



1 Injunctive and Declaratory Relief Pursuant to Cal. Gov. Code 11350 (“the Petition”) on  
2 October 17, 2019.

3 Defendants oppose the Petition. On March 26, 2020, Defendants lodged the  
4 Administrative Record in this matter with the Court, Bates Nos. AR000001-AR000023.

5 Farmer’s Petition seeks a declaration that California Code of Regulations, Title  
6 16, section 5040(b)(3), adopted by the Bureau, is invalid, and seeks an order  
7 permanently enjoining that regulation’s enforcement on the grounds that (1) it is  
8 inconsistent with Business and Professions Code section 26152(d), and (2) on the  
9 grounds that it is void because the Bureau is promoting interests which are inconsistent  
10 with the protection of the public.

11 Business and Professions Code section 26152(d)<sup>1</sup> (“Bus. & Prof. Code, § 26152”  
12 or the “Advertising Placement Statute”) provides that a licensee shall not advertise or  
13 market on a billboard or similar advertising device located on an Interstate Highway or  
14 on a State Highway which crosses the California border.

15 California Code of Regulations, Title 16, section 5040(b)(3) (“Cal. Code Regs.,  
16 tit. 16, § 5040(b)(3)” or the “Advertising Placement Regulation”), being challenged by  
17 Petitioner, provides that all outdoor signs, including billboards, advertising or marketing  
18 cannabis and cannabis products shall not be located within a 15-mile radius of the  
19 California border on an Interstate Highway or on a State Highway that crosses the  
20 California border.

21 Petitioner challenges the Advertising Placement Regulation on the ground that it  
22 is inconsistent with the Advertising Placement Statute.

23 Before the Court may reach the validity of the regulation, it must first consider  
24 Defendants’ arguments that this matter is not justiciable due to a lack of ripeness and  
25 standing.

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28 <sup>1</sup> This statute was enacted pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) and Proposition 64.

1 Standing is jurisdictional. (*Associated Builders and Contractors, Inc. v. San*  
2 *Francisco Airports Com.* (1999) 21 Cal.4th 352, 361.)

3 Because issues of justiciability must be decided before the merits of the  
4 controversy, because standing is jurisdictional, and because the Court initially had  
5 significant concerns about standing in this case, the Court bifurcated the issues of  
6 ripeness and standing to consider them first.

7 Prior to the first hearing on this matter, the Court issued a tentative ruling solely  
8 addressing the issues of justiciability. The tentative ruling found the action ripe, but  
9 addressed concerns the Court had regarding standing and asked the parties to come  
10 prepared to address that issue. At the hearing, Petitioner argued that he had public  
11 interest standing. The Court ordered further full briefing regarding the issue of standing,  
12 including public interest standing.

13 The parties have now submitted their additional briefing. Petitioner submitted a  
14 supplemental brief and reply, and Defendants submitted an opposing supplemental brief  
15 and sur-reply.

16 **I. Ripeness.**

17 Defendants first argue that this case is not ripe for judicial review because no  
18 actual controversy exists. The challenger of the validity of a regulation may bring a  
19 declaratory relief action against the state agency that adopted the regulation in  
20 accordance with Code of Civil Procedure section 1060. (Gov. Code, § 11350(a).) Under  
21 Code of Civil Procedure section 1060, a party seeking a declaration of rights and duties  
22 may only do so where there is an actual controversy relating to the legal rights of the  
23 parties.

24 “A basic prerequisite to judicial review of administrative acts is the existence of  
25 a ripe controversy.” (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33  
26 Cal.3d 158, 169. (“*Pacific Legal Foundation*”)) “The controversy must be definite and  
27 concrete, touching the legal relations of parties having adverse legal interests. It must be  
28 a real and substantial controversy admitting of specific relief through a decree of a

1 conclusive character, as distinguished from an opinion advising what the law would be  
2 upon a hypothetical state of facts.” (*Id.*, at pp. 170–171, quoting *Selby Realty Co. v. City*  
3 *of San Buenaventura* (1973) 10 Cal.3d 110, 117.) “The problem is best seen in a twofold  
4 aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the  
5 hardship to the parties of withholding court consideration.” (*Id.*, at p. 171.)

6 [J]udicial decisionmaking is best conducted in the context of an actual set  
7 of facts so that the issues will be framed with sufficient definiteness to  
8 enable the court to make a decree finally disposing of the controversy. On  
9 the other hand, the requirement should not prevent courts from resolving  
10 concrete disputes if the consequence of a deferred decision will be  
11 lingering uncertainty in the law, especially when there is widespread  
12 public interest in the answer to a particular legal question.  
(*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 170.)

