafly Jobs Report found 428,059 full-time equivalent jobs.

A constitutional right of privacy is well-established and described as the freedom to make intimate and personal decisions that are central to personal dignity and autonomy. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 255 (2022) ("At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."). There are two clusters of personal privacy rights recognized by the Fourteenth Amendment: one relates to ensuring autonomy in making certain kinds of significant personal decisions; the other relates to ensuring confidentiality of personal matters. *Whalen v. Roe*, 429 U.S. 589, 598-600 (1977). Cannabis employees make personal decisions to associate with the marijuana despite its illegality, social stigma, and life in financial darkness. This is their exercise of the autonomy right of privacy. Their decision also implicates confidentiality of their employment in cannabis: the informational privacy. *NASA v. Nelson*, 562 U.S. 134, 146 (2011) (Since the *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), the Court has said little else on the subject of an individual interest in avoiding disclosure of personal matters). Both privacy rights are implicated here and eroding privacy rights of the Petitioner's employees, would also erode the rights of similarly situated cannabis employees in the 41 States and Territories estimated at likely over 425,000 nationwide cannabis workers in licensed facilities; this would amount to nearly 425,000 persons impacted by this petition.

The act of divulging Petitioner's employee names and contact information, including the roster of employees and everything within the *Belaire-West Landscape, Inc. v. Superior Court*, 149 Cal.App.4th 554 (2007)

process, compelled by the LASC does violate both branches of the privacy right.

The public employee name and contact list in *County of Los Angeles (ERCOM)*, landscaper employee name and contact list in *Belaire-West*, and Marshall's employee name and contact list in *Williams* involved divulging information that would not subject those employees to prosecution under Federal law. *County of Los Angeles v. Los Angeles County Employee Relations Comm*, 56 Cal.4th 905 (2013), *Belaire-West Landscape, Inc. v. Superior Court* 149 Cal.App.4th 554. *Williams v. Superior Court*, 3 Cal.5th 531 (2017). The last case, *Williams*, was decided at a time when cannabis had yet to obtain legalization. There is no published case in California concerning the discrete issue of safe-guarding third-party cannabis employee privacy against the criminalization of transacting in marijuana on the Federal level. Moreover, there does not appear to be other precedent available after a review of other states and Federal cases for guidance on the topic. Maintaining the *status quo* places the California courts with power to continue to violate privacy rights of cannabis workers, along with the patchwork of the 40 other American States and Territories. The want of political will in Congress, or political gridlock, or both, likely requires this Court to intervene to preserve privacy rights given the inability of the political process to reconcile the conflict of law.

II. Attorney-Client Privilege Shields Identities When Faced with Criminal Jeopardy; Disclosure Would Violate the Fourteenth Amendment Due Process Clause, Including the Right of Association, as Well as California Supreme Court Precedent Under *Hill v. NCAA*, 7 Cal.4th 1 (1994); This Court Is Authorized to Reverse the $10,000 in Discovery Sanction as the Challenge to the Invalid Order Was a Substantial Justification Not Only as a Violation of Privacy but as Confidential Information Under the Attorney Client Privilege.

Petitioner, and specifically its counsel, are justified under the common law attorney-client privilege to safeguard the confidential third-party employee names and addresses and number of employees. Federal courts have recognized an attorney's right to challenge an infirm order. *Zal v. Steppe*, 968 F.2d 924, 927 (9th Cir. 1992) ('a person under California law, may disobey the order and raise his jurisdictional contentions when he is sought to be punished' citing to *In re Berry*, 68 Cal.2d 137, 148 (1968)). This Court is authorized to reverse the $10,000 discovery sanctions given the excess in jurisdiction and due process clause violation under the Fourteenth Amendment. Safeguarding this data represents a substantial justification under *In re Marriage of Niklas*, 211 Cal.App.3d 28, 35 (1989), citing to *In re Berry*, 68 Cal.2d 137, 148-149 (1968) (challenge validity of order compelling disclosure and payment of sanctions by disobedience and raise the jurisdictional contentions; "if he has correctly assessed his legal position, and it is therefore finally determined that the order was issued without or in excess

of jurisdiction, his violation of such order constitutes no punishable wrong").

