STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

OCC ABQ LLC d/b/a OASIS CANNABIS;
CANNABIS ASSOCIATION OF NEW MEXICO;
THE GROW NM,

Plaintiffs,

v.

NEW MEXICO REGULATION AND LICENSING
DEPARTMENT; CANNABIS CONTROL DIVISION
OF THE NEW MEXICO REGULATION AND
LICENSING DEPARTMENT; TODD STEVENS,
in his official capacity as Director of the Cannabis
Control Division; and CLAY BAILEY, in his official
capacity as Superintendent of the Regulation and Licensing Department,

Defendants.

VERIFIED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs' hereby submit their verified application for Temporary Restraining Order and Preliminary Injunction, and states as follows:

INTRODUCTION

On August 25, 2026 at 5:00 p.m., the Cannabis Control Division will shut down the only lawful means of moving cannabis between licensed businesses in New Mexico. It will do so under an industry bulletin issued eleven days earlier, for a replacement system whose first training manuals appeared at 4:59 p.m. on August 18, seven days before the deadline, depicting a quality assurance release candidate. The Division's own promulgated rules make the shutdown a statewide legal stop on commerce: a licensee without a functional track and trace account may not operate at all, 16.8.7.9 NMAC, and may not transport or receive product during any loss of access, 16.8.7.11(C) NMAC. The bulletin nonetheless instructs licensees to keep operating on paper records and reconcile later, placing every licensee in the state in the position of violating either the bulletin or the rules, with the Division reserving the right to audit whichever choice they make.

Plaintiffs do not ask the Court to stop the new system. They ask for one narrow thing: that the currently functioning system remain the system of record while the State finishes building, testing, and documenting its replacement. The State is contractually paid for that exact continuity through at least September 15, 2026 at $23,127.50 per month. The relief sought costs the State nothing it has not already bought.

JURISDICTION

The Cannabis Regulation Act grants jurisdiction directly: "A person who is or may be affected by a rule promulgated by the division or other state agency pursuant to the Cannabis Regulation Act may appeal to the district court." NMSA 1978, § 26-2C-35. This Court also has jurisdiction under the Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15, and to grant injunctive relief. No administrative remedy exists to exhaust: the Division noticed no rulemaking, held no hearing, and provided no avenue of review in any bulletin or letter. If the obligations it has imposed are rules, they are appealable here and invalid because never promulgated, NMSA 1978, § 14-4-5(A); if they are not rules, no review mechanism reaches them at all. New Energy Economy, Inc. v. Shoobridge, 2010-NMSC-049, 149 N.M. 42, 243 P.3d 746, bars interrupting a pending rulemaking; there is no rulemaking here to interrupt, and the obligations take effect August 25.

STANDARD

A movant must show: (1) irreparable injury absent relief; (2) threatened injury outweighing any damage to the adversary; (3) no adverseness to the public interest; and (4) substantial likelihood of success on the merits. Lujan Grisham v. Romero, 2021-NMSC-009, ¶ 20, 483 P.3d 545 (citing LaBalbo v. Hymes, 1993-NMCA-010, ¶ 11, 115 N.M. 314, 850 P.2d 1017). The relief requested is prohibitory: it preserves the last uncontested operating condition while expressly permitting the replacement's continued development and parallel deployment.

FACTUAL BACKGROUND

The facts are established by the attached affidavits. The agency documents described below are quoted in and authenticated by those affidavits; Plaintiffs will produce any of them at the hearing.

1. The schedule. Bulletin 26-08 (August 10, 2026) announced migration beginning end of day August 25. Bulletin 26-09 (August 14, 2026) published the timeline: BioTrack off for all non-retailer licensees August 25 at 5:00 p.m.; retailers unable to receive inventory until approximately September 2; testing laboratories closed to samples August 25 through 31; BioTrack off entirely September 4 at 12:01 a.m. The bulletin calls its own schedule tentative. (Oueis Aff.)

2. The rule-bulletin collision. Bulletin 26-09 instructs that the shutdown does NOT mean licensees cannot engage in the standard permissions of their license types, with records to be reconciled later. The Division's promulgated rules provide the opposite. 16.8.7.9 NMAC; 16.8.7.11(C) NMAC. During the Division's unplanned June 2025 outage, its own Bulletin 25-07 instructed licensees consistently with the rules: no transfers, manual records, post-restoration audit. (Oueis Aff.)

