

At Individual Assignment Part \_\_\_\_ at the Supreme Court of the State of New York, held in and for the County of New York, City and State of New York, at the Courthouse located at \_\_\_\_\_ Centre/Thomas Street, New York, New York on the \_\_\_\_ day of \_\_\_\_\_, 2023.

PRESENT: HON. JUSTICE \_\_\_\_\_

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 14 FIRST AVENUE, TAX BLOCK #429, TAX LOT #2, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 14 FIRST AVE LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Runtz Tobacco," located within the ground floor of the building at 14 First Avenue, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

**ORDER TO SHOW CAUSE**

Index No.:

Filed On:

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Upon reading and filing the annexed affirmation of Evan Gluck, Esq., dated February 6, 2023; the affidavit of Police Officer Natanya Gelin, sworn to on January 31, 2023; the affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023; together with the exhibits; and the Summons and Verified Complaint, verified by Mary O'Sullivan, Esq., on \_\_\_\_\_, 2023,

LET defendants or their attorneys Show Cause before this Court at I.A.S. Part \_\_\_\_\_ of the Court, Room \_\_\_\_\_, to be held at the Courthouse at \_\_\_\_\_ Centre/Thomas Street, Borough of Manhattan, City and State of New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, at \_\_\_\_\_ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard,

Why an order should not be made pursuant to Sections 7-707 and 710 of the New York City Administrative Code and Sections 6301 and 6311 of the Civil Practice Law and Rules, preliminarily enjoining defendants, their agents, employees and/or representatives, and all persons acting individually or in concert with them, during the pendency of this action:

- A. From the use and/or occupancy of the commercial premises operating as “Runtz Tobacco,” located within the ground floor of the building at 14 First Avenue, New York, New York, (hereinafter "the subject premises"), for any purpose whatsoever and directing that said premises shall be closed;
- B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and
- C. From conducting, maintaining, operating or permitting the subject premises to be used, occupied or operated for the sale of cannabis (also known as marijuana) without the requisite license from the New York State Office of Cannabis Management, in violation of Section 125 of the Cannabis Law; and

And, in the event this motion for a preliminary injunction is adjourned on the return date set forth above, why an order should not be issued on that date pursuant to Section 7-707(a) of the New York City Administrative Code temporarily closing the subject premises and temporarily restraining defendants as set forth in subparagraphs “A” through “C” until such time that the Court

conducts a hearing on the request for a preliminary injunction.

IT IS HEREBY ORDERED that service of a copy of this Order to Show Cause, together with the papers upon which it is based and the Summons and Verified Complaint, be made upon the defendants personally pursuant to CPLR Section 308(1); or by leaving a copy thereof with a person of suitable age and discretion at the subject premise pursuant to CPLR Section 308(2) on or before the \_\_\_\_ day of \_\_\_\_\_, 2023, and that this be deemed good and sufficient service on defendants, provided however, that if service is not made personally or to a person of suitable age and discretion, a copy of the papers will be posted at the subject premises and subsequently mailed to each defendant at his or her last known address by overnight mail on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ENTER:

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 14 FIRST AVENUE, TAX BLOCK #429, TAX LOT #2, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 14 FIRST AVE LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Runtz Tobacco," located within the ground floor of the building at 14 First Avenue, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**ATTORNEY AFFIRMATION**

Index No.:

Filed On:

Evan Gluck, an attorney admitted to practice before the courts of this State, affirms the truth of the following under the penalties of perjury pursuant to Section 2106 of the Civil Practice Law and Rules:

**INTRODUCTORY STATEMENT**

1. I am an attorney in the office of the Legal Bureau of the New York City Police Department and of counsel to Carrie B. Talansky, acting by designation of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for plaintiff herein.

2. I make this affirmation based upon my review of records maintained by, and information obtained from, various departments of the City government and from statements made to me by certain officers or agents of the City of New York.

3. This affirmation is submitted in support of plaintiff's application, brought by Order to Show Cause, for a preliminary injunction pursuant to Section 7-707 of the New York City Administrative Code ("Administrative Code") enjoining and restraining defendants and all persons acting in concert with them during the pendency of this action from conducting, maintaining, operating or permitting a public nuisance inside the commercial premises operating as "Runtz Tobacco," located within the ground floor of the building at 14 First Avenue, New York, New York (hereinafter "the subject premises"), by prohibiting the defendants from using or operating said premises for the purpose of the unlicensed sale of cannabis (also known as marijuana), in violation of Cannabis Law § 125, or any other illegal activity.

4. In the event that the Court adjourns the first return date for the hearing of plaintiff's motion for a preliminary injunction, plaintiff respectfully submits that the Court should issue a temporary closing order prohibiting the use and/or occupancy of the subject premises, for any purpose whatsoever, and a temporary restraining order enjoining defendants and all persons from conducting, maintaining, operating, or permitting a public nuisance inside the subject premises, by prohibiting defendants from using or operating said premises for the unlicensed sale of cannabis until such time that the Court conducts a hearing on the request for a preliminary injunction.

#### **BACKGROUND FACTS**

5. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

6. Defendant THE LAND AND BUILDING KNOWN AS 14 FIRST AVENUE, TAX BLOCK #429, TAX LOT #2, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Runtz Tobacco," located within the ground floor of the building at 14 First Avenue,

New York, New York, is the subject premises where the unlawful activities complained of herein have taken place.

7. Defendant 14 FIRST AVE LLC is the last recorded owner of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register. *See* copy of deed, annexed hereto as Exhibit "1."

8. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

9. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and has not been issued any other license by OCM pursuant to the Cannabis Law, which would allow it sell cannabis. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license. *See* Affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023, annexed hereto as Exhibit "2" at ¶¶ 2-3.

10. As set forth in the annexed affidavit of Police Officer Natanya Gelin, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), which also constitutes a public nuisance under the New York City Nuisance Abatement Law § 7-703(1). *See* Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

11. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the undercover auxiliary officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

12. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001590971. This mylar bag indicated that the brand name of the alleged cannabis was “Dubz Garden Oreoz Cannabis Americas Favorite Nugz.” The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.<sup>1</sup> See Affidavit of Police Officer Natanya Gelin, annexed hereto as Exhibit “3” at ¶¶ 3-7; Property Clerk Invoice, annexed hereto within Exhibit “4;” and NYPD Laboratory Report, annexed hereto within Exhibit “5.”

**December 16, 2022**

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<sup>1</sup> In identifying a substance as a “cannabis,” the Police Laboratory employs the definition of “cannabis” set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as “cannabis” pursuant to Article 222 of the Penal Law, the laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.

13. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591272. This mylar bag indicated that the brand name of the alleged cannabis was "Runtz." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. *See* Exhibit "3" at ¶¶ 8-12; Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

**December 22, 2022**

14. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593213. This mylar bag indicated that the brand name of the alleged cannabis was "BackPack Boyz 5 Points Los Angeles Lucky." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. *See* Exhibit "3" at ¶¶ 13-17; NYPD Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

15. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists.



16. Accordingly, a preliminary injunction is necessary to abate this serious public nuisance.

### **APPLICABLE LAW**

#### **The New York City Nuisance Abatement Law**

17. In 1977, the New York City Council enacted the Nuisance Abatement Law (Section 7-701 *et seq.* of the Administrative Code) with the express purpose of addressing the serious problem created by public nuisances:

[which] exist in the city in flagrant violation of the building code, zoning resolution, health laws, multiple dwelling law, penal laws regulating prostitution and related conduct, licensing laws, laws relating to the sale and consumption of alcoholic beverages, laws relating to gambling, controlled substances and dangerous drugs and penal laws relating to the possession of stolen property, all of which interfere with the quality of life, property values and the public health, safety, and welfare; the council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the city and of the businesses thereof and visitors thereto. . . .

Administrative Code § 7-701 (as amended by Local Law 41 of 2017).

18. Pursuant to Sections 7-703(f) of the Administrative Code, a public nuisance includes:

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law;

#### **The Sale of Cannabis Requires an Adult-Use Retail Dispensary License**

19. On March 31, 2021, the Marijuana Regulation and Taxation Act (MRTA) was enacted under Chapter 92 of the Laws of 2021. The statute is codified as Cannabis Law §§ 1 – 139. The statute established the creation of the NYS Cannabis Control Board and the Office of Cannabis Management to comprehensively regulate the production, licensing, taxation, packaging, marketing and sale of adult-use, medical and hemp cannabis within the State of New York.

20. Section 10 of the Cannabis Law states, in relevant part, as follows:  
Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:
  1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.
  
21. Section 72 of the Cannabis Law, entitled, "Adult-use retail dispensary license," states, in relevant part, as follows:
  1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.
  
22. Section 125 of the Cannabis Law states, in relevant part, as follows:
  1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.
  
23. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:
  1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.
  
24. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:
  3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a

concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

25, Section 222.00 of the New York State Penal Law provides, in part, as follows:

"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

26. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms “marihuana” and “marijuana” do not include “hemp” as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. provides, in part, as follows:

Hemp. The term "hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

27. Pursuant to Section 7-706 of the Administrative Code, the Corporation Counsel is explicitly authorized to bring and maintain an action in the Supreme Court to permanently enjoin the above public nuisances, as well as to permanently enjoin the person or persons conducting, maintaining or permitting such public nuisances from further conducting, maintaining or permitting such public nuisances.

#### **A PUBLIC NUISANCE EXISTS AT THE SUBJECT PREMISE**

28. A public nuisance, as defined by Section 7-703 of the Administrative Code, exists at the subject premises. As stated above, Nuisance Abatement Law Section 7-703(f) declares a premises to be a public nuisance where it is used for the purpose of a business, activity or enterprise which is not licensed as required by law.

29. The evidence set forth in support of this application clearly demonstrates that the subject premises is a public nuisance under Sections 7-703 (f) of the Administrative Code, due to the use of the subject premises for a business that is not licensed as required by law. The supporting affidavit and exhibits demonstrate violations of the licensing requirement of Cannabis Law § 125 predicated on the unlicensed sale of cannabis at the subject premises on December 15, 2022, December 16, 2022, and December 22, 2022.

30. Those individuals involved in these illegal activities may still have access to the subject premises. As a result, the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists. An injunction is the only effective remedy to immediately abate this serious public nuisance and protect the surrounding community.

**PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION AND, IF APPLICABLE, A TEMPORARY CLOSING AND RESTRAINING ORDER PENDING A HEARING ON THE PRELIMINARY INJUNCTION**

31. The affidavit of Police Officer Natanya Gelin and supporting exhibits demonstrate that the subject premises has been used for the illegal sale of cannabis in violation of the licensing requirements of the New York State Cannabis Law.

32. Plaintiff is therefore entitled to a judgment permanently enjoining defendants from continuing their illegal use and occupancy of the subject premises for the sale of cannabis. Pending an action for a permanent injunction, the Court may grant a preliminary injunction to abate the public nuisance. If the Court does not hear the plaintiff's motion for a preliminary injunction on the return date for the instant motion, the Court may, and plaintiff submits, should, on that return date issue a temporary closing order and temporary restraining order prohibiting the subject premises from being used and/or occupied for the unlicensed sale of cannabis until such time as the motion for a preliminary injunction can be heard.

33. The Nuisance Abatement Law itself specifically provides for preliminary injunctive relief ancillary to an action for a permanent injunction. Section 7-707(a) of the Administrative Code states, in relevant part, as follows:

Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this subchapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance, where the public health, safety or

welfare immediately requires the granting of such injunction. . . .

34. Since plaintiff is seeking injunctive relief *pendente lite* under the Nuisance Abatement Law, a showing of immediate and irreparable injury is not a prerequisite to the injunctive relief sought herein. See *People ex rel. Bennett v. Laman*, 277 N.Y. 368 (1938); *City of Rochester v. Gutberlett*, 211 N.Y. 309 (1914); *City of New York v. Castro*, 143 Misc.2d 766 (1989), *aff'd*, 559 N.Y.S.2d 508 (1st Dept. 1990); *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511 (1st Dept. 1986); *Town of Islip v. Clark*, 90 A.D.2d 500 (2d Dept. 1982); *City of Utica v. Ortner*, 256 A.D. 1039 (4th Dept. 1939); *City of New York v. Narod Realty Corp.*, 122 Misc.2d 885 (Sup. Ct. Bronx Co. 1983). Rather, since injunctive relief is specifically authorized by Nuisance Abatement Law, plaintiff need only show that the statutory conditions have been satisfied. Therefore, a *prima facie* showing that defendants are indeed violating the Nuisance Abatement Law is sufficient to entitle plaintiff to a preliminary injunction *pendente lite*.

35. In the case herein, there can be no doubt that cannabis was illegally sold within the subject premises. Indeed, by the affidavit of Police Officer Natanya Gelin, as well as other supporting documentation, plaintiff has established by clear and convincing evidence that defendants have maintained a public nuisance as defined by Section 7-703(f) of the Administrative Code by using the subject premises to sell cannabis without the requisite license. Therefore, plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code.

36. Even if the Nuisance Abatement Law did not specifically authorize a preliminary injunction, this Court could nonetheless grant a preliminary injunction and a temporary restraining order pursuant to CPLR § 6301 enjoining the use of the subject premises for the unlicensed sale of cannabis. In determining whether a preliminary injunction is warranted under CPLR § 6301,

the courts have traditionally employed a three-pronged test, requiring that the moving party demonstrate: (i) a likelihood of ultimate success on the merits; (ii) irreparable injury absent the granting of a preliminary injunction; and (iii) that the balancing of equities favors its position. *See Gambar Ent., Inc. v. Kelly Serv.*, 69 A.D.2d 297, 306 (4th Dept. 1979); *Paine & Chriscott v. Blair House Assoc.*, 70 A.D.2d 571, 572 (1st Dept. 1979). Plaintiff respectfully submits that, since the evidence satisfies this traditional three-pronged test, a preliminary injunction is wholly appropriate.

37. First, plaintiff's likelihood of success on the merits is strongly supported by the evidence submitted in support of this motion. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was illegally sold to an underage auxiliary officer within the subject premises, and such transactions were personally observed by a police officer. Furthermore, the tenant/business owner/operator knew or should have known that this unlawful activity was occurring given that the cannabis was illegally sold in the open by individuals who were in control of the subject premises. *See*, Exhibits "2" through "5."

38. Second, defendants' illegal use of the subject premises for the sale of cannabis without the requisite license constitutes irreparable harm to the City of New York, its residents and visitors, particularly where such sales are made to minors. Indeed, in the legislative declaration incorporated into the Nuisance Abatement Law, the City Council recognized that the continued occurrence of a public nuisance is harmful to the public. *See* Administrative Code § 7-701.

39. Third, the equities are balanced in favor of plaintiff. The subject premises has been operated, occupied and used for the unlicensed sale of cannabis, and thus, no legitimate interest of defendants will be harmed by an injunction enjoining the illegal sale of cannabis. In contrast, the City of New York, and the public at large which it is required to protect, will benefit greatly if the

threat of this type of continued unlicensed activity is eliminated from the subject premises.

40. Accordingly, plaintiff has established a *prima facie* case that defendants have maintained a public nuisance, and has satisfied the traditional three-pronged test used to determine whether a preliminary injunction is appropriate. Therefore, plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code as well as CPLR § 6301.

41. In addition, temporary relief pending the hearing on the motion for the preliminary injunction is authorized pursuant to Section 7-707(a) of the Administrative Code, and may remain in effect pending further order of the Court. Section 7-707(a) states, in relevant part, as follows:

A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted.

42. It is respectfully submitted that the above criteria have been met. Not only has plaintiff shown by clear and convincing evidence that there exists a public nuisance within the scope of the Nuisance Abatement Law, but it is also clear that the public health, safety and welfare require immediate abatement of the public nuisance by an order closing the premises against all use pending the determination of this action as the subject premises is allowing the unlicensed sale of cannabis to minors.

43. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was sold to an underage auxiliary officer within the subject premises. It is submitted that arrests and criminal proceedings alone will not stop the illegal activity or the threat that it will continue or reoccur. Given the prior violations of the law, plaintiff submits that an injunction alone



will likely not be honored by those responsible for conducting, maintaining or permitting the illegal activity. Thus, an order closing the subject premises against all use during the pendency of this action is the best assurance that this public nuisance will be abated.

44. Plaintiff asserts that defendants JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, have a duty to be aware of the unlicensed sale of cannabis within the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty because the extent of the business may preclude his personal supervision and compel reliance on subordinates. *See People ex rel. Price v. Sheffield Farms, etc., Co.*, 225 N.Y. 25, 30 (1918).

45. Since a serious public nuisance exists at the subject premises, and defendants JOHN DOE and/or JANE DOE, the tenant/operator(s), were aware, should have been aware, or had a reason or a duty to be aware of the unlawful activity since it occurred openly, an order closing the subject premises against all use during the pendency of this action is the best assurance that this persistent public nuisance will be abated.

46. The relief sought upon this application is expressly authorized by Section 7-707 of the Administrative Code.

*[The remainder of this page has been intentionally left blank]*

47. No prior application for this relief has been made to this or any other court or justice. No other provisional remedy has been secured or sought in the same action against the same defendants.

WHEREFORE, it is respectfully requested that plaintiff's application be granted in all respects.

**DATED:** New York, New York  
February 6, 2023

  
\_\_\_\_\_  
Evan Gluck, Esq.

**LIST OF EXHIBITS**

- Exhibit 1: Copy of Deed**
- Exhibit 2: Affidavit of Senior Investigator Dawn Kiely**
- Exhibit 3: Affidavit of Police Officer Natanya Gelin**
- Exhibit 4: Property Clerk Invoices**
- Exhibit 5: NYPD Laboratory Reports**

**EXHIBIT 1**

**BARGAIN AND SALE DEED  
WITHOUT COVENANTS AGAINST GRANTOR'S ACTS**

**THIS INDENTURE**, dated May 17, 2022 between NESOR ASSOCIATES, L.L.C., a New York limited liability company having an address at 16 Court Street, Suite 2408, Brooklyn, New York 11241, party of the first part and 14 FIRST AVE LLC, a New York limited liability company, having an address at 400 East 148<sup>th</sup> Street, 3<sup>rd</sup> Floor, Bronx, New York 10455 party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of New York, County of New York and State of New York, bounded and described on Exhibit "A" attached hereto and made a part hereof.

