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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Alameda  
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By: Cheryl Clark,  
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 GREEN SAGE MANAGEMENT, LLC, a )  
13 Colorado Limited Liability Corporation )

14 Petitioner, )

15 v. )

16 BAY AREA AIR QUALITY )  
17 MANAGEMENT DISTRICT; BAY AREA )  
18 AIR QUALITY MANAGEMENT DISTRICT )  
19 HEARING BOARD )

20 Respondents. )

Case No.: **22CV015219**

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND REQUEST FOR STAY**

[Code of Civil Procedure § 1094.5; Health and  
Safety Code § 40864]

21 Petitioner GREEN SAGE MANAGEMENT, LLC, (“Petitioner” or “Green Sage”) hereby  
22 petitions this Court for a peremptory writ of mandate, pursuant to Code of Civil Procedure  
23 §1094.5, directing Respondents Bay Area Air Quality Management District (“District”) and the  
24 District Hearing Board (“Hearing Board”) to vacate and/or set aside its Order for Abatement  
25 regarding the operation of portable diesel generators at 5601 and 5733 San Leandro Street,  
26 Oakland, California (“Order for Abatement”) issued on July 21, 2022, a true copy of which is  
27 attached hereto as **Exhibit A**. Additionally, Petitioner seeks a stay of the Order for Abatement  
28 pending resolution of this action; Petitioner’s request will be supported by a separately filed motion  
following the docketing of this petition. In support of its petition, the Petitioner alleges the  
following:

## INTRODUCTION

1  
2 1. Green Sage is the property manager for two properties located at 5601 and 5733 San  
3 Leandro Street in Oakland, California (“Properties”). Tenants of the Properties include those who  
4 use the indoor commercial space to cultivate cannabis crops. These tenants require a consistent  
5 source of electricity to power artificial lighting used for cultivation. Interruptions of power will  
6 lead to an immediate loss of crops.

7 2. After experiencing multiple interruptions of reliable electric service to the  
8 Properties, including the failure of a transformer owned and operated by Pacific Gas and Electric  
9 Company, portable diesel generators were brought to the Properties to provide a consistent source  
10 of power until an upgraded and reliable source of electricity could be restored to the Properties.

11 3. Although the portable diesel generators held valid registrations issued through the  
12 California Air Resources Board (“CARB”) portable engine registration program (“PERP”), the  
13 District alleged the registrations were no longer valid and the generators required District permits.

14 4. Over the course of three days in June and July 2022, the Hearing Board held a  
15 public hearing to consider an accusation and request for an order for abatement filed by the District  
16 Air Pollution Control Officer (“APCO”) seeking to curtail the use of the portable diesel generators  
17 at the Properties. The Hearing Board received evidence from witnesses under oath and listened to  
18 comments from the public (not under oath or subject to cross-examination) during a public  
19 comment period.

20 5. On two occasions, lengthy exhibits, including hundreds of pages of emails and  
21 hundreds of pages of exhibits and supporting materials prepared by a previously undisclosed  
22 expert, were introduced at the hearing by the District after being provided to Green Sage counsel  
23 less than 24 hours prior to the hearing.

24 6. Further, the District heard highly prejudicial testimony from a purported urban  
25 planning expert who failed to provide adequate support for her opinions and, during the public  
26 comment period of the hearing was allowed to return to provide additional commentary that  
27 included a profanity-laced tirade and threats to the members of the Hearing Board should they not  
28 immediately act to issue the Order for Abatement.

1           7.       Finally, at the conclusion of the hearing, the Hearing Board, without making  
2 findings required by law to support its decision, voted to issue the Order for Abatement requiring  
3 Petitioner to discontinue operation of all portable diesel generators.

4           8.       In its final written Order of Abatement, the District attempted to paper-over the lack  
5 of findings and its abuse of discretion by first preparing a draft Order for Abatement stating that the  
6 Hearing Board found a “Basic Chronology” of certain critical facts “to be true” when it did not.  
7 After Petitioner raised this inconsistency in its comments on the draft Order for Abatement, the  
8 final document was amended to remove the statement that the Hearing Board found the facts to be  
9 true, but the chronology remained in the document. The final version of the Order for Abatement  
10 also included a statement that the Hearing Board declined to make detailed or bright line findings,  
11 “but found the diesel generators were being used 24/7 as the primary source of power in excess of  
12 12 months without District required permits.” This finding is incorrect, not supported by the  
13 evidence, and was not made during the public hearing.

14           9.       Enforcement of the Order for Abatement would result in, within days, the loss of  
15 millions of dollars of cannabis crop. The enforcement of the Order for Abatement would also  
16 result, within a short period of time in the loss of hundreds of direct and indirect jobs to Petitioner  
17 and its tenants. The District failed to present any evidence and did not make findings regarding  
18 any harm, much less immediate harm, to the public to support its Order for Abatement.

19           10.      Therefore, by failing to follow its own governing rules regarding presentation of  
20 evidence, allowing a highly prejudicial expert witness to testify and present public comment  
21 deprived Petitioner of a fair hearing. Further, by failing to support its decision with findings, in  
22 violation of California statutes and its governing rules, the District has abused its discretion.

23           11.      Petitioner therefore seeks a writ of administrative mandate vacating and setting  
24 aside Respondents’ improper issuance of an Order for Abatement. In addition, because Petitioner  
25 is likely to prevail on the merits, will suffer substantial irreparable harm if the Order for Abatement  
26 is enforced, and there has been no showing that Respondents or the public interest would be  
27 harmed, Petitioners request the Court to issue an immediate stay of the Order of Abatement  
28 pending trial.