In *Ex Parte McDonough*, 170 Cal. 230, 236-237 (1915), the California Supreme Court recognized the validity of the attorney-client privilege as a means of shielding the identify of clients faced with criminal jeopardy; there, an attorney was not required to disclose the name of unidentified clients. *Ex Parte McDonough*, 170 Cal. 230, 237 (1915). Had the attorney identified the unnamed client, the attorney's act of disclosing the name would amount to acknowledging guilt of the person who sought the attorney services and created the attorney-client relationship. The Ninth Circuit relied upon *Ex Parte McDonough* in applying California attorney-client privilege and allowed an attorney to withhold the identity of the clients when compelled by the Internal Revenue Service. *Baird v. Koerner*, 279 F.2d 623, 632 (9th Cir. 1960); furthermore, "the name of the client will be considered privileged matter where the circumstances of the case are such that the name of the client is material only for the purpose of showing an acknowledgment of guilt on the part of such client of the very offenses on account of which the attorney was employed." *Baird v. Koerner*, 279 F.2d 623, 633.

Here employees conduct 'prohibited acts' under 21 U.S.C. § 841 transacting in marijuana. They are like the accused in *Ex Parte McDonough* and *Baird v. Koerner*. Revelation of their identities in an employment class action would require remittance of mailings by the U.S. Postmaster connecting them with prohibited acts under Federal law. The question is not so nebulous in the facts before the Court, but when combined with the autonomy and informational privacy, it becomes

clear that there are additional bodies of law supporting the preservation of privacy by the Petitioner's attorney and supports a substantive justification for withholding disclosure without an analysis of the privacy rights of cannabis employees.

Petitioner's employees choose to work and associate themselves in a nascent State-authorized marijuana industry—legalized after the 2017 *Williams* precedent in California which allowed a class action mailer distribution to employees of the Marshalls retailer. Unlike the Marshalls' workers, Petitioners, like about over 425,000 across America, face the dual challenge of social stigmatization as well as federal criminal prosecution. The employees exercise and garner their privacy right applied through the due process clause of the Fourteenth Amendment to mitigate the stigmatization and not reveal themselves. Congress has been unable to pass any legislation resolving this long-standing conflict and this arrives to the Court out of necessity to uphold their privacy. This protected right was not waived as asserted by the California Courts. Furthermore, Petitioner's employees, akin to all others deriving an income from the legal cannabis businesses across our nation, elect to exercise a Federal First Amendment associational privacy right further insulating themselves from the social mores and 'big brother' surveillance of the United States government.

Revealing the *Belaire-West* employee data disclosed therein and *Williams*, would essentially "out" the employee names and contact information as employed and associated with Petitioner's cannabis business. The *status quo* is far different than from the day a *Belaire-West* notice is generated and delivered to a

service for opt-out notices. In other words, while the Federal government can raid Petitioner, hypothetically speaking, at this time there is no set of data delivered to a mailing service or set of envelopes being mailed through the U.S. Postmaster.

The dispatch of responsive data compelled would immediately become part of the federal system under the Postmaster. Even though Petitioner does not want to be alarmist in any fashion, it is more likely than not employees may take such a stance.

Petitioner has stretched out an olive branch to resolve this issue and ascertain a more measured approach to protect the identities of Petitioner's employees from being caught in some form a dragnet and having Petitioner face the associated potential disruption of operations and workflow related to such disclosures—not to mention the likely fear associated. The Second District Court of Appeal presumed all was settled with the *Belaire-West* process cited in footnote 2 of its opinion (App.4a) ignoring that the 'disconnect' on February 22, 2022 with Judge Hogue led the case to go downhill—there was a perception by Petitioner's counsel that Judge Hogue would mediate but that never materialized. (App 6a).

Mediation or alternatives were available had, as sought, a full reset take place concerning the February 22, 2022 videoconference proceeding. Alternative outcomes are essentially what appellate tribunals have suggested. *Moorer v. Noble L.A. Events, Inc.*, 32 Cal. App.5th 736, 743 (2019) (acknowledging the possibility of obtaining other aggrieved employee contact information pursuant to a protective order which would safeguard privacy rights citing *SCC Acquisitions, Inc. v. Superior Court*, 243 Cal.App.4th 741, 755 (2015) which

states "the availability of alternative, less intrusive means for obtaining the requested information.").