3. The Division's written admissions. On August 12, 2026, Plaintiff OCC ABQ's chief executive put eight written operational questions to the Director. The Director's August 18 written response confirms that “no transfers of cannabis or cannabis products between licensed locations may occur during the migration period”; that “there will not be a manual or offline process that permits licensees to complete transfers”; and that transfers resume only after a Division

confirmation with no stated standard or timeline. It acknowledges the rules “do not specifically address a planned statewide migration between track-and-trace systems,” so the Division is providing “transition-specific procedures governing the migration period.” It suspends the daily reconciliation requirement of 16.8.7.10(A) NMAC by letter, declines the written enforcement forbearance requested, conditions retail sales after September 4 on NMS2S “or an approved POS API integration,” and calls its own schedule tentative. (Oueis Aff.)

4. The unfinished replacement. The first training materials for NMS2S were published at 4:59 p.m. on August 18, 2026, by Bulletin 26-10, eleven minutes after the Director's response. The official manuals' interface screenshots carry the build label “QA v1.0.0-rc.”, the mark of a release candidate under quality assurance testing, and depict inventory tiles reading “tbd” with every item status “Unknown.” The Division's transition webpage stated the same evening that the help line “number is being established,” that how-to videos and frequently asked questions are “in development,” and that “Dates for training sessions are being determined.” Plaintiff OCC ABQ's written requests for test credentials, made August 12 and renewed August 17 and August 19 with a requested response deadline of noon August 20, received no response of any kind until the morning this application was filed, when the Division circulated a form invitation to apply for test-environment access. That invitation states that the API and its documentation “are under active development and are subject to change”, and that test access “does not constitute approval or authorization for access to the NMS2S production environment”, with production access “subject to additional eligibility, onboarding, technical, security, certification, validation, or agreement requirements established by CCD” that appear in no rule. The published integration surface remains limited to six dispense endpoints, with no interface for receiving, transfers, adjustments, destruction, plants, or laboratory submission. (Oueis Aff.; Griffin Aff.)

5. Notice and refusal. On August 14, 2026, the Cannabis Association of New Mexico's board demanded in writing an "Immediate Pause of NMS2S Rollout and Continuation of BioTrack Services," proposing eight specific actions. On August 19, 2026, the Division refused all eight in writing, explaining: "The current emergency procurement agreement with BT Government Inc. (BioTrack) expires September 15, 2026"; the Division "sought a substantially longer continuation of the existing arrangement, but BioTrack agreed only to terms extending through September 15, 2026"; and it "does not presently have an agreement, procurement authorization, or identified funding mechanism" beyond that date. The letter confirms manuals were first made public August 18 and declines "CANM's proposed 30-day prerequisite" for training. The date driving this migration is a vendor contract expiration, not a readiness determination. (Kennicott Aff.)

6. The State's own paper. In October 2024 the Department certified under signature that loss of the tracking system "threatens the health and safety of the people of New Mexico, specifically the continuity of care for medical cannabis patients," and its March 2026 emergency procurement determinations (60-42000-26-EM013, EM017) again justified BioTrack continuity on public health grounds, at $23,127.50 per month through at least September 15, 2026, and, on the face of the signed forms, September 15, 2027. (Oueis Aff.)

ARGUMENT

I. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED.

A. A bulletin cannot suspend promulgated rules.

An agency is bound by its own regulations, Narvaez v. N.M. Dep't of Workforce Solutions, 2013-NMCA-079, ¶ 15; failure to comply with its own published procedures is fatal to the resulting action, Miller v. City of Albuquerque, 89 N.M. 503, 507, 554 P.2d 665, 669 (1976); and a document never promulgated under the State Rules Act has no force of law, Princeton Place v. N.M. Human Servs. Dep't, 2022-NMSC-005, 503 P.3d 319; NMSA 1978, § 14-4-5(A). The syllogism is short: the Division is bound by 16.8.7.9 and 16.8.7.11(C) NMAC; Bulletin 26-09 was never promulgated; it therefore cannot suspend those rules, and its instruction that licensees keep operating through a statewide loss of access directs the industry to violate binding law. The State Rules Act defines a "rule" to include any standard "purporting to affect" persons served by the agency. NMSA 1978, § 14-4-2(F). The obligations the bulletins impose, the changes-form retesting standard, the operate-and-reconcile regime, are unpromulgated rules invalid on arrival.