**TOGETHER** with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the above-described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

**AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed as of the day and year first above written.

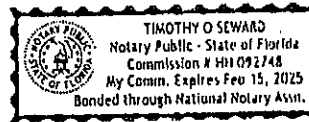
NESOR ASSOCIATES, L.L.C.,  
a New York limited liability company

By: Stephen D. Rosen  
Name: Stephen D. Rosen  
Title: Manager

STATE OF FLORIDA )  
COUNTY OF Palm Beach ss.:  
55

On the 5<sup>th</sup> day of May in the year 2022, before me, the undersigned personally appeared Stephen D. Rosen personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Timothy O Seward  
Notary Public



## Bargain and Sale Deed

BLOCK: 429 LOT 2  
COUNTY: NEW YORK

WITHOUT COVENANTS AGAINST GRANTOR'S ACTS

NESOR ASSOCIATES, L.L.C.

TO

14 FIRST AVE LLC

RETURN BY MAIL TO:  
ATTN: Yaron Komblum, Esq.  
Rivkin Radler  
926 RXR Plaza  
Uniondale, New York 11556

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of New York, County of New York, City and State of New York, bounded and described as follows:

**BEGINNING** at a point on the easterly side of First Avenue, distant 24 feet 6 inches northerly from the northeasterly corner of First Avenue and East First Street;

**RUNNING THENCE** easterly and part of the way through the center of a party wall, 70 feet;

**THENCE** northerly and parallel with First Avenue, 32 feet 6 inches;

**THENCE** westerly and parallel with East First Street, 70 feet to the easterly side of First Avenue;

**THENCE** southerly along the easterly side of First Avenue, 32 feet 6 inches to the point or place of **BEGINNING**.

**NOTE:** Being Block(s) 429, Lot(s) 2, Tax Map of the Borough of New York, County of New York.

Being and intended to be the same premises conveyed to the party of the first part by Deed from Stepros Realty Corp. recorded on 05/11/1977 in Reel 399, Page 1636."

**EXHIBIT 2**



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----  
THE CITY OF NEW YORK;

Plaintiff,

AFFIDAVIT

- against -

THE LAND AND BUILDING KNOWN AS  
14 FIRST AVENUE, et al.

Defendants.

-----  
STATE OF NEW YORK     )  
                                  : ss.:  
COUNTY OF RICHMOND )

**DAWN KIELY**, being duly sworn, deposes and says:

1. I am a senior investigator with the New York State Office of Cannabis Management (“OCM”). OCM is charged with issuing licenses for businesses to participate in New York State’s adult-use, medical, and cannabinoid hemp industries.

2. I have full access to official records of Adult-Use Retail Dispensary Licenses and Conditional Adult-Use Retail Dispensary Licenses for the entire State of New York. This includes all licenses that have been granted, as well as applied for within New York County, including 14 First Avenue, New York, New York (the “subject premises”).

*[This space has been intentionally left blank]*

3. I have made a diligent search of the records of my office and have found that no licenses have been issued by OCM to any individuals and/or establishments operating at the subject premises, furthermore they do not have any applications pending.

**False statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law.**

  
\_\_\_\_\_  
DAWN KIELY

Sworn to before me this 4<sup>th</sup>  
day of 9<sup>th</sup> January, 2022

  
\_\_\_\_\_  
Notary Public

*Allen Mark Taminello  
Notary Public - State of New York  
No. 01746748602  
Qualified in Nassau County  
Commission expires 10/03/2024*

**EXHIBIT 3**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
THE CITY OF NEW YORK,

Plaintiff,

**AFFIDAVIT**

- against -

THE LAND AND BUILDING KNOWN AS  
14 FIRST AVENUE, et al.

Defendants.

-----X

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

Police Officer Natanya Gelin, Shield Number 7283, being duly sworn,  
deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9<sup>th</sup> Precinct where my duties include, but are not limited to, the enforcement of laws connected with the sale of cannabis.

2. I submit this affidavit in support of the plaintiff's motion for a preliminary injunction against the commercial premises operating as "Runtz Tobacco," at 14 First Avenue, New York, New York ("subject premises"), enjoining the use of the subject premises for the sale of cannabis, in violation of the licensing requirements of the Cannabis Law.

**December 15, 2022**

3. On December 15, 2022, I participated in an undercover investigation targeting the subject premises.

4. On December 15, 2022, I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on

his/her identification stated that he/she was twenty (20) years of age.

5. At approximately 8:50 p.m., the underage auxiliary police officer and I then entered the subject premises. As we entered I observed that the awning affixed to the storefront reflected the subject premises was operating as "Runtz Tobacco." Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars (\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

6. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag of alleged cannabis. The purchased item was photographed and vouchered under Property Clerk Invoice Number 1001590971. This mylar bag indicated that the brand name of the alleged cannabis was "Dubz Garden Oreoz Cannabis Americas Favorite Nugz."

7. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

#### **December 16, 2022**

8. On December 16, 2022, I participated in another undercover investigation inside the subject premises.

9. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

10. At approximately 6:50 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars (\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer

his/her age or request any identification.

11. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag of alleged cannabis. The mylar bag of alleged cannabis was photographed and vouchered under Property Clerk Invoice Number 1001591272. This mylar bag indicated that the brand name of the alleged cannabis was "Runtz."

12. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

**December 22, 2022**

13. On December 22, 2022, I participated in another undercover investigation inside the subject premises.

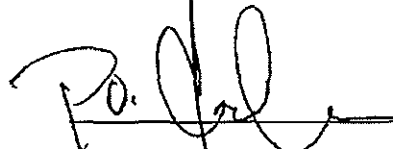
14. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

15. At approximately 7:57 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars (\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

16. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag of alleged cannabis. The mylar bag of alleged cannabis was photographed and vouchered under Property Clerk Invoice Number 1001593213. This mylar bag indicated that the brand name of the alleged cannabis was "BackPack Boyz 5 Points Los Angeles Lucky."


17. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

  
\_\_\_\_\_  
Police Officer Natanya Gelin

Sworn to before me this  
31<sup>st</sup> day of January, 2023

  
\_\_\_\_\_  
Notary Public

BRIGITTE A. WATSON  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02WA6315926  
Qualified in New York County  
My Commission Expires December 01, 2015 <sup>26</sup>  


**EXHIBIT 4**





**NYPD Property Clerk Invoice**  
PD 521-141 (Rev. 12/18)



Invoice No. **1001590971**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/16/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME/EU No.               |
|-----------------------|------|------------------|------------|--------------|---------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                           |
| Arresting Officer     | N/A  |                  |            |              | OCME/FB No.               |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid. Ctr. No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.         |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.           |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC<br>IS: FIELD TESTED POSITIVE PACKAGED IN: MULTU<br>COLORED MYLAR PACAKING BAD DESCRIPTION:<br>MARIJUANA PACKAGED IN A SMALL MYLAR FILM<br>PACKAGING BAG "TITLED OREOZ CANNABIS<br>AMERICAS FAVORITE NUGZ" |                 | 1204889146<br>- 1400393175 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/16/2022 00:21 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH THE  
 BELOW MENTION ESTABLISHMENT SOLD 3.5 G OREOZ (MARIJUANA) FOR \$ 30.  
 12/16/2022 01:02 : Invoice Approved By [REDACTED]

| Date of Incident | Penal Code/Description                           | Crime Classification | Related To | Receipt |
|------------------|--|----------------------|------------|---------|
| 12/15/2022       | PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR |                      |            |         |

| Prisoner(s) Name | D.O.B | Age | Address | Arrest No./Summons No. | NYSID No. |
|------------------|-------|-----|---------|------------------------|-----------|
|                  |       |     |         |                        |           |

| Name   | Tax No. | Address | Phone No. |
|--------|---------|---------|-----------|
| Finder |         |         |           |

|       |               |                          |              |
|-------|---------------|--------------------------|--------------|
| Owner | RUNTZ TOBACCO | 14 1 AVENUE NEW YORK, NY | 347-295-9141 |
|-------|---------------|--------------------------|--------------|

Person Vehicle Taken From

Complaint No. N/A

Related Comp No.(s) N/A

Aided/Accident No.(s) N/A

Related Invoice(s) N/A



Invoice No. **1001590971**

Property Clerk Copy  
printed: 12/16/2022 15:36

PCD Storage No.

Page No. 1 of 2



**NYPD Property Clerk Invoice**  
PD 521-141 (Rev. 12/16)



Invoice No. 1001591272

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/16/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      |                            |
|-----------------------|------|------------------|------------|--------------|----------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT | OCME/EU No.                |
| Arresting Officer     | N/A  |                  |            |              | OCME/FB No.                |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid. Ctrl. No. |
| Det. Squad Supervisor | N/A  |                  |            |              | Det. Sqd. Case No.         |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.            |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC IS:<br>FIELD TESTED POSITIVE PACKAGED IN: GREEN SMALL<br>MYLAR PACKAGING BAG DESCRIPTION: MARIJUANA<br>PACKAGED IN SMALL MYLAR FILM PACKAGING BAG<br>TITLED "RUNTZ" |                 | 1204889157<br>- 1400393170 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/16/2022 23:04 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH BELOW MENTIONED ESTABLISHMENT SOLD 3.5 G MARIJUANA FOR \$ 30.  
 12/17/2022 02:37 : Invoice Approved By [REDACTED]

Date of Incident: 12/16/2022  
 Penal Code/Description: PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR  
 Crime Classification: [REDACTED]  
 Related To: [REDACTED]  
 Receipt: [REDACTED]

Prisoner(s) Name: [REDACTED] D.O.B: [REDACTED] Age: [REDACTED] Address: [REDACTED] Arrest No./Summons No.: [REDACTED] NYSID No.: [REDACTED]

Finder: [REDACTED]  
 Owner: RUNTZ TOBACCO  
 14 1 AVENUE NEW YORK, NY  
 646-22-6-84

Person Vehicle Taken From: [REDACTED]  
 Complaint No. N/A  
 Related Comp No.(s) N/A  
 Aided/Accident No.(s) N/A  
 Related Invoice(s) N/A



Invoice No. 1001591272

Invoicing Officer Copy  
 printed: 12/17/2022 02:40

PCD Storage No. [REDACTED]  
 Page No.1 of 2



**NYPD Property Clerk Invoice**  
 PD 521-141(Rev.12/18)



Invoice No. **1001591272**

| Approvals         | Rank | Name               | Tax No.    | Command      | Date       | Time  |
|-------------------|------|--------------------|------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/16/2022 | 23:04 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/17/2022 | 02:31 |
|                   |      | <i>J. F. O.</i>    |            |              |            |       |
| Approved By       | SGT  | ANTHONY, CHARSEL J | [REDACTED] | 009 PRECINCT | 12/17/2022 | 02:37 |
|                   |      | <i>SA Anthony</i>  |            |              |            |       |



Invoice No. **1001591272**

Invoicing Officer Copy  
 printed: 12/17/2022 02:40

PCD Storage No.

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Page No.2 of 2



**NYPD Property Clerk Invoice**  
PD 521-141(Rev.12/18)



Invoice No. **1001593213**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date: **12/22/2022** Property Type: **CONTROLLED SUBSTANCE** Property Category: **INVESTIGATORY**

| Officers              | Rank | Name             | Tag No.    | Command      | OCME/EU No.              |
|-----------------------|------|------------------|------------|--------------|--------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                          |
| Arresting Officer     | N/A  |                  |            |              | OCME/FB No.              |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid.Ctrl.No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.        |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.          |

| Item | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1    | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC<br>IS: FIELD TESTED POSITIVE PACKAGED IN: MULTI-COLORED / BLACK AND WHITE SMALL MYLAR FILM<br>DESCRIPTION: MARIJUANA PACKAGED IN SMALL MYLAR FILM PACKAGING BAG TITLED "BACKPACK BOYZ 5 POINTS LOS ANGELES LUCKY CANNABIS FLOWER CAI" |                 | 1204889200<br>- 1400393168 | 1   |             |

Total Cash Value 0.00

**REMARKS**

12/22/2022 21:19 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH THE BELOW ESTABLISHMENT SOLD 3.5 G MARIJUANA FOR \$30.  
 12/23/2022 01:35 : Invoice Approved By [REDACTED]  
 12/23/2022 02:24 : Repack - Package Repack completed by ODEN, JERMAINE T  
 12/23/2022 02:24 : Repack - status - Package No. 1204889151 is unsealed and discarded  
 12/23/2022 02:24 : Repack - status - Package No. 1204889200 was added

| Date of Incident | Penal Code/Description                           | Crime Classification | Related To | Receipt |
|------------------|--|----------------------|------------|---------|
| 12/22/2022       | PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR |                      |            |         |

| Prisoner(s) Name | D.O.B | Age | Address | Arrest No./Summons No. | NYSID No. |
|------------------|-------|-----|---------|------------------------|-----------|
|                  |       |     |         |                        |           |

| Name | Tax No. | Address | Phone No. |
|------|---------|---------|-----------|
|      |         |         |           |

Finder  
Owner **RUNTZ TOBACCO** 14 1 AVENUE NEW YORK, NY

Person Vehicle Taken From

Complaint No. **N/A**

Related Comp No.(s) **N/A**

Aided/Accident No.(s) **N/A**

Related Invoice(s) **N/A**



Invoice No. **1001593213**

Property Clerk Copy  
printed: 12/23/2022 17:49

PCD Storage No.

Page No. 1 of 2



**NYPD Property Clerk Invoice**  
 PD 521-141(Rev.12/18)



Invoice No. **1001593213**

| Approvals         | Rank | Name               | Tag No.    | Command      | Date       | Time  |
|-------------------|------|--------------------|------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/22/2022 | 21:19 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/23/2022 | 01:25 |
|                   |      | <i>J. T. O.</i>    |            |              |            |       |
| Approved By       | LT   | HWANG, ALEXANDER O | [REDACTED] | 009 PRECINCT | 12/23/2022 | 01:35 |
|                   |      | <i>Lt Hwang</i>    |            |              |            |       |



Invoice No. **1001593213**

Property Clerk Copy  
 printed: 12/23/2022 17:49

PCD Storage No.

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Page No.2 of 2

**EXHIBIT 5**



NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

LABORATORY # 2022-044163  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001590971  
DATE SUBMITTED: 12/17/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  YES  NO (SEE REMARKS)

RESULTS OF EXAMINATION/ANALYSIS

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 3.493 g (aggregate wt.) |

SUMMARY OF ANALYSIS

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 3.493 g (aggregate wt.) |

REMARKS

|                  |                   |                 |                 |                  |                  |                   |                   |                     |                      |
|------------------|-------------------|-----------------|-----------------|------------------|------------------|-------------------|-------------------|---------------------|----------------------|
| 1/4 oz = 3.544 g | 1/2 oz = 14.175 g | 2 oz = 56.700 g | 3 oz = 85.049 g | 4 oz = 113.399 g | 8 oz = 226.797 g | 16 oz = 453.593 g | 5 lbs = 2267.962g | 10 lbs = 4535.924 g | 100 lbs = 45359.237g |
|------------------|-------------------|-----------------|-----------------|------------------|------------------|-------------------|-------------------|---------------------|----------------------|

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

TESTING METHODOLOGY

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensiclabreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED. I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

[Signature]  
ANALYST SIGNATURE

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED  
PAGE 1 OF 1



NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

LABORATORY # 2022-044238  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001591272  
DATE SUBMITTED: 12/18/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  Yes  No (SEE REMARKS)

RESULTS OF EXAMINATION/ANALYSIS

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 3.559 g (aggregate wt.) |

SUMMARY OF ANALYSIS

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 3.559 g (aggregate wt.) |

REMARKS

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =   | 10 lbs =   | 100 lbs =  |
|----------|----------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962g | 4535.924 g | 45359.237g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

TESTING METHODOLOGY

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT.

THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportsstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

ANALYST SIGNATURE

TAX #

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED  
PAGE 1 OF 1





NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

LABORATORY # 2022-044884  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001593213  
DATE SUBMITTED: 12/24/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  YES  NO (SEE REMARKS)

**RESULTS OF EXAMINATION/ANALYSIS**

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 4.094 g (aggregate wt.) |

**SUMMARY OF ANALYSIS**

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 4.094 g (aggregate wt.) |

**REMARKS**

|                  |                   |                 |                 |                  |                  |                   |                   |                     |                      |
|------------------|-------------------|-----------------|-----------------|------------------|------------------|-------------------|-------------------|---------------------|----------------------|
| 1/4 oz = 3.544 g | 1/2 oz = 14.175 g | 2 oz = 56.700 g | 3 oz = 85.049 g | 4 oz = 113.399 g | 8 oz = 226.797 g | 16 oz = 453.593 g | 5 lbs = 2267.962g | 10 lbs = 4535.924 g | 100 lbs = 45359.237g |
|------------------|-------------------|-----------------|-----------------|------------------|------------------|-------------------|-------------------|---------------------|----------------------|

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

**TESTING METHODOLOGY**

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT.

THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

ANALYST SIGNATURE

TAX #

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 14 FIRST AVENUE, TAX BLOCK #429, TAX LOT #2, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 14 FIRST AVE LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Runtz Tobacco," located within the ground floor of the building at 14 First Avenue, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**SUMMONS**

Index No.:


Filed On:

YOU ARE HEREBY SUMMONED TO ANSWER the complaint in this action and serve a copy of your answer on plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

*[The remainder of this page has been intentionally left blank]*

The venue of this action designated by plaintiff is New York County, the county in which the property affected by this action is located. Plaintiff designates New York County as the place of trial.

