

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Green Analytics North, LLC d/b/a Steep :  
Hill PA, Hanging Gardens, LLC, :  
Pennsylvania Medical Solutions, LLC, :  
Curaleaf PA, LLC, AES Compassionate :  
Care, LLC, Standard Farms, LLC, and Parea :  
BioSciences, LLC, :

*Petitioners,*

No. \_\_ MD 2023

v.

Pennsylvania Department of Health,

*Respondent.*

**ORDER**

NOW, this \_\_\_\_ day of \_\_\_\_\_, 2023, Petitioners’ application for special relief in the nature of an *ex parte* preliminary injunction pursuant to Pa. R.C.P. 1531(b) is hereby granted. Respondent is hereby temporarily enjoined from enforcing Sections 1171a.29(c)(1)-(2) of its regulations pending the hearing on Petitioners’ contemporaneously filed application for special relief in the nature of a preliminary injunction. Additionally, the Department of Health shall be required to notify grower/processors of the stay in the implementation of Section 1171a.29(c)(1)(2) within 24 hours of the date of this Order.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Green Analytics North, LLC d/b/a Steep Hill PA, Hanging Gardens, LLC, Pennsylvania Medical Solutions, LLC, Curaleaf PA, LLC, AES Compassionate Care, LLC, Standard Farms, LLC, and Parea BioSciences, LLC,	:	
	:	
<i>Petitioners,</i>	:	No. __ MD 2023
	:	
v.	:	
	:	
Pennsylvania Department of Health,	:	
	:	
<i>Respondent.</i>	:	

**APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF AN  
EX PARTE PRELIMINARY INJUNCTION**

Petitioners Green Analytics North, LLC d/b/a Steep Hill PA (Green Analytics), Hanging Gardens, LLC (Hanging Gardens), Pennsylvania Medical Solutions, LLC (PAMS), Curaleaf PA, LLC (Curaleaf), AES Compassionate Care, LLC (AES), Standard Farms, LLC (Standard Farms), and Parea BioSciences, LLC (Parea) (Hanging Gardens, PAMS, Curaleaf, AES, and Standard Farms, and Parea collectively “Grower-Processor Petitioners”), respectfully apply, pursuant to Rule 1531(a) of the Pennsylvania Rules of Civil Procedure, for relief in the nature of an *ex parte* preliminary injunction to prevent the immediate enforcement of the Department of Health’s (DOH) newly promulgated regulation at 28 Pa. Code §

1171a.29(c)(1)-(2) (2-Lab Requirement), which became immediately effective on Saturday March 4, 2023 upon publication in the *Pennsylvania Bulletin*.

This regulation will immediately cause millions of dollars of irreparable harm to Petitioners and will freeze most of the production and sale of medical marijuana in the state of Pennsylvania, leading to shortages of medicine and increased prices for patients and chaos in the program. The grant of injunctive relief will not cause any harm as it would simply return the program to the status quo just prior to the effectiveness of the regulation which, even by DOH's admission, has been ensuring safe and consistent medical marijuana to patients for the last six years without incident.

In support, Petitioners state as follows:

### **Introduction**

1. Petitioners seek an *ex parte* preliminary injunction to halt the immediate enforcement of DOH's 2-Lab Requirement pending resolution of Petitioners' contemporaneously filed Petition for Review, which requests a declaration that the 2-Lab Requirement is unlawful and a permanent injunction preventing its continued enforcement, and Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction.<sup>1</sup>

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<sup>1</sup> Petitioners hereby incorporate, as if fully set forth herein, its contemporaneously filed their Application for Special Relief in the Nature of a Preliminary Injunction and its accompanying brief in support thereof.

2. Since the inception of Pennsylvania’s medical marijuana program in 2016, grower/processors such as Grower-Processor Petitioners were by statute allowed to contract with a single laboratory (Lab) such as Petitioner Green Analytics in order to conduct the testing required under the Act – at the harvest stage and the final product stage – of medical marijuana production.