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**JURISDICTION AND VENUE**

12. This Court has jurisdiction under section 1094.5 of the California Code of Civil Procedure (“C.C.P.”) and section 40864 of the California Health and Safety Code.

13. Venue for this action properly lies in the Alameda County Superior Court under C.C.P. section 393, subdivision (b) because the properties affected by Respondent’s Order for Abatement are located in Alameda County

**PARTIES**

14. Petitioner Green Sage Management, LLC is a limited liability corporation, incorporated in the State of Colorado. Green Sage manages a cannabis real estate portfolio, including the Properties subject to the Order for Abatement. Green Sage’s office is located at 100 Fillmore St, 5th Floor, Denver, CO 80206.

15. Respondent Bay Area Air Quality Management Control District is a public agency that regulates stationary sources of air pollution in the nine San Francisco Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara and those portions of the Counties of Solano and Sonoma within the boundaries of the Bay Area Air Pollution Control District as it existed on January 1, 1976. The District office is located at 375 Beale Street, #600, San Francisco, CA 94105.

16. Respondent Bay Area Air Quality Management Control District Hearing Board is the statutory body, organized pursuant to California Health & Safety Code sections 40800 through 40865, that is responsible for hearing petitions for variances from District rules or permit conditions, including the denial, approval or revocation of permits and orders for abatement. The office of the Hearing Board is located at 375 Beale Street, #600, San Francisco, CA 94105.

**LEGAL BACKGROUND**

17. The California Health and Safety Code provides that each Air District Board shall appoint a hearing board. (Cal. Health & Safety Code, § 40800.)

18. Among its enumerated duties, “the hearing board may, after notice and a hearing, issue an order for abatement whenever it finds that any person is constructing or operating any

1 article machine, equipment or other contrivance without a permit.” (Cal. Health & Safety Code, §  
2 42451.)

3 19. The decisions of hearing boards must include the reasons for the decision. (Cal.  
4 Health & Safety Code, § 40862.)

5 20. District Hearing Board Rules require “Formal written Findings and Decisions,” that  
6 are reduced to writing and that must contain “a brief statement of facts found to be true, the  
7 determination of the issues presented, findings, and the order of the Hearing Board.” (District  
8 Hearing Board Rules, §§ 10.4, 10.5.)

9 21. Further, an agency rendering an adjudicatory decision reviewable under C.C.P.  
10 section 1094.5 must set forth findings. (*Topanga Assn. for a Scenic Community v. County of Los*  
11 *Angeles* (1974) 11 Cal.3d 506, 515 (“*Topanga*”).) This requirement is implicit in the language of  
12 C.C.P. section 1094.5. (*Id.*)

13 22. In quasi-adjudicatory proceedings, findings serve several essential functions,  
14 including: (1) facilitating orderly analysis by the agency; (2) enabling a reviewing court to trace  
15 and examine the agency’s analysis; (3) enabling parties to the administrative decision to determine  
16 whether and on what basis to seek judicial review; and (4) serving the public interest by  
17 demonstrating that administrative decision making is careful, reasoned, and equitable. (*Topanga*,  
18 11 Cal.3d at 516; CEB California Administrative Mandamus, § 6.106c.)

19 23. Findings must enable a reviewing court to trace and examine the agency’s analysis  
20 and that “*bridge the analytic gap between raw evidence and the decision or order.*” (*Topanga*, 11  
21 Cal.3d at 515.) Case law refers to this standard as the “*Topanga Rule.*” Findings that do meet the  
22 *Topanga Rule* are insufficient.

23 24. If an agency fails to make any findings, the decision must be vacated and remanded  
24 to the agency to make proper findings. (See e.g., *Usher v. County of Monterey* (1998) 65 Cal.4th  
25 210.)

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**FACTUAL AND PROCEDURAL BACKGROUND**

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2 25. Petitioner, Green Sage, is the property manager for the Properties. Among the  
3 tenants at the Properties are several businesses engaged in the indoor cultivation of cannabis.  
4 Indoor cultivation of cannabis is an energy-intensive activity, requiring a reliable source of  
5 electricity to power lighting and other equipment necessary to grow the plants. Interruptions of  
6 electricity to the buildings will lead to immediate loss of crops.

7 26. After experiencing several issues with the reliability of electricity supplied to the  
8 Properties, including the failure of a transformer (never replaced) owned and operated by Pacific  
9 Gas and Electric Company, portable diesel generators were brought onsite to provide a consistent  
10 source of power until an upgraded and reliable source of electricity could be restored to the  
11 Properties.

12 27. CARB regulates the operation of portable generators and has established a  
13 registration program to allow portable generators to operate throughout the State of California  
14 without authorization from local air districts. (14 C.C.R. § 2450.) All local air district  
15 requirements, including permitting, are preempted by the CARB registration program unless the  
16 operation of the engines falls within an exception outlined in the CARB regulations. (*Id.*) These  
17 exceptions, where a local air district may require the owner or operator of a portable engine to  
18 obtain a district issued permit include uses where the engine operates at the same location for more  
19 than one year or where the engine powers a generator that is used to provide primary or  
20 supplemental power to a building and that use is not the result of the unforeseen interruptions of  
21 electrical power from the utility or where the engines are used in conjunction with a power upgrade  
22 operation, not to exceed 90 days (14 C.C.R. § 2453(m).)

23 28. All portable diesel engine powered generators operating at the Properties were  
24 registered with CARB. The District has not issued permits to any of these portable engines.