The pendulum appears to have swung too far such that class action judges are no longer administering the proceeding but doing the bidding for the class action plaintiff. In other words, the trial court is to identify abuses and weigh the danger of abuses in the administration of justice and rights of the parties over efficiency. The trial court appears to have put efficiency first without performing the weighing of competing interests, such as frivolous litigation and authorized stay of discovery pending resolution of any motion to dismiss. *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. ___, 139 S.Ct. 1743, 1752. Given the LASC Complex Civil Litigation Program, plaintiffs bringing State class action proceedings see no need to negotiate because the regulatory scheme inappropriately shifts the due process such that the jurist is given unfettered discretion to react on behalf of the class action plaintiff without conversation, or even, due process as the program appears to simply set conferences and at the pressing of plaintiff, the judge sets hearing dates and motions to compel with sanctions, along with orders to show cause, without any allowance for due process and motion practice allowing for lawyer-to-lawyer negotiation; California discovery statutes have 'meet and confer' requirements before setting such discovery motions, but the LASC program appears to override it; this is further dampened by COVID-19 social distancing protocols. Garnering the class list simply hands over the settlement leverage: 'extortionate settlements' as this Good Court identified in *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. ___, 139 S.Ct. 1743, 1752. It is ironic that in the second action filed by Respondent,

she has not been forthcoming with discovery. Respondent simply desires to violate employee privacy rights without acknowledging the substantial justification of cannabis worker privacy.

When there are external challenges, such as questions on the legitimacy and sanctity of the proceeding being presented, there is no means of removing them to an independent calendar jurist—it is as if filing certain actions designated as complex, the plaintiff's attorney has all discretion and there is no method of due process implementation to remove or challenge the jurisdiction or sanctity of the proceeding *ex post* which would otherwise be the case had due process. In this case, the plaintiff filed another case, a sexual harassment case, which is proceeding to trial with ongoing discovery; the program at issue prohibited the cases from being related; there are two separate judges and calendars–further demonstrating judicial inefficiency. In that separate case, Ms. Perez has not been able to prove the truthfulness of her employment application to Petitioner–further suggestive plaintiff may be a plant coached by the 'regular customer' plaintiff's counsel.

Even without a direct attorney-client privilege protecting the name of an unidentified client as in *Ex Parte McDonough*, 170 Cal. 230, 236-237 (1915) or *Baird v. Koerner*, 279 F2d 623, the Constitutional privacy right along with the First Amendment associational privacy interest appear to similarly supplant the attorney-client privilege; if it does not, it may be appropriate under these unique circumstances to apply a similar holding as Petitioner employees appear to qualify for such stricter scrutiny as a discrete and insular minority class of employees in our State; the

licensed cannabis industry, including Petitioner's, exists under the threat of federal prosecution daily under the CSA, at least until such a time the CSA delists "marihuana." Petitioner's employees, like others in California, live under that threat as do all employees of the 40 other States and Territories with licensed cannabis industries.

The government intrusion of these cannabis employees is akin to that of transgender Puerto Ricans; government intrusion by this territory violated their rights and the due process clause of the Fourteenth Amendment. *Arroyo Gonzalez v. Rossello Nevares*, 305 F.Supp.3d 327, 333 (D.P.R. 2018) (disclosure "exposes transgender individuals to the substantial risk of stigma, discrimination, intimidation, violence and danger. Forcing disclosure of transgender identity chills speech and restrains engagement in the democratic process in order for transgenders to protect themselves from the real possibility of harm and humiliation . . . it also hurts society as a whole by depriving all from the voices of the transgender community."). This intrusion did not subject the transgender victim to criminal prosecution as the cannabis employee of licensed facilities. This petition seeks intervention in the same fashion when Puerto Rico sought to violate their citizenry's privacy.

About a decade earlier a similar government intrusion transpired in Texas. In *Reliable Consultants, Inc. v. Earle*, the Fifth Circuit confirmed a sexual device company may assert the rights of their customers akin to the rights of the pharmacists that had standing to raise the constitutional rights of married people using contraceptives in *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965). *Reliable Consultants, Inc. v.*

Earle, 517 F.3d 738, 743, fn.21 (5th Cir. 2008). The Fifth Circuit struck down a Texas statute because it "impermissibly burdens the individual's substantive due process right to engage in private intimate conduct of his or her choosing." *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 744 (5th Cir. 2008). The statute criminalized advertising, transacting, and lending devices marketed for sexual stimulation unless a defendant would show it was for a statutorily approved purpose which did not include autonomous sex or the pursuit of gratification unrelated to procreation. That tribunal found a violation of the substantive due process clause of the Fourteenth Amendment. *Reliable Consultants, Inc. v. Earle* 517 F.3d 738, 746 (relying on *Lawrence v. Texas*, 539 U.S. 558 (2003) which overruled *Bowers v. Hardwick*, 478 U.S. 186 (1986)). Petitioner petitions this Court on behalf of third-party employees much like the sexual device retailers did for their customers in *Reliable Consultants* who face criminalization for their acts with the accompanying social stigma.