3. Due to the statutory requirement that grower/processors must execute contracts with the Labs they engage to perform the requisite testing, all testing has been, and is, performed pursuant to existing contracts.

4. As of March 4, 2023, DOH now immediately requires Grower-Processor Petitioners (and all other grower/processors) to use two different Labs for these two testing stages where such grower/processors are currently using one Lab, which puts grower/processors in immediate breach of their existing and statutorily required contracts with Labs. 35 P.S. § 10231.704(a). *See* PFR Exh. 1.

5. The immediate implementation of the 2-Lab Requirement not only puts growers/processors and Labs, including Petitioners, in breach of their current contracts, it leaves grower/processors without an immediate Lab to test their products since no tests can occur unless and until the grower/processor has entered into a contract with a new Lab.

6. In addition to the chaos created over contracts and ongoing business relationships, there are currently thousands of samples in Labs or in transit to Labs

on any given day, with the immediate implementation of the 2-Lab Requirement, these samples will make various Labs and grower/processors, including Petitioners, in immediate violation of the law.

7. The immediate implementation of the 2-Lab Requirement leaves Labs and grower/processors, including Petitioners, with no discernable guidance as to whether they are in breach of their contracts or in breach of the law when continuing any testing of medical marijuana – effectively freezing much of the medical marijuana industry in Pennsylvania.

8. Even if Grower-Processor Petitioners were able to discern which of the samples residing in one Lab must be transferred to another Lab in order to be compliant with the 2-Lab Requirement, there is no mechanism in Pennsylvania’s seed-to sale tracking system, MJ Freeway, to allow for such transfer and no transfer can occur without being tracked through this system.

9. Because marijuana is a plant, it must be cultivated and processed on a specific timeline, the paralysis that the immediate implementation of the 2-Lab Requirement creates in the industry will lead to stale or molding plants and unfinished products which in turn will be unusable and, thus, the 2-Lab Requirement threatens to substantially decrease supply, increase prices to patients, and cost Petitioners millions of dollars in lost inventory and revenue.

10. By making the 2-Lab Requirement effective immediately with no guidance on reconciling the immediate conflicts and confusion, DOH has created an untenable situation which only emergency relief can mitigate.

11. Enjoining enforcement of the 2-Lab Requirement will not harm the public interest as the statute requiring all grower/processors, including Grower-Processor Petitioners, to test harvest and finished product would still be in effect.

12. In addition to the harm caused by the immediacy of the 2-Lab Requirements' effective date, the 2-Lab Requirement wreaks long term harm on Petitioners.

13. Grower-Processor Petitioners substantially use the same Lab for the harvest testing and final product testing phases based on pricing, preferred logistics, geographic closeness, testing speeds and to ensure consistency and accuracy in testing between the two stages of the production process.

14. Labs, including Petitioner Green Analytics, provide volume discounts to grower/processors such as Grower-Processor Petitioners who use their Labs for both the harvest and final product processing stages of testing.

15. The 2-Lab Requirement that was made effective upon publication in the *Pennsylvania Bulletin*, in addition to the chaos described above, immediately strips substantial business from successful, well-functioning Labs such as Petitioner Green Analytics and eliminates volume discounts and logistical cost-savings for

grower/processors like Grower-Processor Petitioners. Despite DOH's prior approvals of the contracts that currently exist between grower/processors and Labs that allow for a single Lab to perform testing at both stages, despite patients' need for medicine to be tested consistently and accurately, despite admitting that there is no current problem with Labs in Pennsylvania, despite laying waste to millions of dollars of investments in laboratory equipment, and despite DOH's failure to identify a single event or any basis in science for the implementation the 2-Lab Requirement, DOH still seeks to implement the 2-Lab Requirement immediately.