**DATED:** New York, New York  
January 27, 2023

  
\_\_\_\_\_  
HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff  
By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 14 FIRST AVENUE, TAX BLOCK #429, TAX LOT #2, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 14 FIRST AVE LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Runtz Tobacco," located within the ground floor of the building at 14 First Avenue, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

---

**VERIFIED COMPLAINT**

Index No.:

Filed On:

Plaintiff, the City of New York, by its attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, Carrie B. Talansky, Acting Deputy Commissioner for Legal Matters, New York City Police Department, of counsel, alleges as follows upon information and belief:

**INTRODUCTION**

1. Plaintiff brings this action pursuant to and by the authority of Section 20 of the General City Law, Section 394 of the New York City Charter and Sections 7-704(a) and 7-706(a) of the Administrative Code of the City of New York.

**THE PARTIES**

2. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

3. Defendant THE LAND AND BUILDING KNOWN AS 14 FIRST AVENUE, TAX BLOCK #429, TAX LOT #2, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Runtz Tobacco," located within the ground floor of the building at 14 First Avenue, New York, New York, is the subject premises where the unlawful activities complained of herein have taken place.

4. Defendant 14 FIRST AVE LLC is the last recorded owner of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register.

5. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

6. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and is not presently licensed pursuant to the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis is a CAURD license.

7. As set forth below, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), and which also constitutes a public nuisance under the New York City Nuisance

Abatement Law § 7-703(l). See Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

8. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the auxiliary police officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

9. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001590971. This mylar bag indicated that the brand name of the alleged cannabis was “Dubz Garden Oreoz Cannabis Americas Favorite Nugz.” The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.<sup>1</sup>

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<sup>1</sup> In identifying a substance as a “cannabis,” the Police Laboratory employs the definition of “cannabis” set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as “cannabis” pursuant to Article 222 of the Penal Law, the laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.

**December 16, 2022**

10. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591272. This mylar bag indicated that the brand name of the alleged cannabis was "Runtz." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

**December 22, 2022**

11. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593213. This mylar bag indicated that the brand name of the alleged cannabis was "BackPack Boyz 5 Points Los Angeles Lucky." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

12. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists.

13. Accordingly, a closing order is necessary to abate this serious public nuisance.

**AS AND FOR A COMPLETE CAUSE OF ACTION**

14. Plaintiff repeats and realleges, as if fully set forth herein at length, the facts contained in the preceding paragraphs.
15. Pursuant to Section 7-703 of the Administrative Code a public nuisance includes:
  - (f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law.
16. Section 10 of the Cannabis Law states, in relevant part, as follows:

Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

  1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.
17. Section 72 of the Cannabis Law, entitled, "Adult-use retail dispensary license," states, in relevant part, as follows:
  1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.
18. Section 125 of the Cannabis Law states, in relevant part, as follows:
  1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.
19. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:



1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.

20. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:

3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

21, Section 222.00 of the New York State Penal Law provides, in part, as follows:

"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

22. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms "marihuana" and "marijuana" do not include "hemp" as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. defines hemp as follows:

Hemp. The term "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

23. Defendants have owned, leased, used, maintained or conducted the subject premises as a place wherein cannabis is sold without a CAURD license as is required by Section 125 of the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license.

24. Plaintiff further asserts that defendant(s) JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, has/have a duty to be aware of the unlicensed sale of cannabis at the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty

because the extent of the business may preclude his personal supervision and compel reliance on subordinates. *See People ex rel. Price v. Sheffield Farms, etc., Co.*, 225 N.Y. 25, 30 (1918).

25. Defendant(s) JOHN DOE and/or JANE DOE, the tenant/operators of the subject premises, should have been aware of the use of the subject premises for the unlicensed sale of cannabis as such transactions were conducted openly by an employee of the subject premises.

26. Pursuant to Section 7-706 and Section 7-714 of the Administrative Code, plaintiff is entitled to a judgment against defendants, their agents, assigns and/or representatives, and any and all persons acting individually or in concert with them, permanently enjoining such public nuisance; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and directing the sale by the sheriff of such property; and closing the subject premises for a period of one (1) year from the posting of the judgment.

27. Defendants have owned, leased, used, maintained or conducted the subject premises for the purpose of the unlicensed sale of cannabis, and have permitted, promoted, condoned or acquiesced in the use of the subject premises for the illegal activity.

28. Pursuant to Section 7-706(h) of the Administrative Code, plaintiff is entitled to a judgment against the defendants ordering that each defendant pay a penalty of one thousand dollars (\$1,000.00) for each day that such defendant intentionally conducted, maintained or permitted the public nuisance.

**WHEREFORE**, plaintiff demands judgment against defendants as follows:

a. With respect to the **COMPLETE CAUSE OF ACTION**, directing that the subject premises described herein and made a defendant in this action shall be permanently and perpetually enjoined as a place which is conducted, maintained or permitted to be a public nuisance, by

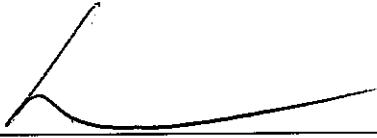
defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance; directing that the subject premises, which has been conducted and maintained as a public nuisance, shall be closed against all use for a period of one (1) year from the date of the posting of the judgment herein, pursuant to Section 7-714(c) of the Administrative Code, unless sooner released as provided by law; and awarding to plaintiff civil penalties in the amount of one thousand (\$1,000.00) dollars from each defendant for each and every day that such defendant intentionally conducted, maintained or permitted the public nuisance.

b. Taxing and allowing plaintiff's costs and disbursements against defendants pursuant to the Civil Practice Law and Rules, and directing that plaintiff have execution therefor;

c. Taxing and allowing plaintiff's actual cost, expenses and disbursements in investigating, bringing and maintaining the action, pursuant to Administrative Code § 7-714 (g), and directing that plaintiff have execution therefor; and

d. Granting to plaintiff such other and further relief as the Court may deem just and proper and equitable.

**DATED:** New York, New York  
January 27, 2023

  
HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff  
By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

**VERIFICATION**

MARY O'SULLIVAN, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury, pursuant to CPLR 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an officer of the City of New York, the Plaintiff in the within action. I have read the foregoing complaint in THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS

14 First Avenue,  
New York County Block #429, Lot #2,

and know the contents thereof, which are to my knowledge true, except as to matters therein alleged upon information and belief, and as to those matters, I believe them to be true. The grounds for my belief as to all matters not stated upon my knowledge are records of the City of New York and statements by officers, employees and agents of the City of New York.

The reason why this verification is not made by the Plaintiff is because Plaintiff is a corporation.

DATED:     New York, New York  
              January 27, 2023

  
MARY O'SULLIVAN

2023-006271

At Individual Assignment Part \_\_\_\_ at the Supreme Court of the State of New York, held in and for the County of New York, City and State of New York, at the Courthouse located at \_\_\_\_\_ Centre/Thomas Street, New York, New York on the \_\_\_\_ day of \_\_\_\_\_, 2023.

PRESENT: HON. JUSTICE \_\_\_\_\_

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 24 AVENUE A, also known as 148-150 EAST 2ND STREET, TAX BLOCK #398, TAX LOT #66, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 24 AVENUE A LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Sogie Mart Rolls & Puff," located within the ground floor of the building at 24 Avenue A, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**ORDER TO SHOW CAUSE**

Index No.:

Filed On:

Upon reading and filing the annexed affirmation of Evan Gluck, Esq., dated February 6, 2023; the affidavit of Police Officer Natanya Gelin, sworn to on February 1, 2023; the affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023; together with the exhibits; and the Summons and Verified Complaint, verified by Mary O'Sullivan, Esq., on February 2, 2023,

LET defendants or their attorneys Show Cause before this Court at I.A.S. Part \_\_\_\_\_ of the Court, Room \_\_\_\_\_, to be held at the Courthouse at \_\_\_\_\_ Centre/Thomas Street, Borough of Manhattan, City and State of New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, at \_\_\_\_\_ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard,

Why an order should not be made pursuant to Sections 7-707 and 710 of the New York City Administrative Code and Sections 6301 and 6311 of the Civil Practice Law and Rules, preliminarily enjoining defendants, their agents, employees and/or representatives, and all persons acting individually or in concert with them, during the pendency of this action:

- A. From the use and/or occupancy of the commercial premises operating as "Sogie Mart Rolls & Puff," located within the ground floor of the building at 24 Avenue A, New York, New York, (hereinafter "the subject premises"), for any purpose whatsoever and directing that said premises shall be closed;
- B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and
- C. From conducting, maintaining, operating or permitting the subject premises to be used, occupied or operated for the sale of cannabis (also known as marijuana) without the requisite license from the New York State Office of Cannabis Management, in violation of Section 125 of the Cannabis Law; and

And, in the event this motion for a preliminary injunction is adjourned on the return date set forth above, why an order should not be issued on that date pursuant to Section 7-707(a) of the New York City Administrative Code temporarily closing the subject premises and temporarily

restraining defendants as set forth in subparagraphs "A" through "C" until such time that the Court conducts a hearing on the request for a preliminary injunction.

IT IS HEREBY ORDERED that service of a copy of this Order to Show Cause, together with the papers upon which it is based and the Summons and Verified Complaint, be made upon the defendants personally pursuant to CPLR Section 308(1); or by leaving a copy thereof with a person of suitable age and discretion at the subject premise pursuant to CPLR Section 308(2) on or before the \_\_\_\_ day of \_\_\_\_\_, 2023, and that this be deemed good and sufficient service on defendants, provided however, that if service is not made personally or to a person of suitable age and discretion, a copy of the papers will be posted at the subject premises and subsequently mailed to each defendant at his or her last known address by overnight mail on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ENTER:

---

J.S.C.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 24 AVENUE A, also known as 148-150 EAST 2ND STREET, TAX BLOCK #398, TAX LOT #66, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 24 AVENUE A LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Sogie Mart Rolls & Puff," located within the ground floor of the building at 24 Avenue A, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

---

**ATTORNEY AFFIRMATION**

Index No.:

Filed On:

Evan Gluck, an attorney admitted to practice before the courts of this State, affirms the truth of the following under the penalties of perjury pursuant to Section 2106 of the Civil Practice Law and Rules:

**INTRODUCTORY STATEMENT**

1. I am an attorney in the office of the Legal Bureau of the New York City Police Department and of counsel to Carrie B. Talansky, acting by designation of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for plaintiff herein.

2. I make this affirmation based upon my review of records maintained by, and information obtained from, various departments of the City government and from statements made to me by certain officers or agents of the City of New York.

3. This affirmation is submitted in support of plaintiff's application, brought by Order to Show Cause, for a preliminary injunction pursuant to Section 7-707 of the New York City Administrative Code ("Administrative Code") enjoining and restraining defendants and all persons acting in concert with them during the pendency of this action from conducting, maintaining, operating or permitting a public nuisance inside the commercial premises operating as "Sogie Mart Rolls & Puff," located within the ground floor of the building at 24 Avenue A, New York, New York (hereinafter "the subject premises"), by prohibiting the defendants from using or operating said premises for the purpose of the unlicensed sale of cannabis (also known as marijuana), in violation of Cannabis Law § 125, or any other illegal activity.

4. In the event that the Court adjourns the first return date for the hearing of plaintiff's motion for a preliminary injunction, plaintiff respectfully submits that the Court should issue a temporary closing order prohibiting the use and/or occupancy of the subject premises, for any purpose whatsoever, and a temporary restraining order enjoining defendants and all persons from conducting, maintaining, operating, or permitting a public nuisance inside the subject premises, by prohibiting defendants from using or operating said premises for the unlicensed sale of cannabis until such time that the Court conducts a hearing on the request for a preliminary injunction.

#### **BACKGROUND FACTS**

5. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

6. Defendant THE LAND AND BUILDING KNOWN AS 24 AVENUE A, also known as 148-150 EAST 2ND STREET, TAX BLOCK #398, TAX LOT #66, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Sogie Mart Rolls & Puff," located within the

ground floor of the building at 24 Avenue A, New York, New York, is the subject premises where the unlawful activities complained of herein have taken place.

7. Defendant 24 AVENUE A LLC is the last recorded owner of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register. *See* copy of deed, annexed hereto as Exhibit "1."

8. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

9. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and has not been issued any other license by OCM pursuant to the Cannabis Law, which would allow it sell cannabis. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license. *See* Affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023, annexed hereto as Exhibit "2" at ¶¶ 2-3.

10. As set forth in the annexed affidavit of Police Officer Natanya Gelin, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), which also constitutes a public nuisance under the New York City Nuisance Abatement Law § 7-703(l). *See* Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

11. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the undercover auxiliary officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

12. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a plastic tube containing a pre-rolled cigar, also known as a “blunt,” containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001590950. The plastic tube indicated that the brand name of the alleged cannabis was “Birthday Cake Premium Roll.” The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.<sup>1</sup> See Affidavit of Police Officer Natanya Gelin, annexed hereto as Exhibit “3” at ¶¶ 3-7; Property Clerk Invoice, annexed hereto within Exhibit “4;” and NYPD Laboratory Report, annexed hereto within Exhibit “5.”

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<sup>1</sup> In identifying a substance as a “cannabis,” the Police Laboratory employs the definition of “cannabis” set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as “cannabis” pursuant to Article 222 of the Penal Law, the laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.

**December 16, 2022**

13. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591278. This mylar bag indicated that the brand name of the alleged cannabis was "Yellow Fruit Stripes." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. See Exhibit "3" at ¶¶ 8-12; Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

**December 22, 2022**

14. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a plastic tube containing a pre-rolled cigar/cigarette, also known as a "blunt" or "joint," containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593222. The plastic tube indicated that the brand name of the alleged cannabis was "Premium Roll 2020 Future Bubble Gum." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. See Exhibit "3" at ¶¶ 13-17; NYPD Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

15. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists.

16. Accordingly, a preliminary injunction is necessary to abate this serious public nuisance.

### **APPLICABLE LAW**

#### **The New York City Nuisance Abatement Law**

17. In 1977, the New York City Council enacted the Nuisance Abatement Law (Section 7-701 *et seq.* of the Administrative Code) with the express purpose of addressing the serious problem created by public nuisances:

[which] exist in the city in flagrant violation of the building code, zoning resolution, health laws, multiple dwelling law, penal laws regulating prostitution and related conduct, licensing laws, laws relating to the sale and consumption of alcoholic beverages, laws relating to gambling, controlled substances and dangerous drugs and penal laws relating to the possession of stolen property, all of which interfere with the quality of life, property values and the public health, safety, and welfare; the council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the city and of the businesses thereof and visitors thereto. . . .

Administrative Code § 7-701 (as amended by Local Law 41 of 2017).

18. Pursuant to Sections 7-703(f) of the Administrative Code, a public nuisance includes:

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law;

## **The Sale of Cannabis Requires an Adult-Use Retail Dispensary License**

19. On March 31, 2021, the Marijuana Regulation and Taxation Act (MRTA) was enacted under Chapter 92 of the Laws of 2021. The statute is codified as Cannabis Law §§ 1 – 139. The statute established the creation of the NYS Cannabis Control Board and the Office of Cannabis Management to comprehensively regulate the production, licensing, taxation, packaging, marketing and sale of adult-use, medical and hemp cannabis within the State of New York.

20. Section 10 of the Cannabis Law states, in relevant part, as follows:

Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.

21. Section 72 of the Cannabis Law, entitled, “Adult-use retail dispensary license,” states, in relevant part, as follows:

1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

22. Section 125 of the Cannabis Law states, in relevant part, as follows:

1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.

23. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:

1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.

24. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:

3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

25. Section 222.00 of the New York State Penal Law provides, in part, as follows:



"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

26. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms "marihuana" and "marijuana" do not include "hemp" as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. provides, in part, as follows:

Hemp. The term "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

27. Pursuant to Section 7-706 of the Administrative Code, the Corporation Counsel is explicitly authorized to bring and maintain an action in the Supreme Court to permanently enjoin the above public nuisances, as well as to permanently enjoin the person or persons conducting, maintaining or permitting such public nuisances from further conducting, maintaining or permitting such public nuisances.

**A PUBLIC NUISANCE EXISTS AT THE SUBJECT PREMISE**

28. A public nuisance, as defined by Section 7-703 of the Administrative Code, exists at the subject premises. As stated above, Nuisance Abatement Law Section 7-703(f) declares a premises to be a public nuisance where it is used for the purpose of a business, activity or enterprise which is not licensed as required by law.

29. The evidence set forth in support of this application clearly demonstrates that the subject premises is a public nuisance under Sections 7-703 (f) of the Administrative Code, due to the use of the subject premises for a business that is not licensed as required by law. The supporting affidavit and exhibits demonstrate violations of the licensing requirement of Cannabis Law § 125 predicated on the unlicensed sale of cannabis at the subject premises on December 15, 2022, December 16, 2022, and December 22, 2022.

30. Those individuals involved in these illegal activities may still have access to the subject premises. As a result, the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists. An injunction is the only effective remedy to immediately abate this serious public nuisance and protect the surrounding community.

**PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION AND, IF APPLICABLE, A TEMPORARY CLOSING AND RESTRAINING ORDER PENDING A HEARING ON THE PRELIMINARY INJUNCTION**

31. The affidavit of Police Officer Natanya Gelin and supporting exhibits demonstrate that the subject premises has been used for the illegal sale of cannabis in violation of the licensing requirements of the New York State Cannabis Law.

32. Plaintiff is therefore entitled to a judgment permanently enjoining defendants from continuing their illegal use and occupancy of the subject premises for the sale of cannabis. Pending an action for a permanent injunction, the Court may grant a preliminary injunction to abate the public nuisance. If the Court does not hear the plaintiff's motion for a preliminary injunction on the return date for the instant motion, the Court may, and plaintiff submits, should, on that return date issue a temporary closing order and temporary restraining order prohibiting the subject premises from being used and/or occupied for the unlicensed sale of cannabis until such time as the motion for a preliminary injunction can be heard.