Using its own privacy precedent, the California Supreme Court confronted the privacy analysis of *Hill v. NCAA* in the psychotherapist-patient privilege setting and the majority favored withholding disclosure and allowing the parties to develop the record. *Matthews v. Becerra*, 8 Cal.5th 756, 783-785 (2019) (citing to *American Academy of Pediatrics v. Lungren*, 16 Cal.4th 307 (1997) where there was testimony available to develop a record). There, in evaluating the patient admission to its psychotherapist of possession of child pornography, as weighed against the therapist's duty to disclose those in possession of such contraband, the California Supreme Court recognized a serious invasion

of privacy and tension between the duty to report the illegal activity as against the right for patient treatment. Judge Hogue did not conduct a *Hill* privacy analysis considering they transact in marijuana (App.23a); the infirm order did not cite the obvious confronted: cannabis workers transact in a controlled substance. (App.3a, 13a). Judge Hogue and the intermediate tribunal viewed the barratry as narrow and unrelated to the CSA and Federal-State conflict but the objection was broad and never waived. *Pearce v. Club Med Sales, Inc.*, (1997) 172 F.R.D. 407, 410. Because the 'privacy' was broad and protected, the Complex Civil Litigation Program with COVID-19 protocols further enhanced the kerfuffle. As a result, the California courts have failed and, by default, knowingly or unknowingly continue to vest their power to violate privacy in this circumstance. The 118th Congress appears to have attempted a political solution to the conflict but has yet act despite the ample financial industry support for reform. (App.55a, 59a, 62a, 64a, 69a). Until that tide turns, we are faced with how to reconcile the privacy concern impacting nearly 425,000 cannabis workers in 41 of America's States and Territories—which would likely vaporize the moment Congress decriminalizes weed. A separation of powers violation may also accrue if Congress does not act as the Federal Executive may indiscriminately and improperly enforce on cannabis workers while the *status quo* persists. As long as they remain in this purgatory, State civil class action plaintiffs may violate their privacy right and increase their potential for imprisonment of up to 5 years and $250,000 in fines.

Notwithstanding, it is without a doubt that disclosure of activity that is legal in California but criminal under laws of the United States, under a Supremacy Clause analysis would require a similar privacy protection and invasion acknowledgment akin to the attorney-client confidentiality of *Ex Parte McDonough*, 170 Cal. 230, 236-237 (1915), *Baird v. Koerner*, (9th Cir. 1960) 279 F.2d 623 as well as the psychotherapist-patient confidentiality of *Matthews v. Becerra*, (2019) 8 Cal.5th 756, 787. This Court may adopt the analysis from *Arroyo Gonzalez v. Rossello Nevares*, (D.P.R. 2018) 305 F.Supp.3d 327 and *Reliable Consultants, Inc. v. Earle*, (5th Cir. 2008) 517 F.3d 738 to confirm Judge Hogue violated the due process clause of the Fourteenth Amendment by not respecting the privacy of Petitioner's employees.

While *Ex Parte McDonough* is over a century old, its precedent has been recognized in more recent cases and not overturned. The Ninth Circuit refused to compel an attorney to reveal payors of an additional tax; specifically, an attorney who remitted a cashier's check to the IRS for payment of "additional amounts due from one or more taxpayer for some past years. Their names have not been disclosed to me." *Baird v. Koerner*, 279 F2d 623, 627, 632-633. In *Baird v. Koerner,* Ninth Circuit confirmed *Brunner v. Superior Court* 51 Cal.2d 616 (1959) did not overrule *McDonough* in our State. *Baird v. Koerner* at 632-634 (fn 18 cites to a 1928-1929 State Bar Journal with a hypothetical concerning a client who consults an attorney regarding a watch she found for which the owner has advertised offering a reward; the client directs her attorney to deliver it for the reward without disclosing her identity; when the attorney ultimately delivers the watch to

the police under their threat of a grand theft search warrant, the attorney maintains inviolate the confidence and does not disclose the name of the client). *See also Willis v. Superior Court*, 112 Cal.App.3d 277, 292-293 (1980).