13 Defendants argue that here the case is not ripe because the issues are not  
14 fit for a judicial determination. Defendants argue that there is no evidence of any  
15 billboards along an Interstate Highway, much less one that adversely impact  
16 Plaintiff. Defendants argue that Petitioner’s evidence of billboards along  
17 Highway 101 in the City of San Luis Obispo is inadmissible.

18 Defendants argue that no set of facts exist involving the application of the  
19 Advertising Placement Regulation, that the Court may only consider the rulemaking file,  
20 and thus Plaintiff’s claim that the public will be harmed is entirely speculative.  
21 Defendants argue that the Court will have to make assumptions about what events will  
22 occur in this case, and that the Court therefore should not decide the validity of the  
23 Advertising Placement Regulation. Defendants argue that this matter is not fit for a  
24 judicial decision in the absence of a precise factual context.

25 Defendants further argue that the case is not ripe because Plaintiff cannot show  
26 harm sufficient to compel declaratory and injunctive relief. Defendants argue that  
27 Petitioner alleges a merely subjective fear of billboard placements and alleges no harm  
28 he would suffer as a result of implementation and enforcement of the advertising  
regulation, and that he does not allege an actual, present controversy.

1           However, Petitioner in reply distinguishes *Pacific Legal Foundation*. There, the  
2 issues were not fit for immediate review because the court found it difficult to assess the  
3 guidelines in the abstract, because everything would turn on the specific factual context  
4 in which they would be applied. There, the challenged guidelines were flexible, general,  
5 and not mandatory, but would need to be applied on a case-by-case basis. (*Pacific Legal*  
6 *Foundation, supra*, 33 Cal.3d at p. 174.) This is unlike the regulation here.

7           Petitioner further argues that Courts also take into account public interest in the  
8 matter in evaluating ripeness in order to avoid piecemeal litigation. (See, e.g.  
9 *Californians for Native Salmon etc. Assn. v. Department of Forestry* (1990) 221  
10 Cal.App.3d 1419, 1430.)

11           Petitioner argues that there is no need to apply the *Pacific Legal Foundation*  
12 balancing test because the challenged Advertising Placement Regulation was issued and  
13 adopted by the Bureau in a final action and is currently impacting Petitioner, as  
14 billboards advertising cannabis are up along the State Highways through San Luis  
15 Obispo County. Moreover, and the Court finds importantly, here the validity of the  
16 Advertisement Placement Regulation is a legal determination, rather than factually  
17 oriented. Where the guidelines in *Pacific Legal Foundation* could only be evaluated as  
18 applied, here, the challenge is a plain conflict in the regulation and the statute.

19           Petitioner further argues that he pleads an actual controversy in his verified  
20 Petition. There is no doubt that the Advertising Placement Regulation was adopted by  
21 the Bureau and is in full force and effect. Petitioner further argues that he has pleaded in  
22 his verified Petition and shown that the Bureau has undertaken a public notice campaign  
23 notifying licensees of the new regulations. (Petition, Exh. 2.) Petitioner further argues  
24 that he has pleaded and provided evidence of the billboard giving rise to this action.  
25 (Petition, Exh. 1.)

26           It appears that Defendants' argument that Petitioner provided no evidence of any  
27 actual billboards is based on their objections to that evidence on the grounds that it may  
28 not be considered under Government Code section 11350(d), which provides that in a

1 declaratory action challenge to the validity of a regulation, the Court may only consider  
2 the rulemaking file.

3 While Defendants are correct that this evidence cannot be considered in  
4 determining the validity of the regulation itself under Government Code section  
5 11350(d), the Court finds that the evidence is admissible to show ripeness, a separate  
6 legal issue, and one that was raised by Defendants themselves.

7 Petitioner argues that this action is analogous to *Farm Sanctuary, Inc. v.*  
8 *Department of Food & Agriculture* (1998) 63 Cal.App.4th 495. In that case challenging  
9 a ritualistic slaughter regulation on the grounds it was inconsistent with the Humane  
10 Slaughter Law, the court found that:

11 In this case, the ripeness test is satisfied. As to the first prong, the  
12 question before us is not so abstract or hypothetical that we should await  
13 a better factual scenario. Farm Sanctuary contends that the ritualistic  
14 slaughter regulation is invalid on its face because it is inconsistent with  
15 the HSL. The issue tendered is a purely legal one: whether the statute was  
16 properly construed by the department. In addition, the regulation  
17 challenged here, promulgated in a formal manner after announcement and  
18 after consideration of comments by interested parties, is quite clearly  
19 definitive, i.e., final.