25 29. On April 20, 2022, the District filed an Accusation and Request for Order for  
26 Abatement against Green Sage and several other named and unnamed respondents, with the  
27 District Hearing Board. The Accusation and Request for Order of Abatement alleged Green Sage  
28 has operated portable diesel engines without District issued permits. In addition, the District

1 alleged that the portable diesel engines were operated in a manner such that the District's  
2 permitting rules were not preempted by the CARB registration program.

3 30. On May 5, 2022, in accordance with District Hearing Board Rules, Green Sage filed  
4 a Notice of Defense and Objection to Accusation requesting a formal hearing in front of the  
5 District Hearing Board.

6 31. On June 28, July 5, and July 12, 2022, the District Hearing Board held a hearing to  
7 consider the request for an Order for Abatement. Green Sage appeared and was represented by  
8 counsel throughout the hearing.

9 32. After 4:00 p.m. on June 27, less than 18 hours prior to the start of the first day of the  
10 hearing, the Clerk of the District Hearing Board forwarded the exhibits prepared by District  
11 counsel to counsel for Green Sage. The exhibits numbered 1547 pages including 1047 pages of a  
12 technical report prepared by Dr. Evan Mills, an expert retained by the District who was disclosed to  
13 Green Sage for the first time on June 27.

14 33. At the hearing, Green Sage counsel requested a continuance to provide an  
15 opportunity to review the exhibits and prepare its defense. The Hearing Board chair denied the  
16 request and allowed the hearing to proceed. The Hearing Board chair did allow Green Sage  
17 counsel to delay its cross-examination of District witnesses until the following week.

18 34. Again, late in the afternoon on July 11, less than a day before the third day of  
19 hearings began, Green Sage counsel received another exhibit from the Hearing Board clerk totaling  
20 more than 218 pages from Pacific Gas and Electric Company. The Hearing Board chair again  
21 denied Green Sage counsel's request for a continuance to provide an opportunity to review the  
22 exhibits and prepare a defense. On July 12, the District called two witnesses from Pacific Gas and  
23 Electric Company and their testimony, including testimony of documents contained in the exhibits  
24 was heard.

25 35. On June 28, District counsel called Ms. Tanya Boyce to testify. Ms. Boyce, who  
26 identified herself as the interim executive director of the Environmental Democracy Project  
27 claimed to be an experienced urban planning professional. Ms. Boyce provided testimony on the  
28 pollution burden of communities in the general vicinity of the Properties. Ms. Boyce's basis for

1 these observations appeared to be limited to an exhibit with no identified author or title that she  
2 claimed to be an appendix of a draft update to the City of Oakland General Plan. During the public  
3 comment period, held at the end of each day of the hearing, Ms. Boyce, re-appeared to provide  
4 testimony, purportedly, as a member of the public. On July 5, this testimony, which occurred soon  
5 after her cross-examination as a witness, included a profanity-laced tirade directed at Green Sage  
6 and the Hearing Board members. Ms. Boyce verbally threatened the Hearing Board if it did not act  
7 to immediately issue the Order of Abatement. The Hearing Board chair admonished Ms. Boyce for  
8 her behavior; however, Ms. Boyce was afforded the opportunity to provide additional testimony  
9 during the public comment period on July 12.

10 36. On the final day of the hearing, July 12, the Hearing Board adopted the Order for  
11 Abatement, without findings that Respondent operated the engines without a required permit or  
12 violated District rules in any way. In his closing statement, District Counsel requested the Hearing  
13 Board adopt such finding, regarding the dates the engines were operated and that this operation was  
14 in violation of District rules. In response, the Hearing Board Chair stated “I do not think we have  
15 to adopt the specific findings of act that were laid out by District counsel. For example, if you  
16 think that the general findings are appropriate, but you don’t want to get nailed down by specific  
17 dates, which have been disputed, I think there would be a work around for that, so I leave it up to  
18 the Board.” Hearing Board Member Chiu concurred with the approach of not adopting specific  
19 findings.

20 37. After additional deliberation, the Hearing Board agreed to adopt one finding of fact,  
21 that the so-called ninety-day grace period which, according to District testimony, would allow  
22 operation of engines for 90 days while power is upgraded, did not apply to this case. No other  
23 findings in support of the Order for Abatement were made by the Hearing Board.

24 38. On July 18, at the direction of the Hearing Board Chair, District Counsel provided a  
25 draft Order for Abatement (“Draft Order”) for Green Sage’s review and comment. The Draft  
26 Order for Abatement included several assertions that were inconsistent with the Hearing Board’s  
27 action. First, in a section title “Statement of Basic Chronology Found to be True,” the Draft Order  
28 lists a series of dates and events and asserts that “The Board finds the following basic chronology



1 to be true.” In response, Green Sage commented that no such findings had been made by the  
 2 Hearing Board. In the Order for Abatement, the title of this section was changed to “Basic  
 3 Chronology” and the dates and events were partially edited.

4 39. A section of the Order for Abatement titled “Statement of Decision,” states the  
 5 Hearing Board “declined to make detailed or bright line findings...but found the generators were  
 6 being used 24/7 as the primary source of power in excess of 12 months without District required  
 7 permits.” The Hearing Board did not make this finding during the public hearing. Further, this  
 8 statement did not appear in the Draft Order, thus Green Sage did not have an opportunity to object  
 9 to the inclusion of such a statement that was not agreed to by the Hearing Board.

10 40. The “Statement of Decision” section in the Order for Abatement includes a  
 11 statement from Board Member Chiu, prior to adoption of the motion for an Order for Abatement.  
 12 However, during the hearing, Dr. Chiu simply stated that he was providing a rationale for the  
 13 motion, “similar to findings of fact,” but not findings of a violation of District Rules required by  
 14 the Health and Safety Code and certainly not formal findings of fact required by District Hearing  
 15 Board Rules.