The Division has conceded the premise in writing: the rules "do not specifically address" the migration, so it is issuing "transition-specific procedures" carrying enforcement consequences. That is a rule in the words of § 14-4-2(F), issued in the one manner the Act makes unenforceable. The same letter suspends a promulgated reconciliation rule by correspondence and invents a point of sale approval power that appears in no statute or rule, while the promulgated rule affirmatively allows licensees to "use separate software applications... including additional inventory tracking or point of sale systems." 16.8.7.10(G) NMAC. The letter also tells licensees no offline alternative exists, when rule 16.8.2.13(I) NMAC, Alternative notice of shipment, commands the precise mechanism for a licensee who "cannot obtain access to the track and trace system": complete the manifest outside the system and email it to the Division and the receiver. The Division has told every licensee the rules furnish no offline mechanism when its own rules furnish one and require its use.

The pattern continued that evening. Bulletin 26-10 directed licensees to a webpage announcing "THE TRANSITION IS MANDATORY FOR ALL CANNABIS LICENSEES" and imposing courier-tracking, approved-inventory-type, and changes-form retesting commands that appear in no promulgated rule. The page is not even stable enough to obey: a capture at 6:12 p.m. on August 18 records that "If licensees choose, sales may still occur in BioTrack until the cutoff date (September 4)"; a capture of the same page at 6:58 p.m. records instead that "Sales MUST continue to be processed through BioTrack until the cutoff date (September 4)." An obligation that flips from permissive to mandatory in one evening, on a webpage, with no notice, is the opposite of what the State Rules Act requires. (Oueis Aff.)

B. The implementation is arbitrary and capricious under the Division's own rules.

The testing rule reserves express discretion to delay implementation and commands consideration of laboratory capacity. 16.8.7.15(B)(1), (B)(3) NMAC. The Division did the opposite: it activated a new statewide finished-product testing gate by bulletin in the same week it closed laboratory intake for six days, with no published capacity analysis and no credentials. An agency that certifies a tracking gap as a public health emergency when procuring software, then schedules a longer gap on eleven days' notice, is contradicting its own administrative record. And it disregarded the less restrictive path its own rule 16.8.2.13(I) NMAC prescribes for exactly this contingency, without explanation.

C. The bulletin regime is executive creation of substantive law.

Executive action that creates new law rather than executing existing law is an unconstitutional encroachment. State ex rel. Taylor v. Johnson, 1998-NMSC-015, ¶¶ 21, 25, 125 N.M. 343, 961 P.2d 768. The Legislature commanded that Division rules be adopted under the State Rules Act. NMSA 1978, § 26-2C-3(A). The Division may enforce its rules or amend them through rulemaking; it may not override them by bulletin and then audit licensees against the very rules it told them to break.

D. The cutover deprives licensees of protected property interests without due process.

A license to engage in a regulated occupation is a protected property interest requiring notice and an opportunity to be heard before deprivation. Mills v. N.M. State Bd. of Psychologist Examiners, 1997-NMSC-028, ¶¶ 13-15, 123 N.M. 421, 941 P.2d 502; N.M. State Racing Comm'n v. Yoakum, 113 N.M. 561, 829 P.2d 7 (Ct. App. 1991). The blackout functionally suspends the operating privileges of entire license classes for six to eight days, on eleven days of bulletin notice, with no hearing mechanism. And the contradictory-commands trap is independently unconstitutional: a State may not punish a citizen for exercising a privilege the State told him was available, Raley v. Ohio, 360 U.S. 423, 438-39 (1959); commands that conflict cannot support sanctions, United States v. Cardiff, 344 U.S. 174 (1952). The Director's August 18 letter carries both commands in one document: all transfers “must cease,” yet licensees may continue their licensed activities, with compliance judged afterward against “transition instructions” appearing in no rule. (Oueis Aff.)

E. The statewide movement ban exceeds the only authority the Legislature granted.

The Cannabis Regulation Act confers exactly one power to restrain movement of cannabis products: an order restricting products “that are or are suspected of being adulterated or dangerously or fraudulently misbranded,” NMSA 1978, § 26-2C-43(B)(3), bounded by notice to the licensee and a duration “not... longer than necessary to complete the... investigation,” § 26-2C-43(D). The announced shutdown is statewide, reaches every product, is untethered to any investigation, and has no stated endpoint. That is not a smaller exercise of the granted power; it is a different power the Legislature never conferred. Taylor, 1998-NMSC-015.