20 (*Farm Sanctuary, Inc., supra*, 63 Cal.App.4th at p. 502 [citations omitted].)

21 Here, Petitioner argues that the legal disagreement is not abstract and is framed  
22 with sufficient definitiveness to enable the Court to make a decree on the regulation's  
23 validity.

24 Further, Petitioner argues that withholding consideration will result in hardship,  
25 as billboards advertising cannabis are and will continue to unnecessarily expose him, his  
26 children, and millions of others to cannabis advertising on a daily basis contradictory to  
27 the intent and purpose of Proposition 64 and Business and Professions Code section  
28 26152(d). Petitioner argues that his hardship is not peculiar to him but to millions of  
other people throughout the state, including children, who should not be exposed to  
these ads.

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1 Defendants submitted additional argument regarding ripeness in their  
2 supplemental opposition brief. Defendants request the Court revisit the issue of ripeness  
3 and dismiss the case on ripeness grounds, as Petitioner cannot show hardship under  
4 *Pacific Legal*.

5 Defendants argue that even if the Court can evaluate the Advertising Placement  
6 Regulation as an exercise of statutory interpretation, Petitioner will not suffer hardship  
7 sufficient to compel relief. Defendants argue that here, all that is at issue is the Bureau's  
8 interpretation of the Advertising Placement Statute, which is insufficient to give rise to a  
9 justiciable controversy. (*Winter v. Gnaizda* (1979) 90 Cal.App.3d 750, 756; *Zetterberg*  
10 *v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 663.)

11 In reply, Petitioner correctly notes that the Court did not request supplemental  
12 briefing on this issue at the first hearing on this matter. Petitioner argues that here, the  
13 issue of the validity of the Advertising Placement Regulation is legal rather than  
14 factually oriented and deferral of this matter would cause lingering uncertainty given  
15 that there is widespread interest in the question of its validity.

16 The ripeness doctrine "should not prevent courts from resolving concrete  
17 disputes if the consequence of a deferred decision will be lingering uncertainty in the  
18 law, especially when there is widespread public interest in the answer to a particular  
19 legal question." (*Pacific Legal, supra*, 33 Cal.3d at p. 170.)

20 The Court has considered Defendants' argument but declines to change its  
21 findings from its initial consideration of the matter.

22 The Court finds that there is a concrete dispute, that it is framed with sufficient  
23 definition to enable the Court to make a decree finally disposing of the controversy, and  
24 that without such a decision there will be a lingering uncertainty in the law. This  
25 regulation is final, in effect, and there is evidence it is resulting in billboards being  
26 placed on State and Interstate Highways in California. This is not a case where more  
27 factual context is required in order to assess the validity of the regulation. Moreover,  
28 Plaintiff argues that he has an interest in he and his children not being exposed to these

1 billboards. Further, as set forth more fully below, there is a public interest in the  
2 Bureau’s compliance with the law in exercising its regulatory authority.

3           The Court finds here that the ripeness requirement should not operate in this case  
4 to prevent the trial court from resolving the concrete dispute before it, given that the  
5 consequence of a deferred decision will be lingering uncertainty in the law, and that  
6 there is public interest in this issue. (*Pacific Legal, supra*, 33 Cal.3d at p. 170; see also  
7 *Communities for a Better Environment v. State Energy Resources Conservation &*  
8 *Development Com.* (2017) 19 Cal.App.5th 725, 732-739.)

9           The Court finds the issue of the potential conflict between the Advertising  
10 Placement Regulation and the Advertising Placement Statute ripe for determination.

11 **II. Standing.**

12           Petitioner brings this action “on his own behalf and in the public interest.”  
13 (Petition, p.1.)

14           Petitioner’s verified Petition states that Petitioner grew up and lives in the City of  
15 San Luis Obispo (the “City”). (Petition, ¶ 2.) He is a licensed general contractor with a  
16 City business license and is the parent of teenage children. (*Ibid.*) He owns real property  
17 in the County of San Luis Obispo (the “County”) and pays property taxes to the County  
18 and sales and income tax to the State of California. (*Ibid.*) He is a registered voter who  
19 voted in support of Proposition 64. (*Ibid.*)

20           Petitioner further alleges that as both a taxpayer under Code of Civil Procedure  
21 section 526a, and interested person under Government Code section 11350, he has  
22 standing to bring this action.

23           As set forth above, at the initial hearing on this matter, the Court had some  
24 concerns about Petitioner’s standing as an interested party under Government Code  
25 section 11350. The Court was concerned that Plaintiff’s interest in challenging this  
26 regulation was not more than that of the general public. As to taxpayer standing, the  
27 Court was not convinced that Petitioner pays a tax that funds the Defendant Bureau. The  
28 parties have now further briefed those issues, as well as the issue of Petitioner’s public

1 interest standing.