16 41. Enforcement of the Order for Abatement would lead to the complete loss of all  
 17 cannabis crops currently being cultivated at the Properties. (Greer Declaration, ¶ 3.) Green Sage  
 18 estimates economic losses for its tenants would exceed fifty million dollars. (Greer Declaration, ¶  
 19 4.) After review of limited data, even the District’s expert witness, Dr. Evan Mills, agrees that  
 20 losses would be substantial, up to fourteen million dollars. Direct and indirect job losses would  
 21 likely exceed 2,600 jobs. (Greer Declaration, ¶ 5.)

22 42. The District offered no evidence of potential health impacts if the engines continued  
 23 operation. Complaints to Green Sage about the operation of the engines have been limited to  
 24 individuals occupying live/work units at the properties. No complaints have been received by  
 25 residents outside of the properties.

### 26 EXHAUSTION OF REMEDIES

27 As discussed above, on July 21, 2022 the District issued the Order of Abatement. Petitioner  
 28 is not required to seek administrative rehearing of the matter (Cal. Health & Safety Code, §

1 40864(a) [“The right to petition shall not be affected by the failure to seek a rehearing before the  
2 hearing board.”].) Further, Petitioner would suffer irreparable harm waiting for the rehearing.  
3 Thus, proceeding to judicial review is appropriate.

4 **FIRST CAUSE OF ACTION**

5 **[Petition for Writ of Administrative Mandate – C.C.P. § 1094.5]**

6 43. Petitioner realleges and incorporates by reference, as if set forth in full herein, the  
7 allegations in Paragraphs 1 through 42, above.

8 44. Following the hearing, the Hearing Board failed to make findings or bridge the  
9 analytical gap between the evidence and the ultimate decision of issuing the Order for Abatement.

10 45. The Hearing Board only made a finding related to the inapplicability of the 90-day  
11 grace period. This finding alone is insufficient to support the Hearing Board’s decision.

12 46. Moreover, the decision is not supported by substantial evidence in light of the whole  
13 record.

14 47. Additionally, Petitioner was denied a fair trial by the Hearing Board’s refusal to  
15 allow Petitioner adequate time to review exhibits prepared by District counsel. Petitioner was  
16 further denied a fair trial by the Hearing Board allowing Ms. Boyce’s unsubstantiated expert  
17 testimony and agitated public comment.

18 48. Accordingly, Respondents prejudicially abused their discretion in issuing the Order  
19 for Abatement and the Court should issue a peremptory writ of mandate directing Respondents to  
20 vacate and set aside the Order for Abatement.

21 **PRAYER FOR RELIEF**

22 Petitioner Green Sage respectfully requests that the Court grant the following relief:

23 49. A peremptory writ of mandate directing Respondents to vacate and aside their Order  
24 for Abatement.

25 50. A stay of enforcement of the Order for Abatement pending judicial review.

26 51. An order requiring Respondents to pay Petitioner’s cost of suit and attorney’s fees.

27 52. Any other relief that the Court deems just and proper.


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Respectfully submitted,

DATED: July 27, 2022

DOWNEY BRAND LLP

By:  \_\_\_\_\_

Darrin D. Gambelin  
Attorneys for Petitioner  
GREEN SAGE MANAGEMENT, LLC

# EXHIBIT A



1 Corporation (“Landlord Respondents”) and 5601-A LLC, a California Limited Liability Corporation;  
2 and 5601-B LLC, a California Limited Liability Corporation (“Cultivator Respondents”) stop violating  
3 District Regulation 2, Rule 1, Sections 301 and 302 at 5601 and 5733 San Leandro Street, Oakland,  
4 California (the “Site”), by immediately ceasing operation of any and all portable diesel generators at the  
5 Site unless and until they obtain a current and valid permit to do so.

6 **PROCEDURAL BACKGROUND AND HEARING**

7 **Procedural Background: Complainant’s Accusation**

8 Complainant, the Bay Area Air Quality Management District’s (the “District”) Air Pollution  
9 Control Officer, initiated this matter by filing an accusation against Respondents on April 20, 2022  
10 (“Accusation”), alleging that Landlord Respondents, at all times relevant to the Accusation, are owners  
11 or operators<sup>1</sup> of a 10+ acre floor area mixed-use (indoor cannabis cultivation, live-work residential lofts,  
12 and other uses) warehouse complex located at 5601 and 5733 San Leandro Street, Oakland, California.  
13 The Site principally consists of two large buildings historically known as “The Oakland Cannery” and  
14 “The Oakland Tinnery.” Cultivator Respondents, at all times relevant to the Accusation, are owners or  
15 operators of expansive indoor cannabis cultivation facilities within the Site. Since at least July 2, 2021 –  
16 and possibly as early as mid-2020 – a number of PERP-registered<sup>2</sup> portable diesel generators stationed  
17 within the Site’s loading docks and other exterior spaces have supplied power to the Site without  
18 District-required permits. The Clerk of the Hearing Board assigned this matter Docket No. 3733 and  
19 set a public hearing for June 28, 2022. The Clerk of the Hearing Board provided notice of the hearing  
20 on the Accusation in accordance with the requirements of Health and Safety Code section 40823 to the  
21 Complainant and to the Respondents at the addresses provided by the Complainant.