There is simply not a sufficiently developed record as the factual backdrop, application of the law to the Petitioner and its employees, nor the unique circumstances such employees confront on a day-to-day basis and their use of pseudonyms and not disclosing their employment within the cannabis industry. Therefore, it appears just and proper to reverse the appealed order, including the $10,000 in sanctions, and return the matter to Judge Riff, who now presides and allow for such record development and protective measures. A full reset of the February 22, 2022 hearing would be appropriate whether or not this Good Court desires to revisit the issue in the dissent of *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. ___, 139 S.Ct. 1743, 1752 pitting the greed of an unscrupulous plaintiff's lawyer and client who lied to gain employment against the unrecognized plight of likely 425,000 cannabis employees nationwide presented by a licensed cannabis facility and its hearing-impaired lawyer who were sanctioned $10,000 for upholding the privacy rights of third-party cannabis workers while Congress has yet to decriminalize their legal trade under 21 U.S.C. § 841.

"Both the United States Supreme Court and California Supreme Court have observed time and again, however, First Amendment freedoms, such as the right of association, 'are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.'" *Bates v. Little Rock*, 361 U.S. 516, 523 (1960); *see*, *e.g.*, *White v.*

Davis, 13 Cal.3d 757, 767 (1975). "Indeed, numerous cases establish that compelled disclosure of an individual's private associational affiliations and activities, such as that at issue in the instant case, frequently poses one of the most serious threats to the free exercise of this constitutionally endowed right." *Britt v. Superior Court*, 20 Cal.3d 844, 853 (1978). "As the United States Supreme Court emphasized nearly 20 years ago in *NAACP v. Alabama* 357 U.S. 449, 462 (1958), the seminal decision in this field: 'It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute (an) effective . . . restraint on freedom of association . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Britt v. Superior Court*, 20 Cal.3d 844, 853. *See*, *e.g.*, *Bates v. Little Rock*, 361 U.S. 516, 523; *Talley v. California*, 362 U.S. 60, 64-65 (1960); *Huntley v. Public Util. Com.*, 69 Cal.2d 67, 72-73 (1968).

Petitioner employees espouse such dissident belief derived from the First Amendment associational privacy interest given their camaraderie and beliefs which still espouse stigmatization akin to dissident beliefs, their status may even be recognized as a 'discrete and insular minority.' *U.S. v. Carolene Products Co.*, 304 U.S. 144, 155, fn 4 (1938) ("prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a

corresponding more searching judicial inquiry.") For instance, undocumented persons have been recognized as discrete and insular minorities still afforded Fourteenth Amendment protection. *Darces v. Woods*, 35 Cal.3d 871, 890-891 (1984) citing *Plyer v. Doe*, 457 U.S. 202 (1982), *Graham v. Richardson*, 403 U.S. 365, 372 (1971). On a daily basis, employees within the stigmatized cannabis industry face potential arrest akin to those undocumented in *Darces v. Woods* 35 Cal.3d 871, 890-891 citing *Plyer v. Doe*, 457 U.S. 202, *Graham v. Richardson*, 403 U.S. 365, 372. Such a status has no likely change in the near future.

III. The Complex Civil Litigation Program of the LASC and COVID-19 Social Distancing Protocols Conferred Excessive Discretion to the Trial Judge Such That Petitioner's Hearing-Impaired Attorney Misperceived What the Jurist Communicated Curtailing Due Process Rights of Cannabis Employees and Petitioner's Ability to Assert Those Rights; the Actual Proceeding Did Not Confer the Due Process to Deliberate Given the Audio Perception Which Contradicted the Written Order on February 22, 2022.