33. The Nuisance Abatement Law itself specifically provides for preliminary injunctive relief ancillary to an action for a permanent injunction. Section 7-707(a) of the Administrative Code states, in relevant part, as follows:

Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this subchapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance, where the public health, safety or welfare immediately requires the granting of such injunction. . . .

34. Since plaintiff is seeking injunctive relief *pendente lite* under the Nuisance Abatement Law, a showing of immediate and irreparable injury is not a prerequisite to the injunctive relief sought herein. *See People ex rel. Bennett v. Laman*, 277 N.Y. 368 (1938); *City of Rochester v. Gutberlett*, 211 N.Y. 309 (1914); *City of New York v. Castro*, 143 Misc.2d 766 (1989), *aff'd*, 559 N.Y.S.2d 508 (1st Dept. 1990); *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511 (1st Dept. 1986); *Town of Islip v. Clark*, 90 A.D.2d 500 (2d Dept. 1982); *City of Utica v. Ortner*, 256 A.D. 1039 (4th Dept. 1939); *City of New York v. Narod Realty Corp.*, 122 Misc.2d 885 (Sup. Ct. Bronx Co. 1983). Rather, since injunctive relief is specifically authorized by Nuisance Abatement Law, plaintiff need only show that the statutory conditions have been satisfied. Therefore, a *prima facie* showing that defendants are indeed violating the Nuisance Abatement Law is sufficient to entitle plaintiff to a preliminary injunction *pendente lite*.

35. In the case herein, there can be no doubt that cannabis was illegally sold within the subject premises. Indeed, by the affidavit of Police Officer Natanya Gelin, as well as other supporting documentation, plaintiff has established by clear and convincing evidence that defendants have maintained a public nuisance as defined by Section 7-703(f) of the Administrative Code by using the subject premises to sell cannabis without the requisite license. Therefore,

plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code.

36. Even if the Nuisance Abatement Law did not specifically authorize a preliminary injunction, this Court could nonetheless grant a preliminary injunction and a temporary restraining order pursuant to CPLR § 6301 enjoining the use of the subject premises for the unlicensed sale of cannabis. In determining whether a preliminary injunction is warranted under CPLR § 6301, the courts have traditionally employed a three-pronged test, requiring that the moving party demonstrate: (i) a likelihood of ultimate success on the merits; (ii) irreparable injury absent the granting of a preliminary injunction; and (iii) that the balancing of equities favors its position. *See Gambar Ent., Inc. v. Kelly Serv.*, 69 A.D.2d 297, 306 (4th Dept. 1979); *Paine & Chriscott v. Blair House Assoc.*, 70 A.D.2d 571, 572 (1st Dept. 1979). Plaintiff respectfully submits that, since the evidence satisfies this traditional three-pronged test, a preliminary injunction is wholly appropriate.

37. First, plaintiff's likelihood of success on the merits is strongly supported by the evidence submitted in support of this motion. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was illegally sold to an underage auxiliary officer within the subject premises, and such transactions were personally observed by a police officer. Furthermore, the tenant/business owner/operator knew or should have known that this unlawful activity was occurring given that the cannabis was illegally sold in the open by individuals who were in control of the subject premises. *See*, Exhibits "2" through "5."

38. Second, defendants' illegal use of the subject premises for the sale of cannabis without the requisite license constitutes irreparable harm to the City of New York, its residents and visitors, particularly where such sales are made to minors. Indeed, in the legislative declaration

incorporated into the Nuisance Abatement Law, the City Council recognized that the continued occurrence of a public nuisance is harmful to the public. *See* Administrative Code § 7-701.

39. Third, the equities are balanced in favor of plaintiff. The subject premises has been operated, occupied and used for the unlicensed sale of cannabis, and thus, no legitimate interest of defendants will be harmed by an injunction enjoining the illegal sale of cannabis. In contrast, the City of New York, and the public at large which it is required to protect, will benefit greatly if the threat of this type of continued unlicensed activity is eliminated from the subject premises.

40. Accordingly, plaintiff has established a *prima facie* case that defendants have maintained a public nuisance, and has satisfied the traditional three-pronged test used to determine whether a preliminary injunction is appropriate. Therefore, plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code as well as CPLR § 6301.

41. In addition, temporary relief pending the hearing on the motion for the preliminary injunction is authorized pursuant to Section 7-707(a) of the Administrative Code, and may remain in effect pending further order of the Court. Section 7-707(a) states, in relevant part, as follows:

A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted.

42. It is respectfully submitted that the above criteria have been met. Not only has plaintiff shown by clear and convincing evidence that there exists a public nuisance within the scope of the Nuisance Abatement Law, but it is also clear that the public health, safety and welfare require immediate abatement of the public nuisance by an order closing the premises against all

use pending the determination of this action as the subject premises is allowing the unlicensed sale of cannabis to minors.

43. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was sold to an underage auxiliary officer within the subject premises. It is submitted that arrests and criminal proceedings alone will not stop the illegal activity or the threat that it will continue or reoccur. Given the prior violations of the law, plaintiff submits that an injunction alone will likely not be honored by those responsible for conducting, maintaining or permitting the illegal activity. Thus, an order closing the subject premises against all use during the pendency of this action is the best assurance that this public nuisance will be abated.

44. Plaintiff asserts that defendants JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, have a duty to be aware of the unlicensed sale of cannabis within the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty because the extent of the business may preclude his personal supervision and compel reliance on subordinates. *See People ex rel. Price v. Sheffield Farms, etc., Co.*, 225 N.Y. 25, 30 (1918).

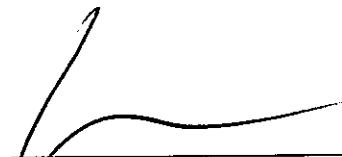
45. Since a serious public nuisance exists at the subject premises, and defendants JOHN DOE and/or JANE DOE, the tenant/operator(s), were aware, should have been aware, or had a reason or a duty to be aware of the unlawful activity since it occurred openly, an order closing the subject premises against all use during the pendency of this action is the best assurance that this persistent public nuisance will be abated.

46. The relief sought upon this application is expressly authorized by Section 7-707 of the Administrative Code.

47. No prior application for this relief has been made to this or any other court or justice. No other provisional remedy has been secured or sought in the same action against the same defendants.

WHEREFORE, it is respectfully requested that plaintiff's application be granted in all respects.

**DATED:** New York, New York  
February 6, 2023



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Evan Gluck, Esq.

**LIST OF EXHIBITS**

- Exhibit 1: Copy of Deed**
- Exhibit 2: Affidavit of Senior Investigator Dawn Kiely**
- Exhibit 3: Affidavit of Police Officer Natanya Gelin**
- Exhibit 4: Property Clerk Invoices**
- Exhibit 5: NYPD Laboratory Reports**



**EXHIBIT 1**

**BARGAIN AND SALE DEED WITHOUT COVENANT AGAINST GRANTOR'S ACTS**

**THIS INDENTURE**, made as of the 8<sup>th</sup> day of February, 2019, between 148-150 E. 2 St LLC, a/k/a 148-150 E 2 St LLC, a New York limited liability company, having an address 84 Orchard Street, #2, New York, New York 10002, party of the first part, and

24 Avenue A LLC, a New York limited liability company, having an address at c/o The Sabet Group, 38 West 31<sup>st</sup> Street, Suite 3, New York, New York 10001, party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of Ten Dollars and No Cents (\$10.00), lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in City and State of New York, known as 24 Avenue A a/k/a 148-150 East 2<sup>nd</sup> Street, New York,, New York, and, as more particularly described in Schedule A attached hereto.

**TOGETHER** with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

**TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

**AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that this conveyance is subject to the trust fund provisions and such consideration for this conveyance as a trust fund is to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**BEING** the same premises described in the deed dated 01/21/2010 recorded 02/09/2010 under CRFN 20100000046968 at the New York County Recording Office.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF: 148-150 E. 2 ST LLC a/k/a 148-150 E 2 ST LLC

By: [Signature]  
Name: Alan Luke  
Title: Managing Member

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:  
)

On the 4th day of February in the year 2019, before me, the undersigned, personally appeared Alan Luke, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

ORLY SONNENKLAR  
Notary Public, State of New York  
No. 01SO6153655  
Qualified in Queens County  
Commission Expires October 10, 2022

Deed  
Title No. RANY-34815

148-150 E. 2 St LLC

To

24 Avenue A LLC

Section  
Block 398  
Lots 66  
County or Town New York  
Street Address 24 Avenue A a/k/a 148-150 East 2<sup>nd</sup>  
Street

Return By Mail To:

Richard J. Brown, Esq.  
Herrick Feinstein LLP  
2 Park Avenue  
New York, New York 10016

Reserve This Space For Use Of Recording Office

[Empty rectangular box for recording office use]

SCHEDULE A

**RIVERSIDE ABSTRACT, LLC**  
As Agent for  
**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

**LEGAL DESCRIPTION**

Title No.: **RANY-34815**

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

**BEGINNING** at an intersection on the northerly side of Second Street with the easterly side of Avenue A;

**RUNNING THENCE** northerly along said easterly side of Avenue A fifty-seven feet, five inches (deed) fifty seven feet, six inches (tax map);

**THENCE** easterly parallel with Second Street, fifty-nine feet, ten inches (deed) sixty feet (tax map);

**THENCE** southerly parallel with Avenue A, fifty-seven feet, five inches (deed) fifty seven feet, six inches (tax map) to the northerly side of Second Street; and

**THENCE** westerly along said northerly side of Second Street, fifty-nine feet, ten inches (deed) sixty feet (tax map), to the point of **BEGINNING**.

Note: Address, Block & Lot shown for informational purposes only

Designated as Block 398, Lot 66, New York County and also known as 24 Avenue A, New York, NY 10009.

Riverside Abstract, LLC  
3839 Flatlands Avenue, Suite 208  
Brooklyn, NY 11234  
TEL: (718) 252-4200 FAX: (718) 252-4226

Schedule A Description

RANY-34815

**EXHIBIT 2**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----  
THE CITY OF NEW YORK,

Plaintiff,

AFFIDAVIT

- against -

THE LAND AND BUILDING KNOWN AS  
24 AVENUE A, et al.,

Defendants.

-----  
STATE OF NEW YORK    )  
                              : ss.:  
COUNTY OF RICHMOND )

**DAWN KIELY**, being duly sworn, deposes and says:

1. I am a senior investigator with the New York State Office of Cannabis Management (“OCM”). OCM is charged with issuing licenses for businesses to participate in New York State’s adult-use, medical, and cannabinoid hemp industries.

2. I have full access to official records of Adult-Use Retail Dispensary Licenses and Conditional Adult-Use Retail Dispensary Licenses for the entire State of New York. This includes all licenses that have been granted, as well as applied for within New York County, including 24 Avenue A, New York, New York (the “subject premises”).

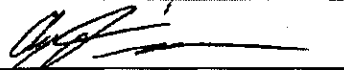
*[This space has been intentionally left blank]*

3. I have made a diligent search of the records of my office and have found that no licenses have been issued by OCM to any individuals and/or establishments operating at the subject premises, furthermore they do not have any applications pending.

**False statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law.**

  
\_\_\_\_\_  
DAWN KIELY

Sworn to before me this 4<sup>th</sup>  
day of January, 2022

  
\_\_\_\_\_  
Notary Public

*Alex Mirko Tumidello  
Notary Public - State of New York  
No. 01746348602  
Qualified in Nassau County  
Commission Expires: 10/03/2024*



**EXHIBIT 3**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
THE CITY OF NEW YORK,

Plaintiff,

**AFFIDAVIT**

- against -

THE LAND AND BUILDING KNOWN AS  
24 AVENUE A, also known as 148-150 EAST 2<sup>nd</sup>  
STREET, et al.

Defendants.

----- X

STATE OF NEW YORK    )  
  : ss.:  
COUNTY OF NEW YORK    )

Police Officer Natanya Gelin, Shield Number 7283, being duly sworn,  
deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9<sup>th</sup> Precinct where my duties include, but are not limited to, the enforcement of laws connected with the sale of cannabis.

2. I submit this affidavit in support of the plaintiff's motion for a preliminary injunction against the commercial premises operating as "Sogie Mart Rolls & Puff," at 24 Avenue A, New York, New York ("subject premises"), enjoining the use of the subject premises for the sale of cannabis, in violation of the licensing requirements of the Cannabis Law.

**December 15, 2022**

3. On December 15, 2022, I participated in an undercover investigation targeting the subject premises.

4. On December 15, 2022, I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on

his/her identification stated that he/she was twenty (20) years of age.

5. At approximately 8:40 p.m., the underage auxiliary police officer and I then entered the subject premises. As we entered I observed that the awning affixed to the storefront reflected the subject premises was operating as "Sogie Mart Rolls & Puff." Once inside, I observed the underage auxiliary police officer purchase a plastic tube containing a pre-rolled cigar, also known as a "blunt," containing alleged cannabis from the store's cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

6. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the plastic tube containing the alleged cannabis. The purchased item was photographed and vouchered under Property Clerk Invoice Number 1001590950. The plastic tube indicated that the brand name of the alleged cannabis was "Birthday Cake Premium Roll."

7. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

#### **December 16, 2022**

8. On December 16, 2022, I participated in another undercover investigation inside the subject premises.

9. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

10. At approximately 7:00 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars

(\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

11. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag of alleged cannabis. The mylar bag of alleged cannabis was photographed and vouchered under Property Clerk Invoice Number 1001591278. This mylar bag indicated that the brand name of the alleged cannabis was "Yellow Fruit Stripes."

12. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

#### **December 22, 2022**

13. On December 22, 2022, I participated in another undercover investigation inside the subject premises.

14. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

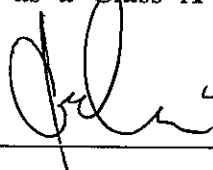
15. At approximately 7:50 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a plastic tube containing a pre-rolled cigar/cigarette, also known as a "blunt" or "joint," containing alleged cannabis from the store's cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

16. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the plastic tube containing the alleged cannabis. The purchased item was photographed and vouchered under

Property Clerk Invoice Number 1001593222. The plastic tube indicated that the brand name of the alleged cannabis was "Premium Roll 2020 Future Bubble Gum."

17. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

**False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.**



Police Officer Natanya Gelin

Sworn to before me this  
1<sup>st</sup> day of February, 2023

  
Notary Public

Jason W. Kravitz  
Notary Public, State of New York  
No. 02KR6399273  
Qualified in Nassau County  
Commission Expires October 15, 2023

**EXHIBIT 4**



**NYPD Property Clerk Invoice**  
PD 521-141(Rev.12/18)



Invoice No. **1001590950**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date: **12/15/2022** Property Type: **CONTROLLED SUBSTANCE** Property Category: **INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME/EU No.              |
|-----------------------|------|------------------|------------|--------------|--------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                          |
| Arresting Officer     | N/A  |                  |            |              | OCME/FB No.              |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid.Ctrl.No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.        |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.          |

| Item                    | Total QTY | Article(s)   | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|--|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC IS:<br>FIELD TESTED POSITIVE PACKAGED IN: BLUNT / PRE-ROLLED UP IN TUBE DESCRIPTION: MARIJUANA<br>PRE-ROLLED UP INTO A WEED BLUNT TITLED<br>"BIRTHDAY CAKE PREMIUM ROLL" IN SMALL TUBE-LIKE CONTAINER. |                 | 1204889148<br>- 1400393173 | 1   |             |
| <b>Total Cash Value</b> |           |  | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/15/2022 23:34 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH BELOW MENTION ESTABLISHMENT SOLD PRE-ROLLED WEED BLUNT (MARIJUANA) FOR \$ 25.  
 12/16/2022 01:05 : Invoice Approved By: [REDACTED]

Date of Incident: **12/15/2022** Penal Code/Description: **PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR** Crime Classification: [REDACTED] Related To: [REDACTED] Receipt: [REDACTED]

Prisoner(s) Name: [REDACTED] D.O.B: [REDACTED] Age: [REDACTED] Address: [REDACTED] Arrest No./Summons No.: [REDACTED] NYSID No.: [REDACTED]

Finder Name: [REDACTED] Tax No.: [REDACTED] Address: [REDACTED] Phone No.: [REDACTED]

Owner: **SOGIE EXOTICS & SMOKE SHOP** 24 AVENUE A NEW YORK, NY 646-226-8479

Person Vehicle Taken From: [REDACTED]  
 Complaint No. **N/A**  
 Related Comp No.(s) **N/A**  
 Aided/Accident No.(s) **N/A**  
 Related Invoice(s) **N/A**



Invoice No. **1001590950**

Property Clerk Copy  
printed: 12/16/2022 15:33

PCD Storage No. [REDACTED]  
Page No.1 of 2



**NYPD Property Clerk Invoice**  
PD 521-141(Rev.12/18)



Invoice No. 1001591278

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/16/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME.EU No.              |
|-----------------------|------|------------------|------------|--------------|--------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                          |
| Arresting Officer     | N/A  |                  |            |              | OCME.FB No.              |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid.Ctrl.No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.        |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.          |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC<br>IS: FIELD TESTED POSITIVE PACKAGED IN: SMALL<br>YELLOW / BLACK MYLAR PACKAGING DESCRIPTION:<br>MARIJUANA PACKAGED IN SMALL YELLOW / BLACK<br>MYLAR FILM PACKAGING TITLED "YELLOW FRUIT<br>STRIPES" CANNABIS FLOWER |                 | 1204889152<br>- 1400393172 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/16/2022 23:29 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH BELOW MENTION ESTABLISHMENT SOLD 3.5 G OF MARIJUANA FOR \$30.  
 12/17/2022 02:28 : Invoice Approved By [REDACTED]

| Date of Incident          | Panel Code/Description                           | Crime Classification     | Related To  | Receipt                |           |
|---------------------------|--|--------------------------|-------------|------------------------|-----------|
| 12/16/2022                | PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR |                          |             |                        |           |
| Prisoner(s) Name          | D.O.B  | Age                      | Address     | Arrest No./Summons No. | NYSID No. |
|                           |  |                          |             |                        |           |
| Name                      | Tax No.  | Address                  | Phone No.   |                        |           |
| Finder<br>Owner           |  | 24 AVENUE A NEW YORK, NY | 646-22-6-84 |                        |           |
| Person Vehicle Taken From |  |                          |             |                        |           |
| Complaint No. N/A         |  |                          |             |                        |           |
| Related Comp No.(s) N/A   |  |                          |             |                        |           |
| Aided/Accident No.(s) N/A |  |                          |             |                        |           |
| Related Invoice(s) N/A    |  |                          |             |                        |           |



Invoice No. 1001591278

Invoicing Officer Copy  
printed: 12/17/2022 02:32

PCD Storage No.  
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Page No.1 of 2





**NYPD Property Clerk Invoice**  
PD 521-141 (Rev. 12/16)



Invoice No. **1001591278**

| Approvals         | Rank | Name               | Tax No.    | Command      | Date       | Time  |
|-------------------|------|--------------------|------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/16/2022 | 23:29 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/17/2022 | 01:15 |
|                   |      | <i>J. T. O.</i>    |            |              |            |       |
| Approved By       | SGT  | ANTHONY, CHARSEL J | [REDACTED] | 009 PRECINCT | 12/17/2022 | 02:28 |
|                   |      | <i>Sgt Anthony</i> |            |              |            |       |



Invoice No. **1001591278**

Invoicing Officer Copy  
printed: 12/17/2022 02:32

PCD Storage No.