16. DOH claims that the 2-Lab Requirement will create "checks and balances" for Labs. *See*, Petition for Review in the Nature of a Complaint in Equity (PFR), Exh. 7 at 65. However, this regulation cannot create any checks and balances since the results at harvest (plant material) should and will always be vastly different in all respects from the testing results of a finished product (pills, tinctures, oils, creams, vapes). And with the immediate implementation of the 2-Lab Requirement, DOH does not provide for any reconciliation process for the chaos that will ensue immediately or the inevitable disputes that will arise between Lab results.

17. Two Labs using two different processes, equipment, and personnel, testing products at two very different points in the manufacturing process (plants versus manufactured medicine), cannot provide any check and/or balance on one another and attempting to do so will lead to further bottlenecks in DOH's approval

process, in turn, leading to rotting crops, stale medicine, higher prices and market confusion.

18. An *ex parte* injunction shall issue when it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held. Pa. R.Civ.P. 1531(a).

19. Here the “effective immediately” implementation of the 2-Lab Requirement creates such unavoidable, irreparable, and immediate harm to the medical marijuana participants while delaying the implementation only puts in effect the same status quo that has been in effect for the last six-plus years, that an *ex parte* injunction is warranted.

#### **Standard for an *Ex Parte* Preliminary Injunction**

20. Although Pennsylvania does not use the term “temporary restraining order” the functional equivalent is an *ex parte* preliminary injunction. *Bloomington’s by Mail v. Com., Dep’t of Revenue*, 518 A.2d 1203, 1205 n.3 (Pa 1986).

21. Generally, a preliminary injunction can only be granted after written notice to the adverse party and a hearing. Pa. R.Civ.P. 1531(a).<sup>2</sup> An injunction made

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<sup>2</sup> Pennsylvania Rule of Civil Procedure 1531(a) states:

A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be



on notice to all adverse parties remains in force until a final determination of the merits of the action, unless modified or terminated earlier by the court. Pa. R.Civ.P. 1531(e).

22. A preliminary injunction may be issued *ex parte* if the court is convinced that immediate and irreparable harm will occur before notice can be given. Pa. R.Civ.P 1531(a). In that case, the injunction will be deemed dissolved unless a hearing on the continuance of the injunction is held within five days. Pa. R.Civ.P. 1531(d); *WPNT Inc. v. Secret Communication, Inc.*, 661 A.2d 409, 410-11 (Pa. Super. 1995). The hearing deadline may be extended by the court or by agreement of the parties. Pa. R.Civ.P. 1531(d). Alternatively, the respondent may waive a hearing on continuance of the injunction and proceed directly to a final hearing on a preliminary injunction. *See Id.*, (Note).

23. An *ex parte* injunction requires the petitioner to demonstrate the same six prerequisites as a preliminary injunction:

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given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice. In determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition and may consider affidavits of parties or third persons or any other proof which the court may require.

- (1) Relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages;
- (2) Greater injury will occur from refusing to grant the injunction than from granting it;
- (3) The injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct;
- (4) The petitioner is likely to prevail on the merits;
- (5) The injunction is reasonably suited to abate the offending activity;
- (6) The public interest will not be harmed if the injunction is granted.

*York Grp., Inc. v. Yorktowne Caskets, Inc.*, 924 A.2d 1234, 1241 (Pa. Super. 2007).

24. In addition, the petitioner must also show that the immediate and irreparable harm will occur before notice can be given. Pa. R.Civ.P. 1531(a). This requires evidence demonstrating the urgent need for the injunction as well as efforts made to notify the adverse party, or why such efforts are impracticable. *See, e.g., Liberty Corp. v. D'Amico*, 329 A.2d 222, 223 (Pa. 1974). Because the grant of an *ex parte* injunction is a harsh and extraordinary remedy, it is to be granted only when and if each criteria has been fully and completely established. *League of Women Voters v. Commonwealth*, 683 A.2d 685, 688 (Pa. Cmwlth. 1996).