2 **III. Public Interest Standing.**

3 Petitioner argues that he has public interest standing to challenge the Bureau’s  
4 adoption of the Advertising Placement Regulation in this action, which seeks a remedy  
5 both under Government Code section 11350, and pursuant to a traditional writ of  
6 mandate. Regulations adopted by state agencies can be reviewed through declaratory  
7 judgment actions or writs of mandate. (Gov. Code, § 11350(a); Code Civ. Proc., § 1060;  
8 See also Asimow, et al, Cal. Practice Guide: Administrative Law (The Rutter Group  
9 2019) ¶¶ 13:3, 14:182.)

10 As a general rule, a party does not have standing to seek a writ of mandate unless  
11 that party is “beneficially interested.” (Code Civ. Proc., § 1086.)

12 Nevertheless, where the question is one of public right and the object of  
13 the mandamus is to procure the enforcement of a public duty, the  
14 petitioner need not show that he has any legal or special interest in the  
15 result, since it is sufficient that he is interested as a citizen in having the  
16 laws executed and the duty in question enforced. This public right/public  
17 duty exception to the requirement of beneficial interest for a writ of  
18 mandate promotes the policy of guaranteeing citizens the opportunity to  
19 ensure that no governmental body impairs or defeats the purpose of  
20 legislation establishing a public right. We refer to this variety of standing  
21 as public interest standing.  
22 (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166  
23 [citations omitted]; see also *Green v. Obledo* (1981) 29 Cal.3d 126, 144 .)

24 As with a mandamus action, which generally requires a party to be “beneficially  
25 interested”, under Government Code section 11350(a), “any interested person” may  
26 obtain a judicial declaration regarding the validity of a regulation by filing an action for  
27 declaratory relief.

28 The term “interested person” under Government Code section 11350(a) and for  
declaratory relief actions has been interpreted using the same tests as used to determine  
whether a petitioner is “beneficially interested” under mandamus proceedings. (See, e.g.,  
*Environmental Protection Information Center v. Department of Forestry & Fire*

1 *Protection* (1996) 43 Cal.App.4th 1011, 1016; *Residents of Beverly Glen, Inc. v. City of*  
2 *Los Angeles* (1973) 34 Cal.App.3d 117, 125.) Thus, both private and public interest  
3 plaintiffs should be allowed standing to challenge regulations under either Government  
4 Code section 11350, or a mandamus action.<sup>2</sup> (See Asimow, et al, Cal. Practice Guide:  
5 Administrative Law (The Rutter Group 2019) ¶¶ 14:5, 14:6 , 14:182.)

6 “Further, taxpayer suits and citizen [public interest] suits are closely related  
7 concepts of standing. The chief difference is a taxpayer suit seeks preventative relief, to  
8 restrain an illegal expenditure, while a citizen suit seeks affirmative relief, to compel the  
9 performance of a public duty. Where standing appears under either rule, the action may  
10 proceed regardless of the label applied by the plaintiff.” (*Connerly v. State Personnel*  
11 *Bd.* (2001) 92 Cal.App.4th 16, 29 [internal citations omitted].)

12 Thus, a finding of public interest standing is sufficient to confer standing on  
13 Petitioner for all of the relief he seeks.

14 Here, Petitioner argues that he has consistently asserted protection of the public  
15 as a prominent component of his case, and that the issue in this case is one of a public  
16 right and the object of it is to procure the enforcement of a public duty.

17 Petitioner argues that the Advertising Placement Statute unequivocally bans  
18 cannabis advertising on billboards on all portions of the Interstate Highways and State  
19 Highways that cross the California border, and was adopted by voter initiative in  
20 Proposition 64 on November 8, 2016. Petitioner argues that this established a public  
21 right for the people of California to be protected from these types of billboard ads on  
22 these highways, and that Business and Professions Code section 26011.5 requires that  
23 the protection of the public be the highest priority for all licensing authorities, including  
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25 <sup>2</sup> Defendants argue that an interested party in a declaratory relief action is mutually exclusive from a  
26 public interest writ, and that Petition cannot be a statutorily recognized interested party, as well as an  
27 exception the statutory interested party requirement in order to create public interest standing.  
28 However, while there may be factual or policy reasons not to extend public interest standing to certain  
declaratory relief actions depending on the specific facts at issue, Defendants cite no authority that  
public interest standing cannot be applied in a declaratory relief action challenging the validity of a  
regulation.

1 the Bureau, in exercising their regulatory functions.