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Page No. 2 of 2



**NYPD Property Clerk Invoice**  
PD 521-141(Rev.12/18)



Invoice No. **1001593222**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/22/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME.EU No.               |
|-----------------------|------|------------------|------------|--------------|---------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                           |
| Arresting Officer     | N/A  |                  |            |              | OCME.FB No.               |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid. Ctrl.No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.         |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.           |

| Item                    | Total QTY | Article(s)   | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|--|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | ALLEGED MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC<br>IS: ALLEGED PACKAGED IN: BLUNT / CIGARETTE<br>PRE-ROLLED UP IN A GLASS TUBE DESCRIPTION:<br>MARIJUANA PRE-ROLLED UP INTO A WEED BLUNT /<br>CIGARETTE PACKAGED IN A GLASS TUBE TITLED<br>"PREMIUM ROLL 2020 FUTURE BUBBLE GUM"<br>DAMAGE/DEFACEMENT DESCRIPTION: GLASS TUBE<br>BROKEN AND TAPED UP BY THE UNDERSIGNED FOR<br>FURTHER VOUCHERING AND INTEGRITY PURPOSES |                 | 1204389150<br>- 1400393167 | 1   |             |
| <b>Total Cash Value</b> |           |  | <b>0.00</b>     |                            |     |             |

**REMARKS:**  
12/22/2022 21:42 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH THE BELOW ESTABLISHMENT SOLD PRE-ROLLED MARIJUANA CIGARETTE FOR \$25.  
12/23/2022 01:39 : Invoice Approved By [REDACTED]

| Date of Incident | Penal Code/Description                           | Crime Classification | Related To | Receipt |
|------------------|--|----------------------|------------|---------|
| 12/22/2022       | PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR |                      |            |         |

| Prisoner(s) Name | D.O.B | Age | Address | Arrest No./Summons No. | NYSID No. |
|------------------|-------|-----|---------|------------------------|-----------|
|                  |       |     |         |                        |           |

| Name | Tax No. | Address | Phone No. |
|------|---------|---------|-----------|
|      |         |         |           |

Finder

| Owner                     | Address                  | Phone No.    |
|---------------------------|--------------------------|--------------|
| SOGIE EXOTIC & SMOKE SHOP | 24 AVENUE A NEW YORK, NY | 646-226-8479 |

Person Vehicle Taken From

Complaint No. N/A

Related Comp No.(s) N/A

Aided/Accident No.(s) N/A

Related Invoice(s) N/A



Invoice No. **1001593222**

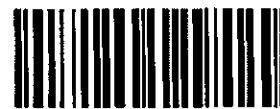
Invoicing Officer Copy  
printed: 12/23/2022 01:46

PCD Storage No.

Page No.1 of 2



**NYPD Property Clerk Invoice**  
 PD 521-141(Rev.12/18)



Invoice No. **1001593222**

| Approvals         | Rank | Name               | Tax No.    | Command      | Date       | Time  |
|-------------------|------|--------------------|------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/22/2022 | 21:42 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/23/2022 | 01:24 |
|                   |      | <i>J. J. O.</i>    |            |              |            |       |
| Approved By       | LT   | HWANG, ALEXANDER O | [REDACTED] | 009 PRECINCT | 12/23/2022 | 01:39 |
|                   |      | <i>Lt Hwang</i>    |            |              |            |       |



Invoice No. **1001593222**

Invoicing Officer Copy  
 printed: 12/23/2022 01:46

PCD Storage No.

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Page No.2 of 2

**EXHIBIT 5**



NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

LABORATORY # 2022-044164  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001590950  
DATE SUBMITTED: 12/17/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  YES  NO (SEE REMARKS)

RESULTS OF EXAMINATION/ANALYSIS

| Item # | Qty. | Description                      | Results  | Weight                  |
|--------|------|----------------------------------|----------|-------------------------|
| 1      | 1    | Cigar(s) cont. vegetative matter | Cannabis | 1.769 g (aggregate wt.) |

SUMMARY OF ANALYSIS

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 1.769 g (aggregate wt.) |

REMARKS

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =   | 10 lbs =   | 100 lbs =  |
|----------|----------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962g | 4535.924 g | 45359.237g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

TESTING METHODOLOGY

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT.

THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE:

<http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

[Signature]  
ANALYST SIGNATURE

[REDACTED]  
TAX #

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED  
PAGE 1 OF 1



NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

LABORATORY # 2022-044241  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001591278  
DATE SUBMITTED: 12/18/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  Yes  No (SEE REMARKS)

RESULTS OF EXAMINATION/ANALYSIS

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 3.498 g (aggregate wt.) |

SUMMARY OF ANALYSIS

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 3.498 g (aggregate wt.) |

REMARKS

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =   | 10 lbs =   | 100 lbs =  |
|----------|----------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962g | 4535.924 g | 45359.237g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

TESTING METHODOLOGY

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

ANALYST SIGNATURE

[REDACTED]  
TAX #

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED  
PAGE 1 OF 1



NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

LABORATORY # 2022-044880  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001593222  
DATE SUBMITTED: 12/24/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  YES  NO (SEE REMARKS)

**RESULTS OF EXAMINATION/ANALYSIS**

| Item # | Qty. | Description                      | Results  | Weight                  |
|--------|------|----------------------------------|----------|-------------------------|
| 1      | 1    | Cigar(s) cont. vegetative matter | Cannabis | 1.306 g (aggregate wt.) |

**SUMMARY OF ANALYSIS**

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 1.306 g (aggregate wt.) |

**REMARKS**

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =   | 10 lbs =   | 100 lbs =  |
|----------|----------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962g | 4535.924 g | 45359.237g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

**TESTING METHODOLOGY**

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

ANALYST SIGNATURE

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED  
PAGE 1 OF 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 24 AVENUE A, also known as 148-150 EAST 2ND STREET, TAX BLOCK #398, TAX LOT #66, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 24 AVENUE A LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Sogie Mart Rolls & Puff," located within the ground floor of the building at 24 Avenue A, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

---

**SUMMONS**

Index No.:

Filed On:


YOU ARE HEREBY SUMMONED TO ANSWER the complaint in this action and serve a copy of your answer on plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

*[The remainder of this page has been intentionally left blank]*



The venue of this action designated by plaintiff is New York County, the county in which the property affected by this action is located. Plaintiff designates New York County as the place of trial.

**DATED:** New York, New York  
February 2, 2023



---

HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff  
By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 24 AVENUE A, also known as 148-150 EAST 2ND STREET, TAX BLOCK #398, TAX LOT #66, COUNTY of NEW YORK, CITY and STATE of NEW YORK; 24 AVENUE A LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Sogie Mart Rolls & Puff," located within the ground floor of the building at 24 Avenue A, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

---

**VERIFIED COMPLAINT**

Index No.:

Filed On:

Plaintiff, the City of New York, by its attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, Carrie B. Talansky, Acting Deputy Commissioner for Legal Matters, New York City Police Department, of counsel, alleges as follows upon information and belief:

**INTRODUCTION**

1. Plaintiff brings this action pursuant to and by the authority of Section 20 of the General City Law, Section 394 of the New York City Charter and Sections 7-704(a) and 7-706(a) of the Administrative Code of the City of New York.

**THE PARTIES**

2. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

3. Defendant THE LAND AND BUILDING KNOWN AS 24 AVENUE A, also known as 148-150 EAST 2ND STREET, TAX BLOCK #398, TAX LOT #66, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Sogie Mart Rolls & Puff," located within the ground floor of the building at 24 Avenue A, New York, New York, is the subject premises where the unlawful activities complained of herein have taken place.

4. Defendant 24 AVENUE A LLC is the last recorded owner of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register.

5. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

6. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and is not presently licensed pursuant to the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis is a CAURD license.

7. As set forth below, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), and which also constitutes a public nuisance under the New York City Nuisance Abatement Law § 7-703(l). *See* Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

8. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the auxiliary police officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

9. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a plastic tube containing a pre-rolled cigar, also known as a “blunt,” containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001590950. The plastic tube indicated that the brand name of the alleged cannabis was “Birthday Cake Premium Roll.” The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.<sup>2</sup>

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<sup>2</sup> In identifying a substance as a “cannabis,” the Police Laboratory employs the definition of “cannabis” set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as “cannabis” pursuant to Article 222 of the Penal Law, the

**December 16, 2022**

10. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591278. This mylar bag indicated that the brand name of the alleged cannabis was "Yellow Fruit Stripes." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

**December 22, 2022**

11. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a plastic tube containing a pre-rolled cigar/cigarette, also known as a "blunt" or "joint," containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593222. The plastic tube indicated that the brand name of the alleged cannabis was "Premium Roll 2020 Future Bubble Gum." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

12. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists.

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laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.

13. Accordingly, a closing order is necessary to abate this serious public nuisance.

**AS AND FOR A COMPLETE CAUSE OF ACTION**

14. Plaintiff repeats and realleges, as if fully set forth herein at length, the facts contained in the preceding paragraphs.

15. Pursuant to Section 7-703 of the Administrative Code a public nuisance includes:

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law.

16. Section 10 of the Cannabis Law states, in relevant part, as follows:

Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.

17. Section 72 of the Cannabis Law, entitled, "Adult-use retail dispensary license," states, in relevant part, as follows:

1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

18. Section 125 of the Cannabis Law states, in relevant part, as follows:

1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.

19. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:

1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.

20. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:

3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

21. Section 222.00 of the New York State Penal Law provides, in part, as follows:

"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

22. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms "marihuana" and "marijuana" do not include "hemp" as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. defines hemp as follows:

Hemp. The term "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

23. Defendants have owned, leased, used, maintained or conducted the subject premises as a place wherein cannabis is sold without a CAURD license as is required by Section 125 of the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license.

24. Plaintiff further asserts that defendant(s) JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, has/have a duty to be aware of the unlicensed sale of cannabis at the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty




defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance; directing that the subject premises, which has been conducted and maintained as a public nuisance, shall be closed against all use for a period of one (1) year from the date of the posting of the judgment herein, pursuant to Section 7-714(c) of the Administrative Code, unless sooner released as provided by law; and awarding to plaintiff civil penalties in the amount of one thousand (\$1,000.00) dollars from each defendant for each and every day that such defendant intentionally conducted, maintained or permitted the public nuisance.

b. Taxing and allowing plaintiff's costs and disbursements against defendants pursuant to the Civil Practice Law and Rules, and directing that plaintiff have execution therefor;

c. Taxing and allowing plaintiff's actual cost, expenses and disbursements in investigating, bringing and maintaining the action, pursuant to Administrative Code § 7-714 (g), and directing that plaintiff have execution therefor; and

d. Granting to plaintiff such other and further relief as the Court may deem just and proper and equitable.

**DATED:** New York, New York  
February 2, 2023

  
\_\_\_\_\_  
HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff

By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

**VERIFICATION**

MARY O'SULLIVAN, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury, pursuant to CPLR 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an officer of the City of New York, the Plaintiff in the within action. I have read the foregoing complaint in THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS

24 Avenue A,  
New York County Block #398, Lot #66,

and know the contents thereof, which are to my knowledge true, except as to matters therein alleged upon information and belief, and as to those matters, I believe them to be true. The grounds for my belief as to all matters not stated upon my knowledge are records of the City of New York and statements by officers, employees and agents of the City of New York.

The reason why this verification is not made by the Plaintiff is because Plaintiff is a corporation.

DATED:       New York, New York  
              February 2, 2023

  
\_\_\_\_\_  
MARY O'SULLIVAN

At Individual Assignment Part \_\_\_\_ at the Supreme Court of the State of New York, held in and for the County of New York, City and State of New York, at the Courthouse located at \_\_\_\_\_ Centre/Thomas Street, New York, New York on the \_\_\_\_ day of \_\_\_\_\_, 2023.

PRESENT: HON. JUSTICE \_\_\_\_\_

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 103 ST. MARKS PLACE, TAX BLOCK #436, TAX LOT #48, COUNTY of NEW YORK, CITY and STATE of NEW YORK; VOYAGE ASSETS LLC; ALLIED V LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the building at 103 St. Marks Place, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**ORDER TO SHOW CAUSE**

Index No.:

Filed On:

Upon reading and filing the annexed affirmation of Evan Gluck, Esq., dated February 6, 2023; the affidavit of Police Officer Natanya Gelin, sworn to on February 1, 2023; the affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023; together with the exhibits; and the Summons and Verified Complaint, verified by Mary O'Sullivan, Esq., on February 1, 2023,

LET defendants or their attorneys Show Cause before this Court at I.A.S. Part \_\_\_\_\_ of the Court, Room \_\_\_\_\_, to be held at the Courthouse at \_\_\_\_\_ Centre/Thomas Street, Borough of Manhattan, City and State of New York, on the \_\_\_\_ day of \_\_\_\_\_, 2023, at \_\_\_\_\_ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard,

Why an order should not be made pursuant to Sections 7-707 and 710 of the New York City Administrative Code and Sections 6301 and 6311 of the Civil Practice Law and Rules, preliminarily enjoining defendants, their agents, employees and/or representatives, and all persons acting individually or in concert with them, during the pendency of this action:

- A. From the use and/or occupancy of the commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the building at 103 St. Marks Place, New York, New York, (hereinafter "the subject premises"), for any purpose whatsoever and directing that said premises shall be closed;
- B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and
- C. From conducting, maintaining, operating or permitting the subject premises to be used, occupied or operated for the sale of cannabis (also known as marijuana) without the requisite license from the New York State Office of Cannabis Management, in violation of Section 125 of the Cannabis Law; and

And, in the event this motion for a preliminary injunction is adjourned on the return date set forth above, why an order should not be issued on that date pursuant to Section 7-707(a) of the New York City Administrative Code temporarily closing the subject premises and temporarily

restraining defendants as set forth in subparagraphs "A" through "C" until such time that the Court conducts a hearing on the request for a preliminary injunction.

IT IS HEREBY ORDERED that service of a copy of this Order to Show Cause, together with the papers upon which it is based and the Summons and Verified Complaint, be made upon the defendants personally pursuant to CPLR Section 308(1); or by leaving a copy thereof with a person of suitable age and discretion at the subject premise pursuant to CPLR Section 308(2) on or before the \_\_\_\_ day of \_\_\_\_\_, 2023, and that this be deemed good and sufficient service on defendants, provided however, that if service is not made personally or to a person of suitable age and discretion, a copy of the papers will be posted at the subject premises and subsequently mailed to each defendant at his or her last known address by overnight mail on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ENTER:

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 103 ST. MARKS PLACE, TAX BLOCK #436, TAX LOT #48, COUNTY of NEW YORK, CITY and STATE of NEW YORK; VOYAGE ASSETS LLC; ALLIED V LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the building at 103 St. Marks Place, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**ATTORNEY AFFIRMATION**

Index No.:

Filed On:

Evan Gluck, an attorney admitted to practice before the courts of this State, affirms the truth of the following under the penalties of perjury pursuant to Section 2106 of the Civil Practice Law and Rules:

**INTRODUCTORY STATEMENT**

1. I am an attorney in the office of the Legal Bureau of the New York City Police Department and of counsel to Carrie B. Talansky, acting by designation of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for plaintiff herein.

2. I make this affirmation based upon my review of records maintained by, and information obtained from, various departments of the City government and from statements made to me by certain officers or agents of the City of New York.

3. This affirmation is submitted in support of plaintiff's application, brought by Order to Show Cause, for a preliminary injunction pursuant to Section 7-707 of the New York City Administrative Code ("Administrative Code") enjoining and restraining defendants and all persons acting in concert with them during the pendency of this action from conducting, maintaining, operating or permitting a public nuisance inside the commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the building at 103 St. Marks Place, New York, New York (hereinafter "the subject premises"), by prohibiting the defendants from using or operating said premises for the purpose of the unlicensed sale of cannabis (also known as marijuana), in violation of Cannabis Law § 125, or any other illegal activity.

4. In the event that the Court adjourns the first return date for the hearing of plaintiff's motion for a preliminary injunction, plaintiff respectfully submits that the Court should issue a temporary closing order prohibiting the use and/or occupancy of the subject premises, for any purpose whatsoever, and a temporary restraining order enjoining defendants and all persons from conducting, maintaining, operating, or permitting a public nuisance inside the subject premises, by prohibiting defendants from using or operating said premises for the unlicensed sale of cannabis until such time that the Court conducts a hearing on the request for a preliminary injunction.

#### **BACKGROUND FACTS**

5. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

6. Defendant THE LAND AND BUILDING KNOWN AS 103 ST. MARKS PLACE, TAX BLOCK #436, TAX LOT #48, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the

building at 103 St. Marks Place, New York, New York, is the subject premises where the unlawful activities complained of herein have taken place.