22 The District may serve its Accusation on a person by certified mail and by a means of service  
23 authorized in civil actions. *Hearing Board Rule 4.4c*. The District filed a Certificate of Service for each  
24

25 <sup>1</sup> As used herein, the term “owner or operator” has the same meaning as the defined term in District  
26 Regulation 1-241. Specifically, District Regulation 1-241 provides that an “owner or operator” is “[a]ny  
27 person who owns, leases, operates, controls, or supervises a facility, building, structure, installation, or  
28 source which directly or indirectly results or may result in emissions of any air pollutant.”

<sup>2</sup> The California Air Resources Board’s Portable Equipment Registration Program is set forth at 13 Cal.  
Code Regs. § 2450, et seq.

1 of the seven named respondents. In addition to filing a Certificate of Service for 5601-B LLC, the  
2 District filed a “Certificate of Service – Evidence of Actual Receipt by Agent of Service of Process for  
3 5601-B LLC,” attaching a true and correct copy of a May 5, 2022 email from Mr. Russel Weissman.

4 Upon the stipulated request of the District and ROMSPEN CALIFORNIA MORTGAGE  
5 LIMITED PARTNERSHIP, an Ontario Limited Partnership (“Romspen”), the Hearing Board issued a  
6 June 21, 2022 Order dismissing Romspen as a Respondent and allowed Romspen to intervene in the  
7 action.

8 Public Hearing: June 28, 2022, July 5, 2022, and July 12, 2022

9 The Hearing Board conducted a public hearing over three days on June 28, 2022, July 5,  
10 2022, and July 12, 2022. Brian Case, Assistant Counsel; and Adan Schwartz, Senior Assistant  
11 Counsel, appeared on behalf of the Complainant. Darrin Gambelin appeared on behalf of Respondent  
12 Green Sage Management LLC (“Green Sage”).

13 Aside from Green Sage, no other Respondent filed a notice of defense. Those Respondents’  
14 express admissions may be used as evidence without any notice thereof, and the Hearing Board may  
15 upon its own motion decide the matter or dismiss the action at the public hearing. *Hearing Board Rule*  
16 *6.9(b)*. Further, having not filed a notice of defense, Respondents waived their right to a hearing  
17 pursuant to California Government Code section 11506(c). The hearing occurred as scheduled, with  
18 Green Sage as the only participating Respondent.

19 At the outset, Green Sage objected to the over 1500 pages of proposed District Exhibits and  
20 requested a continuance. Although the District complied with *Hearing Board Rule 9.3.b.1.* and  
21 provided all Exhibits to the Hearing Board Clerk before 9:00 a.m. on Monday June 27<sup>th</sup>, the Hearing  
22 Board Chair acknowledged the volume of Exhibits and decided Green Sage would be allowed to  
23 cross-examine District witnesses at a continued hearing date.

24 The District commenced its case on June 28<sup>th</sup>. Over the course of the three days of hearings,  
25 the District called five witnesses: Air Quality Specialist Ms. Patricia Barnes (a District employee),  
26 District Supervising Air Quality Specialist Mr. Paul Grazzini (a District employee), Ms. Tanya Boyce  
27 (a percipient witness and urban planning professional), Dr. Evan Mills (a District consultant with  
28 expertise in energy accounting with specialized knowledge of the cannabis cultivation industry), and

1 Air Quality Engineer Ms. Isis Virrueta (a District employee).

2 Between the second and third days of the hearing, the Hearing Board issued a subpoena to  
3 PG&E for “persons most knowledgeable” to appear. Carla Kendall (a PG&E employee familiar with  
4 the 5601 San Leandro property) and Paul Carr (a PG&E employee familiar with the 5733 San Leandro  
5 property) provided testimony.

6 Respondent Green Sage called a single witness: Ken Greer (who identified himself as a  
7 “principal” with Respondent Green Sage Management LLC).

8 Board members had the opportunity to ask question of each witness and Respondent Green  
9 Sage and the District had an opportunity to cross examine each other’s witnesses.

10 Following the presentation of testimonial evidence, the Hearing Board admitted all of the  
11 Complainant’s proposed Exhibits 1–16 into evidence; both of Respondent Green Sage’s Exhibits 1-2  
12 into evidence; and the Hearing Board admitted 2 of Exhibits of material (a total of 216 pages)  
13 provided by PG&E in response to the subpoena into evidence.

14 In addition to formal witnesses, over the course of the hearing the Board received comments  
15 from at least a dozen different members of the public, many of whom were residents or former  
16 residents of the buildings about the air quality and their health and safety concerns.

17 Following its deliberations, the Hearing Board unanimously approved issuance of an Order  
18 for Abatement requiring Landlord Respondents and Cultivator Respondents to cease operation of the  
19 generators from the date the Order is filed (i.e., the “Effective Date” of the Order).

20  
21 **BASIC CHRONOLOGY**

22 Documents and testimony revealed the following basic chronology of events:

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<b>Date</b>	<b>Event</b>
September 2016	Green Sage purchases 5601 San Leandro
November 2017	Green Sage purchases 5733 San Leandro
Early 2018	Green Sage contacts PG&E about power needs
June 2020	Added electrical load at 5733 San Leandro caused service wire to fail and fuses at the transformer to blow
September 29, 2020	PG&E (Kendall) advises Green Sage (Greer) contract sent via Docusign on 9/21/2020; cannot proceed without signed contract and payment; construction schedules booked to December 2020

