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NEWS

## California Falls Short on Tracking Illegal Cannabis, Appellate Court Says

 A Fourth District Court of Appeal panel said the state hasn't met its legal obligations to create a database that flags potentially illegal cannabis sales. August 02, 2023 at 06:45 PM

Marijuana



Cheryl Miller

An Orange County appellate court on Wednesday reinstated a lawsuit that alleges California is not doing enough to spot and stop illegal cannabis transactions.

A unanimous three-justice panel of the Fourth District Court of Appeal said Santa Ana dispensary licensee HNHPC Inc. should be allowed to seek injunctive relief forcing the Department of Cannabis Control to launch a statutorily required track-and-trace system that flags potentially illegal activity.

An Orange County Superior Court judge in March 2022 dismissed the suit, finding state regulators complied with California law regulating medical and recreational marijuana sales when they contracted with track-and-trace database designers and submitted a budget request to pay for system enhancements and the hiring of related staff.

But those actions weren't legally sufficient, Associate Justice Maurice Sanchez wrote in reversing the lower court.

"The Department [of Cannabis Control] did not have a duty to enter into a contract but to establish an electronic database that actually flags irregularities," Sanchez wrote in an opinion joined by Presiding Justice Kathleen O'Leary and Associate Justice Thomas Goethals. "The fact still remains the full performance and completion of the contract per its terms—i.e., that the Department provided flagging criteria to the developer who in turn incorporated it into the system—is openly in dispute."

HNHPC, which operates Catalyst Cannabis Santa Ana, contends the lack of a robust tracking system in California has led to the rise of so-called "burner distributors," who launder cannabis grown under a state license to illegal sellers, including those

operating out of state.

Although Californians voted to legalize recreational-use marijuana in 2016, the illicit market continues to flourish. A 2022 report by the Reason Foundation estimated as many as two-thirds of cannabis sales in the Golden State are illegal.

Jeff Augustini of the Law Office of Jeff Augustini said he and his client are pleased with the Fourth District's ruling and "look forward to vigorously pursuing HNHPC's claims and hopefully forcing the DCC to finally comply with its ministerial duty to create and implement a track and trace system that actually flags irregular transactions for further review and investigation."

"Once the DCC does so, it will serve to significantly reduce the illegal black market activity that is financially harming HNHPC and other licensed retailers just like it," Augustini said.

David Hafner, a spokesperson for the Department of Cannabis Control, stated via email Wednesday that as the litigation continues "DCC will have the opportunity to show that it has fulfilled its legal duties—and we look forward to making that showing. And, no matter what happens in this litigation, we will continue our ongoing work to combat the illegal cannabis market."

State cannabis regulators have had a track-and-trace system in place since 2018, although a May 2023 public notice said the database only collects "very limited information on consumers or patients."

Earlier this year, the department reached out to vendors about possible expansions to the tracking system that would flag "irregular" cannabis supply chain activity. Responses were due last month.

*This article has been updated with comments from a Department of Cannabis Control spokesperson.*

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