2 Business and Professions code section 26013(a) furnishes the Bureau with the  
3 authority to make reasonable regulations under the MAUCRSA, but provides that those  
4 regulations must be consistent with the purpose and intent of Proposition 64. Petitioner  
5 contends that the Bureau failed to comply with this statutory duty in adopting the  
6 Advertising Placement Regulation, and that the regulation conflicts with and is not  
7 consistent with the purpose and intent of the Advertising Protection Statute.

8 Petitioner analogizes this matter to *Friends of Oceano Dunes, Inc. v. San Luis*  
9 *Obispo County Air Pollution Control Dist.* (2015) 235 Cal.App.4th 957, 963  
10 (“*Friends*”). In *Friends*, the petitioner brought a petition for writ of mandate and  
11 complaint for declaratory/injunctive relief. In that case, the court found there to be  
12 public interest standing. The court held that the interpretation and scope of a statute and  
13 the determination whether a local rule exceeded the statutory authority of the issuing  
14 agency was a matter of general public interest, and the responding agency conceded that  
15 the appeal presented an important issue of statutory interpretation affecting the permit  
16 authority of all California air pollution districts. (*Ibid.*)

17 In *Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th  
18 1159, the court found that the petitioner plaintiffs had public interest standing to ensure  
19 that the City of Pomona did not permit the construction of billboards in violation of a  
20 voter proposition. The court found that “[c]ompliance with the law, particularly one  
21 enacted by voter initiative in response to the initial formation of the contract allowing  
22 billboards into the city, is in our view a ‘sharp’ public duty.” (*Citizens for Amending*  
23 *Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1177.)

24 Petitioner argues that he is acting to promote and safeguard the public welfare,  
25 and that the Court should find that he has citizen public interest standing.

26 In opposition, Defendants argue that the Court should not extend the public  
27 interest exception in this case because it involves a duly enacted regulation by the  
28 Bureau and Plaintiff has failed to show a public need justifying extension of the narrow

1 exception to standing.

2 Defendants argue that courts carefully consider policy considerations in deciding  
3 whether to extend or deny this exception to standing. (*Reynolds v. City of Calistoga*  
4 (2014) 223 Cal.App.4th 865, 875 [public interest standing doctrine is designed to ensure  
5 that government misconduct can be challenged, not that alleged government misconduct  
6 will be challenged in every case].)

7 Defendants further argue that the public interest exception should not be  
8 extended to overturn a regulation where there is an absence of any parties who can  
9 demonstrate they were harmed.<sup>3</sup> (*People ex rel. Becerra v. Superior Court* (2018) 29  
10 Cal.App.5th 486, 497.)

11 The Bureau argues that it has broad authority to promulgate reasonable rules and  
12 regulations as may be necessary to implement, administer, and enforce its duties under  
13 MAUCRSA, and that it performed its duty. The Bureau argues that the Advertising  
14 Placement Regulation supports public protection, arguing that its regulations support a  
15 regulated commercial cannabis market which correlates to a reduction in illegal cannabis  
16 in the interest of public protection.

17 Defendants further argue there are equitable reasons to deny public interest  
18 standing, including principles of comity and separation of powers, and because Plaintiff  
19 has made no showing of how the public would suffer from the alleged offense of  
20 commercial cannabis billboards.

21 Defendants argue that the Bureau's administration of MAUCRSA and duty of  
22 public protection will be substantially undermined, should this Court invalidate a  
23 regulation duly enacted by the Bureau in furtherance of its substantial obligations to the  
24 public, and that it would prejudice the licensees, consumers, medicinal patients, and  
25 public who voted in favor of Proposition 64. However, the Court has difficulty seeing

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28 <sup>3</sup> Here, however, while Plaintiff's individual beneficial interest is similar to that of the general public, he will in fact be affected by the Advertising Placement Regulation, through exposure to billboards that are allowed pursuant to that regulation. Petitioner is not wholly unaffected by this regulation.

1 how a judicial declaration that the Bureau's Advertising Placement Regulation is  
2 inconsistent with the law as enacted by Proposition 64, would prejudice the public or  
3 voters.

4 Finally, Defendants argue and object that Petitioner raises public interest  
5 standing for the first time in writing in his supplemental brief, that it is insufficiently  
6 pleaded, that public interest standing was raised for the first time at the hearing, and that  
7 Defendants did not receive due process on this issue. These arguments are not well  
8 taken.