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1	October 9, 2020	First invoice-verified use of United Rentals generator by tenant "RNK"
2	April 13, 2021	First invoice-verified use of United Rentals generators (2) by tenant "Legion of Bloom" (dba name for Respondents 5601-A, LLC & 5601-B LLC)
3	July 7, 2021	PG&E transformer overloaded resulting in loss of 3,000 Amp grid service at 5601 San Leandro
4	September 27, 2021	Complaint received by Air District related to use of diesel generators
5	November 4, 2021	District's first on-site inspection; 9 generators on site; Green Sage consultant and United Rentals account manager present
6	February 16, 2022	District issues Notice of Violation (NOV) to Green Sage, with 9/30/21 violation start date
7	March 24, 2022	District's second on-site inspection; 9 generators on site
8	April 18, 2022	District receives generator receipts from United Rentals
9	April 20, 2022	District files Accusation
10	May 13, 2022	Amended NOV Issued, with 10/9/20 violation start date
11	June 2, 2022	Hearing Notice issued

12 As of the dates of the hearing, the electrical upgrades to the two buildings were not  
13 completed.

14  
15 **STATEMENT OF DECISION**

16 The Hearing Board declined to make detailed or bright line findings regarding specific dates  
17 when the generator use began on the properties, but found the diesel generators were being used 24/7 as  
18 the primary source of power in excess of 12 months without District required permits. After a properly  
19 made motion and second, it voted unanimously in favor of the APCO's request to issue an Order of  
20 Abatement.

21 Board Member Dr. Chiu made the motion and then provided the following rationale<sup>3</sup>:

22 During the hearing, I think we established that the Portable Equipment Registration  
23 Program – for the generator registration – is not a valid authorization to operate  
24 where engines that are used to provide so called primary or supplemental power to  
25 a building. So during the hearing, we have different witnesses [who testified that]  
26 clearly the generators were used as supplemental power possibly or probably since

27 <sup>3</sup> Specifically, Board Member Dr. Chiu stated, "I would be happy to make the motion . . .and if the motion  
28 is seconded I can give the rationale for the motion and give the justification similar to the findings of fact.  
Chair Armento said, "That would be fine." (Audio Recording of July 12, 2022 proceedings at 5:51)

1 the year 2020<sup>4</sup> – that is before July 2021 where the power outage occurred.<sup>5</sup> So,  
2 based on that, alone, the generators should not be . . . they should have gotten a  
3 permit instead of just to get by with the CARB registration. Now, there are some  
4 exceptions as you know, but, actually, the Respondents did not provide adequate  
5 evidence to show that there were special, specific circumstances to allow generator  
6 use. So, the specific circumstances/situations are not applicable in this particular  
7 case, in my opinion. Also, even though we cannot pinpoint the exact time-period  
8 for some of the generators for how long they have been on site, but it’s clearly  
9 indicated that it should be one or more registered generators on site have been used  
10 for more than twelve consecutive months or they replaced generators that  
11 collectively or consecutively have been at the site for more than twelve months.  
12 Even though we cannot pinpoint the months, there is a high likelihood it exceeded  
13 the twelve-month period. Also, we clearly heard from the public -- the issue raised  
14 is the effect of the exhaust from those engines. I can speak to that. As you know,  
15 my background is in public health. I have a doctorate degree in public health and I  
16 have a doctoral degree in medicine and specialize in environmental medicine and  
17 occupational medicine. So, I can say, there is not much scientific debate about the  
18 public health effect of exhaust from the generators. That is, the diesel engine or  
19 diesel-powered generators. So, to make the matter worse, we know that the area is  
20 already a very stressed environment in terms of the pollution load. So, it’s like  
21 you’ve added more pollutants – specifically particulate matter – so I do believe that  
22 it would make a difference in terms of the health effects for the local residence and  
23 also the neighborhood.

24  
25 **FINDING REGARDING INAPPLICABILITY OF THE 90-DAY GRACE PERIOD**

26 Assistant District Counsel Mr. Case requested the Board make a finding to resolve any ambiguity  
27 in the record about whether or not Respondents were ever entitled to a 90-day grace period. The Board  
28 found that while there is a limited 90-day exception to the general prohibition against using generators as  
primary or supplemental power to a building for electrical upgrade operations, that exception never  
applied to the situation presented. *See* 13 C.C.R. Section 2453(m)(4)(E)(3). Both 5601 and 5733 San  
Leandro Street are old buildings with modest electrical capacity; cannabis operations by their very nature  
are electrical energy intensive. The likely demands for power were foreseeable, as Dr. Mills emphasized  
in his testimony, since several hundred thousand square feet of space were (and continue to be) leased for  
cannabis operations.

29 \_\_\_\_\_  
30 <sup>4</sup> Board Member Dr. Chui mistakenly said “the year 2000” when giving the verbal justification for his  
31 motion.

32 <sup>5</sup> The Board did not address the question of whether or not Respondents were in violation of the District’s  
33 permitting requirements months prior to July 7, 2021, when generator use *admittedly* began per APCO  
34 Exhibit 9 and the testimony of Mr. Ken Greer.