25. This showing may be made solely with the averments in the petition. Pa. R.Civ.P. 1531(a). Affidavits are not required, provided the court is presented with sworn evidence justifying the issuance of the injunction. *Rupel v. Bluestein*, 421 A.2d 406, 413 (Pa. Super. 1980) (petition for preliminary injunction did not

have to be verified where it did not contain allegations of fact, but merely incorporated the allegations of the complaint and alleged that immediate and irreparable harm would result).

26. While Petitioners have served both DOH's Office of Chief Counsel and the Pennsylvania Office of Attorney General by email, the fact remains that Petitioners, as of March 4, 2023, are suffering and will continue to suffer immediate and irreparable harm before a hearing can be held. The Court should, therefore, enter an *ex parte* injunction barring implementation and enforcement of DOH's 2-Lab Requirement pending resolution of Petitioners' underlying Petition for Review and Application for Preliminary Injunction.

#### **Facts in Support of an *Ex Parte* Preliminary Injunction**

26. Petitioners' Petition for Review details the facts which support the grant of a preliminary injunction, and these facts are incorporated herein by reference. PFR, ¶¶34—110. Petitioners also incorporate the description of each Petitioner, *Id.*, ¶¶26—32.<sup>3</sup> In addition to the harms described in the PFR that would result from any implementation of the 2-Lab Requirement, the additional harms caused by DOH making the 2-Lab Requirement immediately effective as described herein meet the criteria for the issuance *ex parte* relief.

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<sup>3</sup> Petitioners hereby incorporate in its entirety their Petition for Review.

27. Sans *ex parte* relief, immediate and irreparable harm that cannot be compensated by money damages will occur when dozens of contracts will be voided or breached, thousands of samples will be in limbo, production of products that are not currently in compliance will be halted, and most of the program participants will be at a loss to move forward with the manufacturing, testing, and sale of medical marijuana.

28. The injuries described above will occur if the injunction is not granted, but if an injunction is granted, then no injury to the public interest will occur since the Petitioners will continue to perform the statutorily requisite testing at harvest and final processing phases the Labs have used over the last six years.

29. Granting an injunction will restore the status quo between the parties that existed for the last six years and under which even DOH admits there were no issues. *See* PFR Exh. 7 at 66.

30. Because, as further described in the PFR, the 2-Lab Requirement is a regulation beyond DOH's authority given to it in the Act, it allows DOH to abdicate its legislative mandate to directly regulate the medical marijuana in contravention of the Non-Delegation Clause of the Pennsylvania Constitution, and it violates the contract clauses in both the U.S. and Pennsylvania Constitutions, Petitioners will likely prevail on the merits. *See*, PFR ¶¶110—160.

31. Granting Petitioners' application for a preliminary injunction is narrowly tailored to abate the harm pending final adjudication of Petitioners' Petition for Review on the merits. *SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495, 502 (Pa. 2014). Petitioners are seeking only to enjoin DOH from enforcing its 2-Lab Requirement pending resolution of Petitioners' claims. Petitioners are not seeking an abatement of the testing requirement at both phases of production; rather, Petitioners are seeking to continue the option of completing the Act's testing mandates by one Lab, which has been the status for the last six years, and thus it is narrowly tailored to abate DOH's unlawful testing requirements.

32. The public interest will not be harmed by the grant of emergency relief because DOH's imposition of its new and unlawful 2-Lab Requirement, that significantly alters the testing mandates that have been in place, without incident, since the program's inception to combat a phantom problem, is not in the public interest.

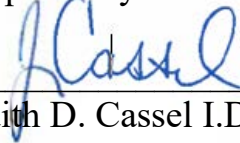
33. Because the harm will be immediate, Petitioners cannot provide notice to DOH prior the occurrence of the harm. However, a copy of this Application for Relief in the Nature of an *Ex Parte* Preliminary Injunction, the Petition for Review and the Application for Preliminary Injunction and supporting brief were contemporaneously emailed to DOH's chief counsel, Douglas Snyder (douglasnyd@pa.gov), DOH program counsel Kevin Hoffman

(kjhoffman@pa.gov), and Executive Deputy Attorney General Keli M. Neary (kneary@attorneygeneral.gov) of the Civil Law Division in the Office of the Attorney General.