9 Petitioner's Petition opens by stating that he is bringing this action in the public  
10 interest, and the petition raises protection of the public throughout. Moreover, the Court  
11 specifically asked the parties to come prepared to address standing. The Court ordered  
12 full further briefing on the issue of standing with no limitations. Defendants  
13 subsequently filed a 32-page brief as well as a sur-reply on the issue, which the Court  
14 has reviewed and considered, and Defendants are entitled to appear at the hearing on  
15 this matter, and the Court finds that they have had notice and full opportunity to be heard  
16 on the issue of standing, including public interest standing.

17 After review of the parties' supplemental briefs, the Court finds that Petitioner  
18 has shown public interest standing and is entitled to bring this action. The Court finds  
19 that the Bureau's compliance with the MAUCRSA/Proposition 64 is a strong public  
20 duty, that the interpretation and scope of the law is strongly in the public interest, and  
21 that Petitioner is seeking to procure enforcement of the Bureau's duty to comply with  
22 MAUCRSA/Proposition 64, the proposition's purpose and intent.

23 Because the Court finds that Petitioner has public interest standing, it need not  
24 address the parties' other arguments with regard to standing.

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26 **IV. Validity of the Advertising Placement Regulation.**

27 As set forth above, Petitioner challenges the validity of the Advertising  
28 Placement Regulation.

1 Business and Professions Code section 26013(a) allows the Bureau to make and  
2 prescribe reasonable rules and regulations necessary to implement, administer, and  
3 enforce their respective duties under MAUCRSA, as long as the rules and regulations  
4 are consistent with the purposes and intent of Proposition 64. (Bus. & Prof. Code, §  
5 26013.)

6 The validity of regulations promulgated by agencies such as the Bureau are  
7 measured in part by Government Code section 11342.2, which states:

8 Whenever by the express or implied terms of any statute a state agency  
9 has authority to adopt regulations to implement, interpret, make specific  
10 or otherwise carry out the provisions of the statute, no regulation adopted  
11 is valid or effective unless consistent and not in conflict with the statute  
12 and reasonably necessary to effectuate the purpose of the statute. (Gov.  
13 Code, § 11342.2.) (See also *Agnew v. State Bd. of Equalization* (1999) 21  
14 Cal.4th 310, 321.)

15 “Consistency” means being in harmony with, and not in conflict with or  
16 contradictory to, existing statutes, court decisions, or other provisions of law. (Gov.  
17 Code, § 11349.)

18 “Administrative regulations that alter or amend the statute or enlarge or impair  
19 its scope are void and courts not only may, but it is their obligation to strike down such  
20 regulations.” (*Littoral Development Co. v. San Francisco Bay Conservation etc. Com.*  
21 (1994) 24 Cal.App.4th 1050, 1058; see also *In re Edwards* (2018) 26 Cal.App.5th 1181,  
22 1189 [There is no agency discretion to promulgate a regulation which is inconsistent  
23 with the governing statute. Whatever the force of administrative construction final  
24 responsibility for the interpretation of the law rests with the courts. Administrative  
25 regulations that alter or amend the statute or enlarge or impair its scope are void.])

26 Petitioner argues that the Advertising Placement Regulation is invalid because  
27 (1) it is inconsistent with the Advertising Placement Statute, and (2) it conflicts with the  
28 purposes and intent of Business and Professions Code section 26152(d) (the Advertising  
Placement Statute).

1           As set forth above, the Advertising Placement Statute provides that a licensee  
2 shall not advertise or market on a billboard or similar advertising device located on an  
3 Interstate Highway or on a State Highway which crosses the California border.

4           Meanwhile, the Advertising Placement Regulation being challenged by  
5 Petitioner provides that all outdoor signs, including billboards, advertising or marketing  
6 cannabis, and cannabis products shall not be located within a 15-mile radius of the  
7 California border on an Interstate Highway or on a State Highway that crosses the  
8 California border.

9           Petitioner argues that the plain language of the Advertising Placement Statute  
10 states in no uncertain terms that cannabis or cannabis products are prohibited from being  
11 advertised or marketed on billboards located anywhere on the Interstate Highways and  
12 State Highways which cross the California border. No further clarification as to what  
13 extent such prohibitions take place is needed because the intent of the voters and  
14 legislature, that there should be no such advertising on these highways, is more than  
15 obvious from the language of the statutes.