7. Defendants VOYAGE ASSETS LLC and ALLIED V LLC are the last recorded owners of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register. *See* copy of deed, annexed hereto as Exhibit "1."

8. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

9. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and has not been issued any other license by OCM pursuant to the Cannabis Law, which would allow it sell cannabis. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license. *See* Affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023, annexed hereto as Exhibit "2" at ¶¶ 2-3.

10. As set forth in the annexed affidavit of Police Officer Natanya Gelin, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), which also constitutes a public nuisance under the New York City Nuisance Abatement Law § 7-703(l). *See*



Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

11. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the undercover auxiliary officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

12. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001590922. This mylar bag indicated that the brand name of the alleged cannabis was "Savage New Year." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.<sup>1</sup> See Affidavit of Police Officer Natanya Gelin, annexed hereto as Exhibit "3" at ¶¶ 3-7; Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

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<sup>1</sup> In identifying a substance as a "cannabis," the Police Laboratory employs the definition of "cannabis" set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as "cannabis" pursuant to Article 222 of the Penal Law, the laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.

**December 16, 2022**

13. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591283. This mylar bag indicated that the brand name of the alleged cannabis was "Savage New Year." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. *See* Exhibit "3" at ¶¶ 8-12; Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

**December 22, 2022**

14. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593230. This mylar bag indicated that the brand name of the alleged cannabis was "Savage New Year." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. *See* Exhibit "3" at ¶¶ 13-17; NYPD Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

15. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding

community still exists.

16. Accordingly, a preliminary injunction is necessary to abate this serious public nuisance.

### **APPLICABLE LAW**

#### **The New York City Nuisance Abatement Law**

17. In 1977, the New York City Council enacted the Nuisance Abatement Law (Section 7-701 *et seq.* of the Administrative Code) with the express purpose of addressing the serious problem created by public nuisances:

[which] exist in the city in flagrant violation of the building code, zoning resolution, health laws, multiple dwelling law, penal laws regulating prostitution and related conduct, licensing laws, laws relating to the sale and consumption of alcoholic beverages, laws relating to gambling, controlled substances and dangerous drugs and penal laws relating to the possession of stolen property, all of which interfere with the quality of life, property values and the public health, safety, and welfare; the council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the city and of the businesses thereof and visitors thereto. . . .

Administrative Code § 7-701 (as amended by Local Law 41 of 2017).

18. Pursuant to Sections 7-703(f) of the Administrative Code, a public nuisance includes:

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law;

#### **The Sale of Cannabis Requires an Adult-Use Retail Dispensary License**

19. On March 31, 2021, the Marijuana Regulation and Taxation Act (MRTA) was enacted under Chapter 92 of the Laws of 2021. The statute is codified as Cannabis Law §§ 1 – 139. The statute established the creation of the NYS Cannabis Control Board and the Office of Cannabis Management to comprehensively regulate the production, licensing, taxation, packaging,

marketing and sale of adult-use, medical and hemp cannabis within the State of New York.

20. Section 10 of the Cannabis Law states, in relevant part, as follows:

Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.

21. Section 72 of the Cannabis Law, entitled, "Adult-use retail dispensary license," states, in relevant part, as follows:

1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

22. Section 125 of the Cannabis Law states, in relevant part, as follows:

1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.

23. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:

1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.

24. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:

3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

25, Section 222.00 of the New York State Penal Law provides, in part, as follows:

"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp

extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

26. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms “marihuana” and “marijuana” do not include “hemp” as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. provides, in part, as follows:

Hemp. The term "hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

27. Pursuant to Section 7-706 of the Administrative Code, the Corporation Counsel is explicitly authorized to bring and maintain an action in the Supreme Court to permanently enjoin the above public nuisances, as well as to permanently enjoin the person or persons conducting, maintaining or permitting such public nuisances from further conducting, maintaining or permitting such public nuisances.

**A PUBLIC NUISANCE EXISTS AT THE SUBJECT PREMISE**

28. A public nuisance, as defined by Section 7-703 of the Administrative Code, exists at the subject premises. As stated above, Nuisance Abatement Law Section 7-703(f) declares a premises to be a public nuisance where it is used for the purpose of a business, activity or enterprise which is not licensed as required by law.

29. The evidence set forth in support of this application clearly demonstrates that the subject premises is a public nuisance under Sections 7-703 (f) of the Administrative Code, due to the use of the subject premises for a business that is not licensed as required by law. The supporting affidavit and exhibits demonstrate violations of the licensing requirement of Cannabis Law § 125 predicated on the unlicensed sale of cannabis at the subject premises on December 15, 2022,

December 16, 2022, and December 22, 2022.

30. Those individuals involved in these illegal activities may still have access to the subject premises. As a result, the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists. An injunction is the only effective remedy to immediately abate this serious public nuisance and protect the surrounding community.

**PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION AND, IF APPLICABLE, A TEMPORARY CLOSING AND RESTRAINING ORDER PENDING A HEARING ON THE PRELIMINARY INJUNCTION**

31. The affidavit of Police Officer Natanya Gelin and supporting exhibits demonstrate that the subject premises has been used for the illegal sale of cannabis in violation of the licensing requirements of the New York State Cannabis Law.

32. Plaintiff is therefore entitled to a judgment permanently enjoining defendants from continuing their illegal use and occupancy of the subject premises for the sale of cannabis. Pending an action for a permanent injunction, the Court may grant a preliminary injunction to abate the public nuisance. If the Court does not hear the plaintiff's motion for a preliminary injunction on the return date for the instant motion, the Court may, and plaintiff submits, should, on that return date issue a temporary closing order and temporary restraining order prohibiting the subject premises from being used and/or occupied for the unlicensed sale of cannabis until such time as the motion for a preliminary injunction can be heard.

33. The Nuisance Abatement Law itself specifically provides for preliminary injunctive relief ancillary to an action for a permanent injunction. Section 7-707(a) of the Administrative Code states, in relevant part, as follows:

Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this subchapter and the person or persons conducting, maintaining or

permitting the public nuisance from further conducting, maintaining or permitting the public nuisance, where the public health, safety or welfare immediately requires the granting of such injunction. . . .

34. Since plaintiff is seeking injunctive relief *pendente lite* under the Nuisance Abatement Law, a showing of immediate and irreparable injury is not a prerequisite to the injunctive relief sought herein. See *People ex rel. Bennett v. Laman*, 277 N.Y. 368 (1938); *City of Rochester v. Gutberlett*, 211 N.Y. 309 (1914); *City of New York v. Castro*, 143 Misc.2d 766 (1989), *aff'd*, 559 N.Y.S.2d 508 (1st Dept. 1990); *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511 (1st Dept. 1986); *Town of Islip v. Clark*, 90 A.D.2d 500 (2d Dept. 1982); *City of Utica v. Ortner*, 256 A.D. 1039 (4th Dept. 1939); *City of New York v. Narod Realty Corp.*, 122 Misc.2d 885 (Sup. Ct. Bronx Co. 1983). Rather, since injunctive relief is specifically authorized by Nuisance Abatement Law, plaintiff need only show that the statutory conditions have been satisfied. Therefore, a *prima facie* showing that defendants are indeed violating the Nuisance Abatement Law is sufficient to entitle plaintiff to a preliminary injunction *pendente lite*.

35. In the case herein, there can be no doubt that cannabis was illegally sold within the subject premises. Indeed, by the affidavit of Police Officer Natanya Gelin, as well as other supporting documentation, plaintiff has established by clear and convincing evidence that defendants have maintained a public nuisance as defined by Section 7-703(f) of the Administrative Code by using the subject premises to sell cannabis without the requisite license. Therefore, plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code.

36. Even if the Nuisance Abatement Law did not specifically authorize a preliminary injunction, this Court could nonetheless grant a preliminary injunction and a temporary restraining order pursuant to CPLR § 6301 enjoining the use of the subject premises for the unlicensed sale



of cannabis. In determining whether a preliminary injunction is warranted under CPLR § 6301, the courts have traditionally employed a three-pronged test, requiring that the moving party demonstrate: (i) a likelihood of ultimate success on the merits; (ii) irreparable injury absent the granting of a preliminary injunction; and (iii) that the balancing of equities favors its position. *See Gambar Ent., Inc. v. Kelly Serv.*, 69 A.D.2d 297, 306 (4th Dept. 1979); *Paine & Chriscott v. Blair House Assoc.*, 70 A.D.2d 571, 572 (1st Dept. 1979). Plaintiff respectfully submits that, since the evidence satisfies this traditional three-pronged test, a preliminary injunction is wholly appropriate.

37. First, plaintiff's likelihood of success on the merits is strongly supported by the evidence submitted in support of this motion. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was illegally sold to an underage auxiliary officer within the subject premises, and such transactions were personally observed by a police officer. Furthermore, the tenant/business owner/operator knew or should have known that this unlawful activity was occurring given that the cannabis was illegally sold in the open by individuals who were in control of the subject premises. *See*, Exhibits "2" through "5."

38. Second, defendants' illegal use of the subject premises for the sale of cannabis without the requisite license constitutes irreparable harm to the City of New York, its residents and visitors, particularly where such sales are made to minors. Indeed, in the legislative declaration incorporated into the Nuisance Abatement Law, the City Council recognized that the continued occurrence of a public nuisance is harmful to the public. *See* Administrative Code § 7-701.

39. Third, the equities are balanced in favor of plaintiff. The subject premises has been operated, occupied and used for the unlicensed sale of cannabis, and thus, no legitimate interest of defendants will be harmed by an injunction enjoining the illegal sale of cannabis. In contrast, the

City of New York, and the public at large which it is required to protect, will benefit greatly if the threat of this type of continued unlicensed activity is eliminated from the subject premises.

40. Accordingly, plaintiff has established a *prima facie* case that defendants have maintained a public nuisance, and has satisfied the traditional three-pronged test used to determine whether a preliminary injunction is appropriate. Therefore, plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code as well as CPLR § 6301.

41. In addition, temporary relief pending the hearing on the motion for the preliminary injunction is authorized pursuant to Section 7-707(a) of the Administrative Code, and may remain in effect pending further order of the Court. Section 7-707(a) states, in relevant part, as follows:

A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted.

42. It is respectfully submitted that the above criteria have been met. Not only has plaintiff shown by clear and convincing evidence that there exists a public nuisance within the scope of the Nuisance Abatement Law, but it is also clear that the public health, safety and welfare require immediate abatement of the public nuisance by an order closing the premises against all use pending the determination of this action as the subject premises is allowing the unlicensed sale of cannabis to minors.

43. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was sold to an underage auxiliary officer within the subject premises. It is submitted that arrests and criminal proceedings alone will not stop the illegal activity or the threat that it will

continue or reoccur. Given the prior violations of the law, plaintiff submits that an injunction alone will likely not be honored by those responsible for conducting, maintaining or permitting the illegal activity. Thus, an order closing the subject premises against all use during the pendency of this action is the best assurance that this public nuisance will be abated.

44. Plaintiff asserts that defendants JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, have a duty to be aware of the unlicensed sale of cannabis within the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty because the extent of the business may preclude his personal supervision and compel reliance on subordinates. *See People ex rel. Price v. Sheffield Farms, etc., Co.*, 225 N.Y. 25, 30 (1918).

45. Since a serious public nuisance exists at the subject premises, and defendants JOHN DOE and/or JANE DOE, the tenant/operator(s), were aware, should have been aware, or had a reason or a duty to be aware of the unlawful activity since it occurred openly, an order closing the subject premises against all use during the pendency of this action is the best assurance that this persistent public nuisance will be abated.


46. The relief sought upon this application is expressly authorized by Section 7-707 of the Administrative Code.

*[This space has been intentionally left blank]*

47. No prior application for this relief has been made to this or any other court or justice. No other provisional remedy has been secured or sought in the same action against the same defendants.

WHEREFORE, it is respectfully requested that plaintiff's application be granted in all respects.

**DATED:** New York, New York  
February 6, 2023

  
\_\_\_\_\_  
Evan Gluck, Esq.

**LIST OF EXHIBITS**

- Exhibit 1: Copy of Deed**
- Exhibit 2: Affidavit of Senior Investigator Dawn Kiely**
- Exhibit 3: Affidavit of Police Officer Natanya Gelin**
- Exhibit 4: Property Clerk Invoices**
- Exhibit 5: NYPD Laboratory Reports**

**EXHIBIT 1**

CORE  
22852

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT-THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made the 7<sup>th</sup> day of June 2017

BETWEEN

ALLIED XVII LLC, a New York limited liability company, having an address at 9 Park Place, Suite 201, Great Neck, New York 11021,

party of the first part, and

VOYAGE ASSETS LLC and ALLIED V LLC, As Tenants in Common, both having an address at 9 Park Place, Suite 201, Great Neck, New York 11021,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

See Schedule A Attached Hereto

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.


AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Allied XVII LLC  
By: Voyage Assets LLC, Managing Member

\_\_\_\_\_

  
By: Bahram Hakakian, Sole Member

*First American Title Insurance Company*

Title Number: **CORE22852**

Page 1

**SCHEDULE A DESCRIPTION**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, being bounded and described as follows:

**BEGINNING** at a point on the Northerly side of Eighth Street, also known as St Marks Place, distant 237 feet 6 inches Easterly from the corner formed by the intersection of the Northerly side of Eighth Street and the Easterly side of First Avenue;

**RUNNING THENCE** Northerly and parallel with First Avenue and part of the distance through a party wall, 93 feet 11 inches to the center line of the block;

**THENCE** Easterly along the center line of the block, 37 feet 6 inches;

**THENCE** Southerly and parallel with First Avenue and part of the distance through a party wall, 93 feet 11 inches to the Northerly side of Eighth Street;

**THENCE** Westerly along the Northerly side of Eighth Street, 37 feet 6 inches to the point or place of **BEGINNING**.

For Information only: Premises is known as 103 St. Marks Place, New York, NY



**TO BE USED ONLY WHEN THE ACKNOWLEDGMENT IS MADE IN NEW YORK STATE**

State of New York, County of Nassau ss:

State of New York, County of \_\_\_\_\_ ss:

On the 7<sup>th</sup> day of June in the year 2017  
before me, the undersigned, personally appeared  
Bahram Hakakian  
personally known to me or proved to me on the basis of  
satisfactory evidence to be the individual(s) whose name(s) is  
(are) subscribed to the within instrument and acknowledged to  
me that he/she/they executed the same in his/her/their  
capacity(ies), and that by his/her/their signature(s) on the  
instrument, the individual(s), or the person upon behalf of which  
the individual(s) acted, executed the instrument.

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
before me, the undersigned, personally appeared \_\_\_\_\_  
personally known to me or proved to me on the basis of  
satisfactory evidence to be the individual(s) whose name(s) is  
(are) subscribed to the within instrument and acknowledged to  
me that he/she/they executed the same in his/her/their  
capacity(ies), and that by his/her/their signature(s) on the  
instrument, the individual(s), or the person upon behalf of which  
the individual(s) acted, executed the instrument.

Hector Alexiades  
\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

**HECTOR ALEXIADES**  
Notary Public, State of New York  
Registration #02AL801847D  
Qualified in Queens County  
Commission Expires Jan. 18, 2019

**TO BE USED ONLY WHEN THE ACKNOWLEDGMENT IS MADE OUTSIDE NEW YORK STATE**

State (or District of Columbia, Territory, or Foreign Country) of \_\_\_\_\_ ss:

ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_  
personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are)  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and  
that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted,  
executed the instrument, and that such individual made such appearance before the undersigned in the

\_\_\_\_\_ in \_\_\_\_\_  
(insert the City or other political subdivision) (and insert the State or Country or other place the acknowledgment was taken)

\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

DISTRICT \_\_\_\_\_  
SECTION \_\_\_\_\_  
BLOCK 436  
LOT 48  
COUNTY OR TOWN New York  
STREET ADDRESS 103 St. Marks Place

**QUITCLAIM DEED**

Title No. \_\_\_\_\_  
ALLIED XVII LLC

TO  
VOYAGE ASSETS LLC and ALLIED V LLC, As Tenants In  
Common

Recorded at Request of  
NEW YORK TITLE

RETURN BY MAIL TO:

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS

*Distributed By*  
**NEW YORK TITLE**  
RESEARCH CORPORATION  
15 Flsher Lane  
White Plains, NY 10603  
914-682-9010 Fax 914-682-0182  
www.nytitle.com

Karabelas & Papagianopoulos, LLP  
31-10 37th Avenue, Suite 301  
Long Island City, NY 11101

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

**EXHIBIT 2**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----  
THE CITY OF NEW YORK,

Plaintiff,

- against -

AFFIDAVIT

THE LAND AND BUILDING KNOWN AS  
103 ST. MARKS PLACE, et al.,

Defendants.

-----  
STATE OF NEW YORK     )  
                                  : ss.:  
COUNTY OF RICHMOND )

**DAWN KIELY**, being duly sworn, deposes and says:

1. I am a senior investigator with the New York State Office of Cannabis Management (“OCM”). OCM is charged with issuing licenses for businesses to participate in New York State’s adult-use, medical, and cannabinoid hemp industries.


2. I have full access to official records of Adult-Use Retail Dispensary Licenses and Conditional Adult-Use Retail Dispensary Licenses for the entire State of New York. This includes all licenses that have been granted, as well as applied for within New York County, including 103 St. Marks Place, New York, New York (the “subject premises”).

*[This space has been intentionally left blank]*

3. I have made a diligent search of the records of my office and have found that no licenses have been issued by OCM to any individuals and/or establishments operating at the subject premises, furthermore they do not have any applications pending.

**False statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law.**

  
DAWN KIELY

Sworn to before me this 4<sup>th</sup>  
day of January, 2022  
  
Notary Public

Alex Mark Tumino  
Notary Public - State of New York  
No. 0176348602  
Qualified in Nassau County  
Commission Expires: 10/03/2024

**EXHIBIT 3**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
THE CITY OF NEW YORK,

Plaintiff,

**AFFIDAVIT**

- against -

THE LAND AND BUILDING KNOWN AS  
103 ST. MARKS PLACE, et al.