On February 22, 2022, and from that disconnect forward, Judge Hogue appeared to implement the Complex Civil Litigation Program rules and in doing so exceeded the scope an impartial jurist and violated the due process clause of the Fourteenth Amendment. "The trial court must also expressly identify any potential abuses of the class action procedure that may be created if the discovery is permitted, and weigh the danger of such abuses against the rights of the parties under the circumstances." *Parris v. Superior*

Court, 109 Cal.App.4th 285, 300-301. The process was simply rushed and what was said on video conference February 22, 2022 was simply not what was memorialized and there were attempts to implement due process which only aggravated the situation. There was no balancing and the fact it was stated on the record as perceived by videoconference and when brought to the attention of the Judge, it was denied and there was no follow-through. This is patently offensive to due process and does not recognize the delicacy of so many factors, clear audio, Internet connection, viewing faces on video to read lips. In fact, when the hearing-impaired attorney for the Petitioner misperceived the complex court jurist as having agreed to mediate the dispute, Judge Hogue could have easily taken time to mediate on request and blunted the violation–the jurist may have been in a rush to retire from the bench, become a class action mediator, and see 'regular customers' in private mediation. However, the judge compelled disclosure and the Petitioner was unable to question that order until it was basically too late. Ms. Perez and her counsel did little to cooperate or mediate between lawyers in this action or the other pending case.

Petitioner, like its hearing-impaired counsel, are attempting to assert and argue in favor of removing the proceeding from the complex court and Judge Hogue's administration of due process curtailed their ability; Justice Collins also shut the door by ignoring the existence of privacy and attorney-client privilege as the substantial justification presented to nullify the discovery sanctions. Given the lack of Congressional acceptance of the licensed cannabis trade and its employees, Petitioner and its third-party employees

are in no position or means to cause the repeal of undesirable legislation to give way to a disclosure compelled. *Schuette v. Coalition to Defend, et al.*, 572 U.S. 291, 326 (2014) (Presiding Justice Roberts Concurring Opinion) and citing to *United States v. Carolene Products Co.* 304 U.S. 144, 152 fn4 (1938).

Judge Hogue, when implementing the violative court efficiency program and COVID-19 protocols, essentially disregarded due process. In the opinion affirming the $10,000 in discovery sanctions by Justice Collins, the intermediary tribunal opined the Petitioner should have filed an extraordinary writ separately on only the third-party employee rights privacy issue and failure to have done so appears to be a waiver. This procedural hurdle not only runs contrary to *In re Marriage of Niklas* and the *Shady Grove* precedent (*Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 407 (rule found invalid if the rules of decision by which the court will adjudicate those rights), employee third-party privacy rights were timely and properly raised prior to the appeal in discovery responses citing to privacy; waiver is not likely found under California precedent (*Heda v. Superior Court*, 225 Cal.App.3d 525, 530 and refusal to answer is an acceptable method of raising privacy *Boler v. Superior Court*, 201 Cal.App.3d 467, 473 (1987). *Pearce v. Club Med Sales, Inc.*, (1997) 172 F.R.D. 407, 410. Without the granting of the writ, Petitioner and its employees appear to be, by definition, "discrete and insular minorities" because they are unable with the various layers of government operations unable and unsuccessful at protecting their interests in a majoritarian democratic process: the LASC Complex Civil Litigation Program rules implemented with

COVID teleconferencing along with the inability of Congress to decriminalize.

CONCLUSION

The order compelling disclosure of the third-party employee data and awarding $10,000 in discovery sanctions not only violates the due process clause of the Fourteenth Amendment but the California precedent of Constitutional privacy under *Hill* which were simply not applied by Judge Hogue. Petitioner identified how the order did not cite the obvious: the third-party employees of California Herbal Remedies, a California licensed dispensary. The tribunal reviewing the trial court order affirmed the discovery sanctions and dismissed the privacy and attorney-client privilege arguments as having been waived as not raised. California precedent in *Heda* and *Boler* allow for the broad privacy objection without the granularity—these are employees of California Herbal Remedies and the complaint obviously states this is a licensed marijuana dispensary, not a tea shop. California and Federal precedent identify there can be no waiver of privacy for such third-parties. The infirm order did not cite to Federal criminal liability associated with cannabis employee privacy, nor conduct a full analysis of the privacy or privilege issues; when conducting the required analysis, application of the due process clause of the Fourteenth Amendment would identify that the order constitutes a serious invasion of privacy. The privacy objection constitutes substantial justification and is well-grounded in both law and fact as manifested in the appendix and this petition. This Court is auth-

orized to reverse the infirm order, along with its $10,000 discovery sanctions.

Respectfully submitted,

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