16           The Bureau gave the following reason for adoption of the Advertising Placement  
17 Regulation:

18           Subsection (b)(3) has been added to clarify that outdoor signs, including  
19 billboards, shall not be located within a 15-mile radius of the California  
20 border or an Interstate Highway or on a State Highway which crosses the  
21 California border. The Act prohibits certain advertisements along  
22 Interstate Highways and State Highways that cross the California border  
23 but does not clarify to what extent such prohibitions take place. This  
24 change is necessary to clarify the prohibitions found in section 26152(d)  
25 of the Business and Professions Code, by allowing the placement of  
26 outdoor signs or billboards along Interstate Highways or State Highways,  
27 provided that they are located further than 15-miles from the California  
28 border. The Bureau determined that a 15-mile radius was a necessary and  
appropriate distance from the California border because it satisfies that  
the intent of section 26152(d) of the Business and Professions Code,  
while assuring that Bureau licensees, including those located in  
jurisdictions along the California border, still have an opportunity to  
advertise and market their commercial cannabis operations along

1 Interstate Highways and State Highways if they satisfy the identified  
2 radius limitations.  
3 (AR0001-AR0002.)

4 Petitioner argues that the Bureau’s interpretation/clarification of the Advertising  
5 Placement Statutes is not a reasonable construction of the statute because it eviscerates  
6 the scope of the ban by allowing cannabis advertising billboards on all portions of the  
7 Interstate Highways or State Highways except those within a 15-miles from the  
8 California border.

9 Petitioner further argues that the Advertising Placement Regulation promotes  
10 interests at odds with protection of the public. Business and Professions Code section  
11 26011.5, part of MAUCRSA, provides that “[t]he protection of the public shall be the  
12 highest priority for all licensing authorities in exercising licensing, regulatory, and  
13 disciplinary functions under this division. Whenever the protection of the public is  
14 inconsistent with other interests sought to be promoted, the protection of the public shall  
15 be paramount.”

16 Petitioner argues that the Advertising Placement Regulation puts the advertising  
17 interests of Bureau licensees above the protection of the public, by greatly expanding the  
18 scope of cannabis advertising beyond that provided for in the Advertising Placement  
19 Statute.

20 In opposition, Defendants argue that the Bureau was within its rulemaking  
21 authority in implementing the Advertising Placement Regulation and that Plaintiff has  
22 failed to show that the regulation is invalid.

23 Defendants argue that the Advertising Placement Regulation is a quasi-  
24 legislative rule subject to a narrow scope of review by the Court. (*Association of  
25 California Ins. Companies v. Jones* (2017) 2 Cal.5th 376, 396.)

26 However, it appears here that the Bureau itself regarded this regulation as  
27 interpretive, rather than quasi-legislative. The Bureau’s own notice provides that the  
28 Advertising Placement Regulation was implemented to *clarify* the Advertising  
Placement Statute. (AR0001-AR0002.)

1           “A court reviewing the validity of an interpretive rule therefore must consider  
2 more than simply whether the rule is within the scope of the authority conferred, and  
3 whether the rule is reasonably necessary to effectuate the statute’s purpose. Rather, a  
4 court must also consider whether the administrative interpretation is a proper  
5 construction of the statute.” (*Association of California Ins. Companies v. Jones, supra*, 2  
6 Cal.5th at p. 397.) In that review, the Court accords great weight to the administrative  
7 construction, but its interpretation does not carry with it the dignity of statutes. (*Ibid.*)  
8 Nonetheless, interpretation of the relevant statutes is a question of law on which the  
9 Court exercises independent judgment. (*Id.* at pp. 389-390.)

10           Defendants argue that it acted within the scope of its authority by implementing  
11 the Advertising Placement Regulation, which is necessary to effectuate the purpose of  
12 the MAUCRSA.

13           In reply, Petitioner argues that Business and Professions Code section 26013(a)  
14 provides that the Bureau has authority to make regulations as may be necessary to  
15 implement, administer, and enforce its duties, but that it does not provide it with  
16 authority to interpret or clarify provisions of a statute. Petitioner argues that the Bureau  
17 can make regulations that are consistent with the purposes of Proposition 64, but does  
18 not have the authority to adopt regulations that interpret these statutes. Petitioner  
19 therefore argues the Bureau was acting ultra vires.

20           Defendants argue that Petitioner is making a facial challenge to the validity of  
21 the Advertising Placement Regulation, and that the regulation must be inconsistent with  
22 the relevant statutes in all conceivable applications. (*PacifiCare Life & Health Ins. Co.*  
23 *v. Jones* (2018) 27 Cal.App.5th 391, 403.) Defendants then argue that the Advertising  
24 Placement Regulation and Statute are consistent because both prohibit billboard  
25 advertising within a 15-mile radius of the California border, and the facial challenge  
26 must fail.

27           Petitioner argues his challenge is not a facial challenge, because it addresses the  
28 Advertising Placement Regulation as applied. Moreover, the Court disagrees that the

1 two are consistent because the Advertising Placement Regulation and Statute both  
2 prohibit advertising within a 15-mile radius.