34. Additionally, because the harm inflicted on Petitioners is immediate, a subsequent preliminary injunction without immediate emergency relief would still allow for substantial irreparable harm to Petitioners.

WHEREFORE, Petitioners respectfully request that this Honorable Court grant relief in the nature of an *ex parte* preliminary injunction to halt the enforcement of DOH's 2-Lab Requirement pending resolution of Petitioners' contemporaneously filed Petition for Review which requests a declaration that the 2-Lab Requirement is unlawful and a permanent injunction preventing its continued enforcement, and Petitioners' Application for Relief in the Nature of a Preliminary Injunction.

Respectfully submitted,



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*Counsel for Petitioners*

Dated: March 4, 2023

**VERIFICATION**

I, Andrew Dorsett, certify that I am the U.S. Central Regional Director of Compliance for Curaleaf PA, LLC and AES Compassionate Care, LLC and that in this capacity I am authorized to, and do make this Verification on its behalf, that the facts set forth in the foregoing Application for Relief in the Nature of an *Ex Parte* Preliminary Injunction are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

*Andrew Dorsett*  
\_\_\_\_\_  
Andrew Dorsett

Dated: March 3, 2023



**VERIFICATION**

I, Andrew Rosenstein, certify that I am the Chief Executive Officer for Green Analytics North, LLC and that in this capacity I am authorized to, and do make this Verification on its behalf, that the facts set forth in the foregoing Application for Relief in the Nature of an *Ex Parte* Preliminary Injunction are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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Andrew Rosenstein

Dated: March 4, 2023

**VERIFICATION**

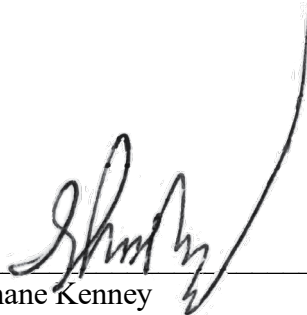
I, Rob Sweatman, certify that I am the Director of Operations for Pennsylvania Medical Solutions, LLC and that in this capacity I am authorized to, and do make this Verification on its behalf, that the facts set forth in the foregoing Application for Special Relief in the Nature of an *Ex Parte* Preliminary Injunction concerning Pennsylvania Medical Solutions, LLC are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

  
Rob Sweatman

Dated: March 3, 2023

**VERIFICATION**

I, Shane Kenney, certify that I am the Principal of Hanging Gardens, LLC and that in this capacity I am authorized to, and do make this Verification on its behalf, that the facts set forth in the foregoing Application for Relief in the Nature of an *Ex Parte* Preliminary Injunction are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

  
\_\_\_\_\_  
Shane Kenney

Dated: 03/03/2023

**VERIFICATION**

I, Edward Stum, certify that I am the Chief Operations Officer of Parea BioScience and that in this capacity I am authorized to, and do make this Verification on its behalf, that the facts set forth in the foregoing Application for Relief in the Nature of an *Ex Parte* Preliminary Injunction are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



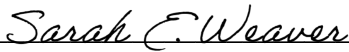
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Edward Stum

Dated: 03/03/2023

**VERIFICATION**

I, Sarah Weaver, certify that I am the Director of Regulatory Compliance for TILT Holdings, the parent company of Standard Farms, LLC and that in this capacity I am authorized to, and do make this Verification on its behalf, that the facts set forth in the foregoing Application for Special Relief in the Nature of an *Ex Parte* Preliminary Injunction concerning Standard Farms, LLC are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

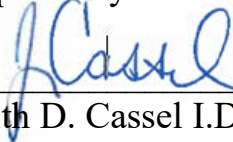
  
\_\_\_\_\_  
Sarah Weaver

Dated: March 3, 2023

**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,



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*Counsel for Petitioners*

Dated: March 4, 2023