Defendants.

----- X

STATE OF NEW YORK    )  
                                  : ss.:  
COUNTY OF NEW YORK )

Police Officer Natanya Gelin, Shield Number 7283, being duly sworn,  
deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9<sup>th</sup> Precinct where my duties include, but are not limited to, the enforcement of laws connected with the sale of cannabis.

2. I submit this affidavit in support of the plaintiff's motion for a preliminary injunction against the commercial premises operating as "Saint Marks Convenience & Smoke Shop," at 103 St. Marks Place, New York, New York ("subject premises"), enjoining the use of the subject premises for the sale of cannabis, in violation of the licensing requirements of the Cannabis Law.

**December 15, 2022**

3. On December 15, 2022, I participated in an undercover investigation targeting the subject premises.

4. On December 15, 2022, I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on

his/her identification stated that he/she was twenty (20) years of age.

5. At approximately 8:30 p.m., the underage auxiliary police officer and I then entered the subject premises. As we entered I observed that the awning affixed to the storefront reflected the subject premises was operating as "Saint Marks Convenience & Smoke Shop." Once inside, I observed the underage auxiliary police officer purchase a mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars (\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

6. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag containing the alleged cannabis. The purchased item was photographed and vouchered under Property Clerk Invoice Number 1001590922. The mylar bag indicated that the brand name of the alleged cannabis was "Savage New Year."

7. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

#### **December 16, 2022**

8. On December 16, 2022, I participated in another undercover investigation inside the subject premises.

9. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

10. At approximately 7:10 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars

(\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

11. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag of alleged cannabis. The mylar bag of alleged cannabis was photographed and vouchered under Property Clerk Invoice Number 1001591283. This mylar bag indicated that the brand name of the alleged cannabis was "Savage New Year."

12. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

#### **December 22, 2022**

13. On December 22, 2022, I participated in another undercover investigation inside the subject premises.

14. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

15. At approximately 7:40 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars (\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.

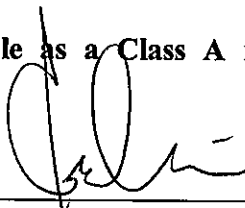
16. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the plastic tube containing the alleged cannabis. The purchased item was photographed and vouchered under Property Clerk Invoice Number 1001593230. The mylar bag indicated that the brand name of



the alleged cannabis was "Savage New Year."

17. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

**False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.**

  
\_\_\_\_\_  
Police Officer Natanya Gelin

Sworn to before me this  
1<sup>st</sup> day of February, 2023

  
\_\_\_\_\_  
Notary Public

Jason W. Krawitz  
Notary Public, State of New York  
No. 02KR6399273  
Qualified in Nassau County  
Commission Expires October 15, 2023

**EXHIBIT 4**



NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

LABORATORY # 2022-044162  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001590922  
DATE SUBMITTED: 12/17/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  YES  NO (SEE REMARKS)

**RESULTS OF EXAMINATION/ANALYSIS**

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 3.456 g (aggregate wt.) |

**SUMMARY OF ANALYSIS**

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 3.456 g (aggregate wt.) |

**REMARKS**

|                     |                      |                    |                    |                     |                     |                      |                      |                        |                         |
|---------------------|----------------------|--------------------|--------------------|---------------------|---------------------|----------------------|----------------------|------------------------|-------------------------|
| 1/4 oz =<br>3.544 g | 1/2 oz =<br>14.175 g | 2 oz =<br>56.700 g | 3 oz =<br>85.049 g | 4 oz =<br>113.399 g | 8 oz =<br>226.797 g | 16 oz =<br>453.593 g | 5 lbs =<br>2267.962g | 10 lbs =<br>4535.924 g | 100 lbs =<br>45359.237g |
|---------------------|----------------------|--------------------|--------------------|---------------------|---------------------|----------------------|----------------------|------------------------|-------------------------|

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

**TESTING METHODOLOGY**

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT.

THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE:

<http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexis Benson  
AUTHORIZER/ANALYST NAME

ANALYST SIGNATURE

TAX #

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED

PAGE 1 OF 1



NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION

LABORATORY REPORT

LABORATORY # 2022-044239  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001591283  
DATE SUBMITTED: 12/18/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  YES  NO (SEE REMARKS)

RESULTS OF EXAMINATION/ANALYSIS

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 3.081 g (aggregate wt.) |

SUMMARY OF ANALYSIS

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 3.081 g (aggregate wt.) |

REMARKS

|                  |                   |                 |                 |                  |                  |                   |                   |                     |                      |
|------------------|-------------------|-----------------|-----------------|------------------|------------------|-------------------|-------------------|---------------------|----------------------|
| 1/4 oz = 3.544 g | 1/2 oz = 14.175 g | 2 oz = 56.700 g | 3 oz = 85.049 g | 4 oz = 113.399 g | 8 oz = 226.797 g | 16 oz = 453.593 g | 5 lbs = 2267.962g | 10 lbs = 4535.924 g | 100 lbs = 45359.237g |
|------------------|-------------------|-----------------|-----------------|------------------|------------------|-------------------|-------------------|---------------------|----------------------|

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

TESTING METHODOLOGY

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED. I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

ANALYST SIGNATURE

[REDACTED]  
TAX #

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED  
PAGE 1 OF 1



**NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION**

**LABORATORY REPORT**

INVOICED BY: LT JERMAINE ODEN Tax# [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

LABORATORY # 2022-044883  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001593230  
DATE SUBMITTED: 12/24/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  Yes  No (SEE REMARKS)

**RESULTS OF EXAMINATION/ANALYSIS**

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 2.423 g (aggregate wt.) |

**SUMMARY OF ANALYSIS**

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 2.423 g (aggregate wt.) |

**REMARKS**

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =   | 10 lbs =   | 100 lbs =  |
|----------|----------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962g | 4535.924 g | 45359.237g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

**TESTING METHODOLOGY**

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT.

THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE:

<http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.

CRIM IB  
RANK/TITLE

Alexys Benson  
AUTHORIZER/ANALYST NAME

ANALYST SIGNATURE

[REDACTED]  
TAX #

12/28/2022  
DATE PREPARED

12/28/2022  
DATE ISSUED

**EXHIBIT 5**



**NYPD Property Clerk Invoice**  
PD 521-141(Rev.12/18)



Invoice No. **1001590922**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/15/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME/EU No.                |
|-----------------------|------|------------------|------------|--------------|----------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                            |
| Arresting Officer     | N/A  |                  |            |              | OCME/FB No.                |
| Investigating Officer | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT | Police Lab Evid. Ctrl. No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.          |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.            |

| Item                    | Total QTY | ArSide(s)   | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC IS:<br>FIELD TESTED POSITIVE DESCRIPTION: 3.5 G OF<br>MARIJUANA PACKAGE IN A MYLAR FILM PACK /<br>SMALL MULTI-COLORED BAG TITLED "SAVAGE NEW<br>YEAR" |                 | 1204889147<br>- 1400393174 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 [REDACTED] 12/15/2022 22:49 : AT TPO ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH ABOVE MENTION ESTABLISHMENT SOLD 3.5 G OF MARIJUANA FOR \$ 30. FTP BY LT ODEN  
 [REDACTED] 12/16/2022 01:09 : Invoice Approved By [REDACTED]

| Date of Incident | Penal Code/Description               | Crime Classification | Related To | Receipt |
|------------------|--------------------------------------|----------------------|------------|---------|
| 12/15/2022       | PENAL LAW/CRIMINAL SALE OF MARIJUANA | MISDEMEANOR          |            |         |

| Prisoner(s) Name | D.O.B | Age | Address | Arrest No./Summons No. | NYSIO No. |
|------------------|-------|-----|---------|------------------------|-----------|
|                  |       |     |         |                        |           |

| Name | Tax No. | Address | Phone No. |
|------|---------|---------|-----------|
|      |         |         |           |

**Finder**  
 Owner **ST MARKS SMOKE SHOP / SMOKE SHOP CONVENIENCE**  
**103 SAINT MARKS PLACE NEW YORK, NY**  
**910-633-5702**

Person Vehicle Taken From  
 Complaint No. **N/A**  
 Related Comp No.(s) **N/A**  
 Aided/Accident No.(s) **N/A**  
 Related Invoice(s) **N/A**



Invoice No. **1001590922**

Property Clerk Copy  
printed: 12/16/2022 15:33

PCD Storage No.

Page No.1 of 2



**NYPD Property Clerk Invoice**  
PD 521-141 (Rev. 12/16)



Invoice No. **1001591283**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/16/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME.EU No.               |
|-----------------------|------|------------------|------------|--------------|---------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                           |
| Arresting Officer     | N/A  |                  |            |              | OCME.FB No.               |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid. Ctrl.No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.         |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.           |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC<br>IS: FIELD TESTED POSITIVE PACKAGED IN: SMALL<br>PINK MYLAR FILM PACK DESCRIPTION: MARIJUANA<br>PACKAGE IN A MYLAR FILM PACK / SMALL MULTI-<br>COLORED BAG TITLED "SAVAGE NEW YEAR" |                 | 1204889153<br>- 1400393171 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/16/2022 23:48 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH THE BELOW ESTABLISHMENT SOLD 3.5 G OF MARIJUANA FOR \$ 30.  
 12/17/2022 02:36 : Invoice Approved By [REDACTED]

| Date of Incident | Penal Code/Description                           | Crime Classification | Related To | Receipt |
|------------------|--|----------------------|------------|---------|
| 12/16/2022       | PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR |                      |            |         |

| Prisoner(s) Name | D.O.B | Age | Address | Arrest No./Summons No. | NYSID No. |
|------------------|-------|-----|---------|------------------------|-----------|
|                  |       |     |         |                        |           |

| Finder | Owner               | Address                            | Phone No.   |
|--------|---------------------|------------------------------------|-------------|
|        | ST MARKS SMOKE SHOP | 103 SAINT MARKS PLACE NEW YORK, NY | 910-63-3-57 |

Person Vehicle Taken From  
 Complaint No. N/A  
 Related Comp No.(s) N/A  
 Aided/Accident No.(s) N/A  
 Related Invoice(s) N/A



Invoice No. **1001591283**

Invoicing Officer Copy  
printed: 12/17/2022 02:41

PCD Storage No.  
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Page No.1 of 2





**NYPD Property Clerk Invoice**  
 PD 521-141(Rev.12/18)



Invoice No. **1001591283**

| Approvals         | Rank | Name               | Tax No.    | Command      | Date       | Time  |
|-------------------|------|--------------------|------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/16/2022 | 23:48 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/17/2022 | 02:31 |
|                   |      | <i>J. F. O.</i>    |            |              |            |       |
| Approved By       | SGT  | ANTHONY, CHARSEL J | [REDACTED] | 009 PRECINCT | 12/17/2022 | 02:36 |
|                   |      | <i>Sgt Anthony</i> |            |              |            |       |



Invoice No. **1001591283**

Invoicing Officer Copy  
 printed: 12/17/2022 02:41

PCD Storage No.

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Page No.2 of 2



**NYPD Property Clerk Invoice**  
PD 521-141(Rev.12/18)



Invoice No. **1001593230**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date **12/22/2022** Property Type **CONTROLLED SUBSTANCE** Property Category **INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME/EU No.                |
|-----------------------|------|------------------|------------|--------------|----------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                            |
| Arresting Officer     | N/A  |                  |            |              | OCME/FB No.                |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid. Clrf. No. |
| Det Squad Supervisor  | N/A  |                  |            |              | Det Sqd. Case No.          |
| CSU/ECT Processing    | N/A  |                  |            |              | CSU/ECT Run No.            |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC IS:<br>FIELD TESTED POSITIVE PACKAGED IN: SMALL MYLAR<br>FILM BAG MULTI-COLORED DESCRIPTION: 3.5 G OF<br>SOUR DIESEL MARIJUANA / WEED PACKAGE IN A<br>MYLAR FILM PACK / SMALL MULTI-COLORED BAG<br>TITLED "SAVAGE NEW YEAR" |                 | 1204889155<br>- 1400393166 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/22/2022 22:00 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH THE BELOW ESTABLISHMENT SOLD 3.5 G MARIJUANA SOUR DIESEL WEED FOR \$30.  
 12/23/2022 01:33 : Invoice Approved By [REDACTED]

Date of Incident: 12/22/2022 Penal Code/Description: PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR Crime Classification: Related To: Receipt:

Prisoner(s) Name: D.O.B: Age: Address: Arrest No./Summons No.: NYSID No.:

Name: Tax No.: Address: Phone No.:

Finder:  
 Owner: ST. MARKS SMOKE SHOP / SMOKE SHOP CONVENIENCE 103 SAINT MARKS PLACE NEW YORK, NY 910-633-5702

Person Vehicle Taken From:

Complaint No. N/A  
 Related Comp No. (s) N/A  
 Aided/Accident No. (s) N/A  
 Related Invoice(s) N/A



Invoice No. **1001593230**

Invoicing Officer Copy  
printed: 12/23/2022 01:45

PCD Storage No.

Page No.1 of 2

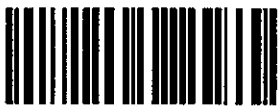


**NYPD Property Clerk Invoice**  
 PD 521-141(Rev.12/18)



Invoice No. **1001593230**

| Approvals         | Rank | Name               | Tax No.    | Command      | Date       | Time  |
|-------------------|------|--------------------|------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/22/2022 | 22:00 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/23/2022 | 01:25 |
|                   |      | <i>J. J. O.</i>    | [REDACTED] |              |            |       |
| Approved By       | LT   | HWANG, ALEXANDER O | [REDACTED] | 009 PRECINCT | 12/23/2022 | 01:33 |
|                   |      | <i>Lt Hwang</i>    |            |              |            |       |



Invoice No. **1001593230**

Invoicing Officer Copy  
 printed: 12/23/2022 01:45

PCD Storage No.

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Page No.2 of 2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 103 ST. MARKS PLACE, TAX BLOCK #436, TAX LOT #48, COUNTY of NEW YORK, CITY and STATE of NEW YORK; VOYAGE ASSETS LLC; ALLIED V LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the building at 103 St. Marks Place, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

---

**SUMMONS**

Index No.:

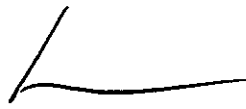
Filed On:

YOU ARE HEREBY SUMMONED TO ANSWER the complaint in this action and serve a copy of your answer on plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

*[The remainder of this page has been intentionally left blank]*

The venue of this action designated by plaintiff is New York County, the county in which the property affected by this action is located. Plaintiff designates New York County as the place of trial.

**DATED:** New York, New York  
February 1, 2023



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HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff  
By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 103 ST. MARKS PLACE, TAX BLOCK #436, TAX LOT #48, COUNTY of NEW YORK, CITY and STATE of NEW YORK; VOYAGE ASSETS LLC; ALLIED V LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the building at 103 St. Marks Place, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

---

**VERIFIED COMPLAINT**

Index No.:

Filed On:

Plaintiff, the City of New York, by its attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, Carrie B. Talansky, Acting Deputy Commissioner for Legal Matters, New York City Police Department, of counsel, alleges as follows upon information and belief:

**INTRODUCTION**

1. Plaintiff brings this action pursuant to and by the authority of Section 20 of the General City Law, Section 394 of the New York City Charter and Sections 7-704(a) and 7-706(a) of the Administrative Code of the City of New York.

**THE PARTIES**

2. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

3. Defendant THE LAND AND BUILDING KNOWN AS 103 ST. MARKS PLACE, TAX BLOCK #436, TAX LOT #48, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Saint Marks Convenience & Smoke Shop," located within the ground floor of the building at 103 St. Marks Place, New York, New York, is the subject premises where the unlawful activities complained of herein have taken place.

4. Defendants VOYAGE ASSETS LLC and ALLIED V LLC are the last recorded owners of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register.

5. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

6. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and is not presently licensed pursuant to the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis is a CAURD license.

7. As set forth below, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), and which also constitutes a public nuisance under the New York City Nuisance

Abatement Law § 7-703(l). *See* Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

8. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the auxiliary police officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

12. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001590922. This mylar bag indicated that the brand name of the alleged cannabis was “Savage New Year.” The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.<sup>2</sup>

---

<sup>2</sup> In identifying a substance as a “cannabis,” the Police Laboratory employs the definition of “cannabis” set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as “cannabis” pursuant to Article 222 of the Penal Law, the laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.



**December 16, 2022**

13. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591283. This mylar bag indicated that the brand name of the alleged cannabis was "Savage New Year." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

**December 22, 2022**

14. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a small mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593230. This mylar bag indicated that the brand name of the alleged cannabis was "Savage New Year." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

12. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists.

13. Accordingly, a closing order is necessary to abate this serious public nuisance.

**AS AND FOR A COMPLETE CAUSE OF ACTION**

14. Plaintiff repeats and realleges, as if fully set forth herein at length, the facts contained in the preceding paragraphs.

15. Pursuant to Section 7-703 of the Administrative Code a public nuisance includes:

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law.

16. Section 10 of the Cannabis Law states, in relevant part, as follows:

Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.

17. Section 72 of the Cannabis Law, entitled, "Adult-use retail dispensary license," states, in relevant part, as follows:

1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

18. Section 125 of the Cannabis Law states, in relevant part, as follows:

1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.

19. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:

1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.

20. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:

3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

21, Section 222.00 of the New York State Penal Law provides, in part, as follows:

"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

22. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms "marihuana" and "marijuana" do not include "hemp" as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. defines hemp as follows:

Hemp. The term "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

23. Defendants have owned, leased, used, maintained or conducted the subject premises as a place wherein cannabis is sold without a CAURD license as is required by Section 125 of the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license.