1 **ORDER FOR ABATEMENT**

2 **Cause being found therefore, pursuant to Sections 42451(a) and 42452 of the California**  
3 **Health and Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY**  
4 **MANAGEMENT DISTRICT hereby ORDERS:**

5 1. Immediately, Respondents and their agents, employees, successors and assigns shall  
6 cease violation of District Regulation 2, Rule 1, Sections 301 and 302 at 5601 and 5733 San Leandro  
7 Street, Oakland, California, by ceasing operation of any and all portable diesel generators at the Site  
8 unless and until they obtain a current and valid permit to do so; and

9 2. Respondents shall demonstrate compliance with this Order by submitting to the Hearing  
10 Board either (a) a copy of a current and valid District permit to operate the Facility, or (b) written  
11 affirmation executed by Respondents that they have ceased operating all portable generators at The Site  
12 and that they shall not recommence operating any generators, if ever, until they have met all applicable  
13 requirements to obtain and maintain a valid District permit to operate pursuant to District Regulation 2,  
14 Rule 1. Respondents shall deliver such documentation via electronic mail and certified mail to the Clerk  
15 of the Hearing Board, by no later than fifteen (15) calendar days from the Effective Date, with a copy of  
16 such documentation to Adan Schwartz, Senior Assistant District Counsel, also delivered via electronic  
17 mail and certified mail; and

18 3. The Hearing Board shall retain jurisdiction over this matter for three years from the date  
19 of conclusion of the hearing in this matter, pursuant to Hearing Board Rule 4.12, during which period  
20 the parties may apply to modify or terminate this Order in accordance with the Rules of the Hearing  
21 Board; and

22 4. Landlord Respondents shall provide actual notice of this Order to all prospective tenants,  
23 buyers, lenders, and successors in interest in the Site for as long as the Hearing Board retains jurisdiction  
24 over this matter; and

25 5. Cultivator Respondents shall provide actual notice of this Order to any prospective sub-  
26 tenants or assignees with respect to their leasehold interest in the Site for as long as the Hearing Board  
27 retains jurisdiction over this matter; and

1 6. Once the Order in this matter is finalized, that a copy of it be provided electronically to  
2 the City of Oakland City Attorney, City Administrator, Building Division and Fire Prevention Bureau;  
3 and

4 7. That a copy of the final Order be provided electronically to the United Rentals branch  
5 manager and account manager; and

6 8. That a copy of the final Order be provided to the Compliance Division of the California  
7 Department of Cannabis Control; and

8 9. That a copy of the final Order be posted by Green Sage, so that every page is readable, at  
9 every entrance to both 5601 and 5733 San Leandro Street, Oakland; and that the Order remain posted  
10 until all portable diesel generators are either removed from the properties or proper permits are obtained;  
11 and

12 10. On a monthly basis through December 2022, due no later than the fifth of the month, that  
13 Green Sage provides a list of all cannabis tenants with full contact information to the APCO.  
14

15 **VIOLATION OF THIS ORDER MAY RESULT IN PENALTIES UP TO \$25,000 PER DAY**

16 As provided by Cal. Health and Safety Code Section 42401:

17 Any person who intentionally or negligently violates any order of abatement issued by a  
18 district pursuant to Section 42450, by a hearing board pursuant to Section 42451, or by  
19 the state board pursuant to Section 41505 is liable for a civil penalty of not more than  
20 twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

21 **APPEAL RIGHTS**

22 Pursuant to Cal. Health and Safety Code Section 40864, Respondents may appeal this  
23 Abatement Order by filing an action within 30 days of the Effective Date of this Abatement Order.  
24

25 **Motion To (1) Adopt Order For Abatement Paragraphs 1-5 as Articulated By Board Member**  
**Dr. Chiu and (2) Make a Finding Regarding Inapplicability of 90-Day Grace Period**

26 **Moved By:** Peter Y. Chiu, M.D., P.E.

27 **Seconded By:** Barbara Toole O'Neil, Ch.E., Q.E.P  
28

1 **Ayes:** Valerie J. Armento, Esq., Chair; Peter Y. Chiu, M.D., P.E.; Catherine Fortney, P.E.;

2 Barbara Toole O'Neil, Ch.E., Q.E.P.; and Amelia Timbers

3 **Noes:** None.

4

5 **Motion to Amend Requested Order For Abatement To Include Notification Items**  
6 **(Adding Paragraphs 6-10 to Order For Abatement)**

6 **Moved By:** Valerie J. Armento, Esq., Chair

7 **Seconded By:** Barbara Toole O'Neil

8 **Ayes:** Valerie J. Armento, Esq., Chair; Peter Y. Chiu, M.D., P.E.; Catherine Fortney, P.E.;

9 Barbara Toole O'Neil, Ch.E., Q.E.P.; and Amelia Timbers

10 **Noes:** None.

11

12

13  7/20/2022

14 Valerie J. Armento, Esq., Chair

Date

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1 BEFORE THE HEARING BOARD  
2 OF THE  
3 BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA

4 AIR POLLUTION CONTROL OFFICER of )  
5 the BAY AREA AIR QUALITY )  
6 MANAGEMENT DISTRICT, )

Docket No.: 3733

CERTIFICATE OF SERVICE

7 Complainant,

8 vs.

9 GREEN SAGE MANAGEMENT, LLC, a )  
10 Colorado Limited Liability Corporation; )  
11 OAKLAND CANNERY REAL ESTATE, )  
12 LLC, a California Limited Liability )  
13 Corporation; 5601 SLOCA, LLC, a California )  
14 Limited Liability Corporation; 5733 SLOCA, )  
15 LLC, a California Limited Liability )  
16 Corporation; 5601-A LLC, a California )  
17 Limited Liability Corporation; 5601-B LLC, a )  
18 California Limited Liability Corporation; and )  
19 DOES 1 - 25, inclusive, )

20 Respondents,

21 ROMSPEN CALIFORNIA MORTGAGE )  
22 LIMITED PARTNERSHIP, an Ontario )  
23 Limited Partnership, )

24 Intervenor.

FILED

JUL 21 2022

HEARING BOARD  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

25 STATE OF CALIFORNIA )  
26 )  
27 City and County of San Francisco )

ss.