II. THE INJURY IS IRREPARABLE.

First, the harm is a legal bar, not a business loss: while the shutdown runs, 16.8.7.11(C) NMAC forbids licensees to transport or receive product, and 16.8.7.9 NMAC forbids operating at all without a functional account. The Director has confirmed in writing that no transfers may occur, no offline alternative will exist, and resumption waits on a confirmation with no standard or deadline. No judgment restores a week of commerce the law itself prohibited. Second, Defendants twice certified under signature that this precise harm threatens the health and safety of medical cannabis patients. Third, no adequate remedy at law exists against these Defendants. Fourth, approximately 770 transactions per day in Plaintiff OCC ABQ's stores alone are sales to qualified medical patients whose access to particular products, in communities with no alternative supplier, cannot be remedied by money. (Oueis Aff.)

The harm has begun. On August 19, 2026, Argon LabsNM, a licensed testing laboratory, notified customers in writing that it "will stop accepting samples at the close of business today," citing "an unusually high sample volume" driven by the August 25 shutoff, and that it will be closed August 27 and 28. The laboratory blackout scheduled for August 25 began six days early, and the bottleneck propagates to every manufacturer and retailer in the supply chain. (Oueis Aff.) The affidavits of the coalition plaintiffs detail the same harms across cultivation, manufacturing, distribution, transport, and software: forced overstocking, dual-system reconciliation error risk, manual re-keying of compliance data, stranded working capital, and delayed revenue. (Gomez Aff.; Griffin Aff.)

Defendants' anticipated answer, that the Division will be flexible, defeats them. The Division declined written forbearance, offering case-by-case evaluation "in light of the circumstances." The Director has told the industry on the record what those circumstances include. Describing how the Division decides "final disciplinary action" at its April 27, 2026 industry meeting, he stated: "If the person has recalled voluntarily, if the person has covered their branding, have they been working with us? Have they just told us? We don't know what we're doing and we'll see you in court. Those all go into how we will move forward with final disciplinary action and we take in the totality of the circumstances." (Apr. 27, 2026 CCD Product Packaging Industry Meeting Tr. at 8, produced by Defendants under IPRA; quoted at Oueis Aff.) Plaintiff OCC ABQ is presently in litigation against these Defendants in this Court. An unenforceable assurance of leniency, administered under stated criteria that weigh a licensee's litigation posture, is not an adequate remedy at law.

III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST FAVOR RELIEF.

The State's cost of compliance is its own contracted $23,127.50 per month, already procured through at least September 15. The order does not touch the replacement's development, testing, training, credentialing, or voluntary use, and Bulletin 26-09 calls its own schedule tentative. Against that: a statewide rule-enforced stop on lawful commerce, interrupted patient access, and a compliance trap the Division has promised to audit. The Division's own August 19 letter confirms the schedule rests on a vendor contract cliff of the Department's own procurement timing, not on readiness; that is not a harm attributable to Plaintiffs or a reason to visit the consequences on the regulated industry. The public interest in the integrity of the tracking system is served by keeping the functioning system of record online, the position the Department itself certified in 2024 and 2026.

IV. SECURITY SHOULD BE NOMINAL.

Security under Rule 1-066(C) NMRA should be nominal. The only compliance cost in the record is the continuity contract the State has already executed and budgeted.

V. NOTICE.

This application is not ex parte. Defendants and their counsel are being served with the application and all supporting papers by electronic mail on the date of filing, and Defendants' counsel received the substance of Plaintiffs' positions in correspondence throughout the week of August 17. Plaintiffs request an emergency hearing before August 25, 2026.

CONCLUSION AND REQUESTED RELIEF

Plaintiffs request entry of the proposed Temporary Restraining Order and Order to Show Cause: temporarily restraining Defendants from disabling BioTrack as the statewide system of record, from requiring exclusive use of NMS2S, and from penalizing licensees for operating in BioTrack in the ordinary course; expressly permitting continued parallel development and deployment of NMS2S; setting a preliminary injunction hearing within the term of the order; and setting nominal security.

Respectfully submitted,

VERIFICATION

I, Kane Oueis, Chief Executive Officer of OCC ABQ LLC, verify under penalty of perjury under the laws of the State of New Mexico that I have read the foregoing application and that the factual statements concerning OCC ABQ LLC and its operations are true and correct to my personal knowledge.

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Kane Oueis | Date: 8/21/2026