3 Defendants next argue that the Bureau's interpretation of the Advertising  
4 Placement Statute was reasonable. It argues that the statute is ambiguous in scope  
5 because of a failure to define Interstate Highways and State Highways and that the  
6 Advertising Placement Regulation avoids the absurd consequences of removing any  
7 geographic limit on the advertising ban, and that the statute must be interpreted to refer  
8 only to highways in fairly close geographic proximity to the border.

9 Nonetheless, Defendants cite to no portion of the administrative record or  
10 rulemaking file showing that failure to define Interstate Highways or State Highways  
11 was a reason that the Bureau adopted the Advertising Placement Regulation. (Gov.  
12 Code, § 11350(d).)

13 Moreover, this argument is belied by the fact that the Advertising Placement  
14 Regulation uses identical terms, Interstate Highways and State Highways, as the  
15 Advertising Placement Statute, without further definition. Moreover, these terms are  
16 defined in Streets and Highways Code sections 23, 24, 300, et seq., 746(h), and the  
17 Bureau did not seek in its regulation to clarify which of the routes would be subject to  
18 the regulation. Thus, it does not appear that the Advertising Placement Regulation  
19 sought to clarify ambiguities in these terms as argued.

20 Defendants further argue that the Court should construe the statutory framework  
21 and implementing regulations as a whole and that the Advertising Placement Regulation  
22 is consistent with and reasonably necessary to ensure the viability of the statewide  
23 commercial market and advance the policy goals of Proposition 64, while at the same  
24 time ensuring public protection. They argue they argue that the voters never articulated  
25 an unequivocal ban on licenses engaging in truthful marketing and advertising on  
26 billboards.

27 Nonetheless, the Court finds that the Bureau exceeded its authority in  
28 promulgating the Advertising Placement Regulation. The Advertising Placement

1 Regulation is clearly inconsistent with the Advertising Placement Statute, expanding the  
2 scope of permissible advertising to most of California's State and Interstate Highway  
3 system, in direct contravention of the statute.

4 "Regulations that alter or amend the statute or enlarge or impair its scope are  
5 void." (*Carmel Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287, 300.) The  
6 Bureau argued in promulgating the regulation that it was clarifying the application of the  
7 Advertising Placement Statute, however that statute was clear on its face, and the  
8 Bureau's interpretation of the statute went beyond its authority.

9 The Advertising Placement Regulation conflicts with the Advertising Placement  
10 Statute and is invalid under Government Code section 1134.2.

## 11 12 **CONCLUSION**

13 Plaintiff's Petition is granted. Whether Plaintiff shall be entitled to attorneys'  
14 fees under Code of Civil Procedure section 1021.5 shall be determined pursuant to  
15 subsequent motion. Plaintiff is to provide an order to the Court for signature, consistent  
16 with this Ruling, after meeting and conferring with Defendants. If the parties are unable  
17 to agree on an order, the matter may be placed on an ex parte calendar, with notice, for  
18 the Court to consider the proposed Order.

## 19 20 **EVIDENTIARY OBJECTIONS**

21 The Court sustains Defendants' evidentiary objection number 16.

22 The Court overrules Defendants' evidentiary objections numbers 1-9, 25-30, and  
23 37-40 which object to portions of Petitioner's briefs, on the grounds that these  
24 provisions are argument, not evidence. The Court considered them only as argument, not  
25 evidence.


26 The Court overrules Defendants' evidentiary objections numbers 10-13, and 17,  
27 on the grounds that they are submitted in support of the issues of ripeness and standing.  
28 They were not considered when deciding the validity of the regulation itself.

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The Court sustains Defendants' evidentiary objection number 32.

The Court declines to rule on objections 14, 15, 18, 19-24, 31, and 33-36, as the Court did not rely on the evidence to which Defendants object and it was immaterial to the Court's decision.

DATED: November 20, 2020

  
GINGER E. GARRETT  
Judge of the Superior Court

GEG:jn

**STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO  
CERTIFICATE OF MAILING**

Matthew Farmer vs. Lori Ajax

19CV-0597

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I, Kathy Martindelcampo, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **11/20/2020** I deposited in the United States mail at San Luis Obispo, California, first class postage prepaid, in a sealed envelope, a copy of the attached **Ruling on Petition for Writ of Mandate and Complaint for Injunctive and Declarative Relief**. The foregoing document was addressed to each of the above parties.

OR

If counsel has a pickup box in the Courthouse a copy was placed in said pickup box this date.

OR

Document served electronically pursuant to CRC§2.251(b)(1)(B).

Dated: 11/20/2020

Michael Powell, Clerk of the Court

By: /s/ Kathy Martindelcampo Deputy Clerk  
Kathy Martindelcampo