28 I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:

That I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled actions; that I served true copies of the attached **Order for Abatement** on: (see next page)

///

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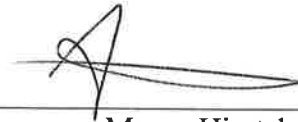
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Recipient	Method of Delivery
<i>Respondents Served</i>	
<p><b>Green Sage Management, LLC</b>  c/o 1505 Corporation 112 CT  Corporation System  330 N. Brand Blvd, Ste. 700  Glendale, CA 91203-2326</p> <p>And to 1250 Humboldt St., Suite 1203  Denver, CO 80218</p>	<p>Electronic Mail  (to D. Gambelin, K. Greer,  J. Barnocky, M. Espinoza,  and C. Thomas)  &amp; Certified Mail</p>
<p><b>Oakland Cannery Real Estate, LLC</b>  c/o 1505 Corporation 1567 Incorporating  Services, Ltd.  7801 Folsom Blvd, # 202  Sacramento, CA 95826-2620</p>	<p>Certified Mail</p>
<p><b>5601 SLOCA, LLC</b>  5601 San Leandro St  Oakland, CA 94621-4432</p>	<p>Certified Mail</p>
<p><b>5601-A LLC</b>  c/o Marcos Morales  3440 Airway Drive Suite H200  Santa Rosa, CA 95403</p>	<p>Certified Mail</p>
<p><b>5733 SLOCA, LLC</b>  c/o Steve Goldblatt  22 Martin St  Gilroy, CA 95020</p>	<p>Certified Mail</p>
<p><b>5601-B LLC</b>  c/o Russell Weisman  1720 River View Lane  Colfax, CA 95713</p>	<p>Electronic Mail  (to R. Weisman)  &amp; Certified Mail</p>
<i>Complainant Served</i>	
<p><b>Air District Legal Counsel</b>  Brian Case, Esq.</p>	<p>Electronic Mail  (to B. Case, A. Schwartz,  and M. Vinluan-Chan)</p>
<i>Intervenor Served</i>	
<p><b>Romspen California Mortgage  Limited Partnership</b>  515 Flower St, Fl 25  Los Angeles, CA 90071-2228</p>	<p>Electronic Mail  (to T. Lee, K. Hirsch, and  W. Roitman)  &amp; US Mail</p>
<i>Other Entities Served by Order of the Hearing Board Chair</i>	
<p>Barbara Parker, City Attorney  City of Oakland  <b><a href="mailto:bparker@oaklandca.gov">bparker@oaklandca.gov</a></b></p>	<p>Electronic Mail</p>
<p>Gregory Minor  Asst. to City Administrator  City of Oakland  <b><a href="mailto:gminor@oaklandca.gov">gminor@oaklandca.gov</a></b></p>	<p>Electronic Mail</p>

Richard Fielding Planning & Building Dept. City of Oakland <a href="mailto:rfielding@oaklandca.gov">rfielding@oaklandca.gov</a>	Electronic Mail
Felicia Bryant, Fire Marshall City of Oakland <a href="mailto:fwanzobryant@oaklandca.gov">fwanzobryant@oaklandca.gov</a>	Electronic Mail
Christophe Johns, Branch Manager United Rentals 2249 Davis Court Hayward 94545 <a href="mailto:cjohns1@ur.com">cjohns1@ur.com</a>	Electronic Mail
Justin McCaffery, Account Manager United Rentals 100 1 <sup>st</sup> Stamford Place, Stamford CT 06902 <a href="mailto:jmccaffery@ur.com">jmccaffery@ur.com</a>	Electronic Mail
Compliance Division California Dept. of Cannabis Control <a href="mailto:Renee.Hussar@cannabis.ca.gov">Renee.Hussar@cannabis.ca.gov</a> <a href="mailto:Michael.Vella@cannabis.ca.gov">Michael.Vella@cannabis.ca.gov</a> <a href="mailto:Jennie.Wung@cannabis.ca.gov">Jennie.Wung@cannabis.ca.gov</a>	Electronic Mail

DATED: July 21, 2022



\_\_\_\_\_  
 Marcy Hiratzka  
 Clerk of the Boards



1 **VERIFICATION**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND  
4 REQUEST FOR STAY and know its contents.

5 I am a party to this action. The matters stated in the foregoing document are true of my  
6 own knowledge except as to those matters which are stated on information and belief, and as to  
7 those matters I believe them to be true.

8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct.

10 Executed on July 27, 2022, at Denver, Colorado.

11  
12 Ken Greer, Managing Director  
13 GREEN SAGE MANAGEMENT, LLC  
14 Print Name of Signatory

15   
16 \_\_\_\_\_  
17 Signature

DOWNEY BRAND LLP

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**PROOF OF SERVICE BY EMAIL/ELECTRONIC SERVICE**

*Green Sage Management, LLC v. Bay Area Air Quality Management District, et al.*  
Alameda County Superior Court Case No. \_\_\_\_\_

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 455 Market Street, 15th Floor, San Francisco, CA 94105.

On July 28, 2022, I served a true copy(ies) of the following document(s) described as:

**VERIFIED PETITION FOR WRIT OF MANDATE AND REQUEST FOR STAY**

on the interested parties in this action as follows:

Alexander G. Crockett  
Adan A. Schwartz  
Brian Case  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
Tel: 415 749-4920  
Email: bcase@baaqmd.gov

*Attorneys for,* **AIR POLLUTION CONTROL OFFICER of the BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Marcy Hiratzka  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
375 Beale St., Ste. 600,  
San Francisco, CA 94105  
Tel: 415 749-5073  
Email: mhiratzka@baaqmd.gov

*Clerk,* **BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address cthomas@downeybrand.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 28, 2022, at San Francisco, California



Chinetha M. Thomas