24. Plaintiff further asserts that defendant(s) JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, has/have a duty to be aware of the unlicensed sale of cannabis at the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty

because the extent of the business may preclude his personal supervision and compel reliance on subordinates. *See People ex rel. Price v. Sheffield Farms, etc., Co.*, 225 N.Y. 25, 30 (1918).

25. Defendant(s) JOHN DOE and/or JANE DOE, the tenant/operators of the subject premises, should have been aware of the use of the subject premises for the unlicensed sale of cannabis as such transactions were conducted openly by an employee of the subject premises.

26. Pursuant to Section 7-706 and Section 7-714 of the Administrative Code, plaintiff is entitled to a judgment against defendants, their agents, assigns and/or representatives, and any and all persons acting individually or in concert with them, permanently enjoining such public nuisance; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and directing the sale by the sheriff of such property; and closing the subject premises for a period of one (1) year from the posting of the judgment.

27. Defendants have owned, leased, used, maintained or conducted the subject premises for the purpose of the unlicensed sale of cannabis, and have permitted, promoted, condoned or acquiesced in the use of the subject premises for the illegal activity.

28. Pursuant to Section 7-706(h) of the Administrative Code, plaintiff is entitled to a judgment against the defendants ordering that each defendant pay a penalty of one thousand dollars (\$1,000.00) for each day that such defendant intentionally conducted, maintained or permitted the public nuisance.

**WHEREFORE**, plaintiff demands judgment against defendants as follows:

a. With respect to the **COMPLETE CAUSE OF ACTION**, directing that the subject premises described herein and made a defendant in this action shall be permanently and perpetually enjoined as a place which is conducted, maintained or permitted to be a public nuisance, by

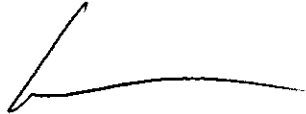
defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance; directing that the subject premises, which has been conducted and maintained as a public nuisance, shall be closed against all use for a period of one (1) year from the date of the posting of the judgment herein, pursuant to Section 7-714(c) of the Administrative Code, unless sooner released as provided by law; and awarding to plaintiff civil penalties in the amount of one thousand (\$1,000.00) dollars from each defendant for each and every day that such defendant intentionally conducted, maintained or permitted the public nuisance;

b. Taxing and allowing plaintiff's costs and disbursements against defendants pursuant to the Civil Practice Law and Rules, and directing that plaintiff have execution therefor;

c. Taxing and allowing plaintiff's actual cost, expenses and disbursements in investigating, bringing and maintaining the action, pursuant to Administrative Code § 7-714 (g), and directing that plaintiff have execution therefor; and

d. Granting to plaintiff such other and further relief as the Court may deem just and proper and equitable.

**DATED:** New York, New York  
February 1, 2023



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HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff  
By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

**VERIFICATION**

MARY O'SULLIVAN, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury, pursuant to CPLR 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an officer of the City of New York, the Plaintiff in the within action. I have read the foregoing complaint in THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS

103 St. Marks Place,  
New York County Block #436, Lot #48,

and know the contents thereof, which are to my knowledge true, except as to matters therein alleged upon information and belief, and as to those matters, I believe them to be true. The grounds for my belief as to all matters not stated upon my knowledge are records of the City of New York and statements by officers, employees and agents of the City of New York.

The reason why this verification is not made by the Plaintiff is because Plaintiff is a corporation.

DATED:      New York, New York  
                 February 1, 2023

  
MARY O'SULLIVAN

At Individual Assignment Part \_\_\_\_ at the Supreme Court of the State of New York, held in and for the County of New York, City and State of New York, at the Courthouse located at \_\_\_\_\_ Centre/Thomas Street, New York, New York on the \_\_\_\_ day of \_\_\_\_\_, 2023.

PRESENT: HON. JUSTICE \_\_\_\_\_

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 736 BROADWAY, TAX BLOCK #545, TAX LOT #22, COUNTY of NEW YORK, CITY and STATE of NEW YORK; UD 736 BROADWAY LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**ORDER TO SHOW CAUSE**

Index No.:

Filed On:

Upon reading and filing the annexed affirmation of Evan Gluck, Esq., dated February 6, 2023; the affidavit of Police Officer Natanya Gelin, sworn to on February 2, 2023; the affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023; together with the exhibits; and the Summons and Verified Complaint, verified by Mary O'Sullivan, Esq., on February 2, 2023,



LET defendants or their attorneys Show Cause before this Court at I.A.S. Part \_\_\_\_\_ of the Court, Room \_\_\_\_\_, to be held at the Courthouse at \_\_\_\_\_ Centre/Thomas Street, Borough of Manhattan, City and State of New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, at \_\_\_\_\_ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard,

Why an order should not be made pursuant to Sections 7-707 and 710 of the New York City Administrative Code and Sections 6301 and 6311 of the Civil Practice Law and Rules, preliminarily enjoining defendants, their agents, employees and/or representatives, and all persons acting individually or in concert with them, during the pendency of this action:

- A. From the use and/or occupancy of the commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New York, (hereinafter "the subject premises"), for any purpose whatsoever and directing that said premises shall be closed;
- B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and
- C. From conducting, maintaining, operating or permitting the subject premises to be used, occupied or operated for the sale of cannabis (also known as marijuana) without the requisite license from the New York State Office of Cannabis Management, in violation of Section 125 of the Cannabis Law; and

And, in the event this motion for a preliminary injunction is adjourned on the return date set forth above, why an order should not be issued on that date pursuant to Section 7-707(a) of the New York City Administrative Code temporarily closing the subject premises and temporarily restraining defendants as set forth in subparagraphs "A" through "C" until such time that the Court

conducts a hearing on the request for a preliminary injunction.

IT IS HEREBY ORDERED that service of a copy of this Order to Show Cause, together with the papers upon which it is based and the Summons and Verified Complaint, be made upon the defendants personally pursuant to CPLR Section 308(1); or by leaving a copy thereof with a person of suitable age and discretion at the subject premise pursuant to CPLR Section 308(2) on or before the \_\_\_\_ day of \_\_\_\_\_, 2023, and that this be deemed good and sufficient service on defendants, provided however, that if service is not made personally or to a person of suitable age and discretion, a copy of the papers will be posted at the subject premises and subsequently mailed to each defendant at his or her last known address by overnight mail on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ENTER:

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 736 BROADWAY, TAX BLOCK #545, TAX LOT #22, COUNTY of NEW YORK, CITY and STATE of NEW YORK; UD 736 BROADWAY LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**ATTORNEY AFFIRMATION**

Index No.:

Filed On:

Evan Gluck, an attorney admitted to practice before the courts of this State, affirms the truth of the following under the penalties of perjury pursuant to Section 2106 of the Civil Practice Law and Rules:

**INTRODUCTORY STATEMENT**

1. I am an attorney in the office of the Legal Bureau of the New York City Police Department and of counsel to Carrie B. Talansky, acting by designation of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for plaintiff herein.

2. I make this affirmation based upon my review of records maintained by, and information obtained from, various departments of the City government and from statements made to me by certain officers or agents of the City of New York.

3. This affirmation is submitted in support of plaintiff's application, brought by Order to Show Cause, for a preliminary injunction pursuant to Section 7-707 of the New York City Administrative Code ("Administrative Code") enjoining and restraining defendants and all persons acting in concert with them during the pendency of this action from conducting, maintaining, operating or permitting a public nuisance inside the commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New York (hereinafter "the subject premises"), by prohibiting the defendants from using or operating said premises for the purpose of the unlicensed sale of cannabis (also known as marijuana), in violation of Cannabis Law § 125, or any other illegal activity.

4. In the event that the Court adjourns the first return date for the hearing of plaintiff's motion for a preliminary injunction, plaintiff respectfully submits that the Court should issue a temporary closing order prohibiting the use and/or occupancy of the subject premises, for any purpose whatsoever, and a temporary restraining order enjoining defendants and all persons from conducting, maintaining, operating, or permitting a public nuisance inside the subject premises, by prohibiting defendants from using or operating said premises for the unlicensed sale of cannabis until such time that the Court conducts a hearing on the request for a preliminary injunction.

#### **BACKGROUND FACTS**

5. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

6. Defendant THE LAND AND BUILDING KNOWN AS 736 BROADWAY, TAX BLOCK #545, TAX LOT #22, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New

York, is the subject premises where the unlawful activities complained of herein have taken place.

7. Defendant UD 736 BROADWAY LLC is the last recorded owner of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register. *See* copy of deed, annexed hereto as Exhibit "1."

8. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

9. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and has not been issued any other license by OCM pursuant to the Cannabis Law, which would allow it sell cannabis. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license. *See* Affidavit of Senior Investigator Dawn Kiely, sworn to on January 4, 2023, annexed hereto as Exhibit "2" at ¶¶ 2-3.

10. As set forth in the annexed affidavit of Police Officer Natanya Gelin, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), which also constitutes a public nuisance under the New York City Nuisance Abatement Law § 7-703(l). *See* Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

11. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the undercover auxiliary officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

12. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a mylar bag containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. Officer Gelin also purchased a mylar bag containing alleged cannabis from the cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The bags were subsequently vouchered under Property Clerk Invoice Number 1001590961. The mylar bags had various words on them, including larger letters stating "CA." The NYPD Police Laboratory subsequently determined that a sample of the recovered substance was, in fact, cannabis.<sup>1</sup> See Affidavit of Police Officer Natanya Gelin, annexed hereto as Exhibit "3" at ¶¶ 3-7; Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

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<sup>1</sup> In identifying a substance as a "cannabis," the Police Laboratory employs the definition of "cannabis" set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as "cannabis" pursuant to Article 222 of the Penal Law, the laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.

**December 16, 2022**

13. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591264. The mylar bag had various words on it, including larger letters stating "CA." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. See Exhibit "3" at ¶¶ 8-12; Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

**December 22, 2022**

14. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a mylar bag containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593250. The mylar bag had various words on it, including larger letters stating "CA." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis. See Exhibit "3" at ¶¶ 13-17; NYPD Property Clerk Invoice, annexed hereto within Exhibit "4;" and NYPD Laboratory Report, annexed hereto within Exhibit "5."

15. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists.

16. Accordingly, a preliminary injunction is necessary to abate this serious public nuisance.

### APPLICABLE LAW

#### **The New York City Nuisance Abatement Law**

17. In 1977, the New York City Council enacted the Nuisance Abatement Law (Section 7-701 *et seq.* of the Administrative Code) with the express purpose of addressing the serious problem created by public nuisances:

[which] exist in the city in flagrant violation of the building code, zoning resolution, health laws, multiple dwelling law, penal laws regulating prostitution and related conduct, licensing laws, laws relating to the sale and consumption of alcoholic beverages, laws relating to gambling, controlled substances and dangerous drugs and penal laws relating to the possession of stolen property, all of which interfere with the quality of life, property values and the public health, safety, and welfare; the council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the city and of the businesses thereof and visitors thereto. . . .

Administrative Code § 7-701 (as amended by Local Law 41 of 2017).

18. Pursuant to Sections 7-703(f) of the Administrative Code, a public nuisance includes:

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law;

#### **The Sale of Cannabis Requires an Adult-Use Retail Dispensary License**

19. On March 31, 2021, the Marijuana Regulation and Taxation Act (MRTA) was enacted under Chapter 92 of the Laws of 2021. The statute is codified as Cannabis Law §§ 1 – 139. The statute established the creation of the NYS Cannabis Control Board and the Office of Cannabis Management to comprehensively regulate the production, licensing, taxation, packaging, marketing and sale of adult-use, medical and hemp cannabis within the State of New York.



20. Section 10 of the Cannabis Law states, in relevant part, as follows:

Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

  1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.
  
21. Section 72 of the Cannabis Law, entitled, "Adult-use retail dispensary license," states, in relevant part, as follows:
  1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.
  
22. Section 125 of the Cannabis Law states, in relevant part, as follows:
  1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.
  
23. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:
  1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.
  
24. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:
  3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or

offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

25, Section 222.00 of the New York State Penal Law provides, in part, as follows:

"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

26. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms “marihuana” and “marijuana” do not include “hemp” as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. provides, in part, as follows:

Hemp. The term "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

27. Pursuant to Section 7-706 of the Administrative Code, the Corporation Counsel is explicitly authorized to bring and maintain an action in the Supreme Court to permanently enjoin the above public nuisances, as well as to permanently enjoin the person or persons conducting, maintaining or permitting such public nuisances from further conducting, maintaining or permitting such public nuisances.

**A PUBLIC NUISANCE EXISTS AT THE SUBJECT PREMISE**

28. A public nuisance, as defined by Section 7-703 of the Administrative Code, exists at the subject premises. As stated above, Nuisance Abatement Law Section 7-703(f) declares a premises to be a public nuisance where it is used for the purpose of a business, activity or enterprise which is not licensed as required by law.

29. The evidence set forth in support of this application clearly demonstrates that the subject premises is a public nuisance under Sections 7-703 (f) of the Administrative Code, due to the use of the subject premises for a business that is not licensed as required by law. The supporting affidavit and exhibits demonstrate violations of the licensing requirement of Cannabis Law § 125 predicated on the unlicensed sale of cannabis at the subject premises on December 15, 2022, December 16, 2022, and December 22, 2022.

30. Those individuals involved in these illegal activities may still have access to the subject premises. As a result, the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists. An injunction is the only effective remedy to immediately abate this serious public nuisance and protect the surrounding community.

**PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION AND, IF APPLICABLE, A TEMPORARY CLOSING AND RESTRAINING ORDER PENDING A HEARING ON THE PRELIMINARY INJUNCTION**

31. The affidavit of Police Officer Natanya Gelin and supporting exhibits demonstrate that the subject premises has been used for the illegal sale of cannabis in violation of the licensing requirements of the New York State Cannabis Law.

32. Plaintiff is therefore entitled to a judgment permanently enjoining defendants from continuing their illegal use and occupancy of the subject premises for the sale of cannabis. Pending an action for a permanent injunction, the Court may grant a preliminary injunction to abate the public nuisance. If the Court does not hear the plaintiff's motion for a preliminary injunction on the return date for the instant motion, the Court may, and plaintiff submits, should, on that return date issue a temporary closing order and temporary restraining order prohibiting the subject premises from being used and/or occupied for the unlicensed sale of cannabis until such time as the motion for a preliminary injunction can be heard.

33. The Nuisance Abatement Law itself specifically provides for preliminary injunctive relief ancillary to an action for a permanent injunction. Section 7-707(a) of the Administrative Code states, in relevant part, as follows:

Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this subchapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance, where the public health, safety or

welfare immediately requires the granting of such injunction. . . .

34. Since plaintiff is seeking injunctive relief *pendente lite* under the Nuisance Abatement Law, a showing of immediate and irreparable injury is not a prerequisite to the injunctive relief sought herein. See *People ex rel. Bennett v. Laman*, 277 N.Y. 368 (1938); *City of Rochester v. Gütberlett*, 211 N.Y. 309 (1914); *City of New York v. Castro*, 143 Misc.2d 766 (1989), *aff'd*, 559 N.Y.S.2d 508 (1st Dept. 1990); *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511 (1st Dept. 1986); *Town of Islip v. Clark*, 90 A.D.2d 500 (2d Dept. 1982); *City of Utica v. Ortner*, 256 A.D. 1039 (4th Dept. 1939); *City of New York v. Narod Realty Corp.*, 122 Misc.2d 885 (Sup. Ct. Bronx Co. 1983). Rather, since injunctive relief is specifically authorized by Nuisance Abatement Law, plaintiff need only show that the statutory conditions have been satisfied. Therefore, a *prima facie* showing that defendants are indeed violating the Nuisance Abatement Law is sufficient to entitle plaintiff to a preliminary injunction *pendente lite*.

35. In the case herein, there can be no doubt that cannabis was illegally sold within the subject premises. Indeed, by the affidavit of Police Officer Natanya Gelin, as well as other supporting documentation, plaintiff has established by clear and convincing evidence that defendants have maintained a public nuisance as defined by Section 7-703(f) of the Administrative Code by using the subject premises to sell cannabis without the requisite license. Therefore, plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code.

36. Even if the Nuisance Abatement Law did not specifically authorize a preliminary injunction, this Court could nonetheless grant a preliminary injunction and a temporary restraining order pursuant to CPLR § 6301 enjoining the use of the subject premises for the unlicensed sale of cannabis. In determining whether a preliminary injunction is warranted under CPLR § 6301,

the courts have traditionally employed a three-pronged test, requiring that the moving party demonstrate: (i) a likelihood of ultimate success on the merits; (ii) irreparable injury absent the granting of a preliminary injunction; and (iii) that the balancing of equities favors its position. *See Gambar Ent., Inc. v. Kelly Serv.*, 69 A.D.2d 297, 306 (4th Dept. 1979); *Paine & Chriscott v. Blair House Assoc.*, 70 A.D.2d 571, 572 (1st Dept. 1979). Plaintiff respectfully submits that, since the evidence satisfies this traditional three-pronged test, a preliminary injunction is wholly appropriate.

37. First, plaintiff's likelihood of success on the merits is strongly supported by the evidence submitted in support of this motion. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was illegally sold to an underage auxiliary officer within the subject premises, and such transactions were personally observed by a police officer. Furthermore, the tenant/business owner/operator knew or should have known that this unlawful activity was occurring given that the cannabis was illegally sold in the open by individuals who were in control of the subject premises. *See*, Exhibits "2" through "5."

38. Second, defendants' illegal use of the subject premises for the sale of cannabis without the requisite license constitutes irreparable harm to the City of New York, its residents and visitors, particularly where such sales are made to minors. Indeed, in the legislative declaration incorporated into the Nuisance Abatement Law, the City Council recognized that the continued occurrence of a public nuisance is harmful to the public. *See* Administrative Code § 7-701.

39. Third, the equities are balanced in favor of plaintiff. The subject premises has been operated, occupied and used for the unlicensed sale of cannabis, and thus, no legitimate interest of defendants will be harmed by an injunction enjoining the illegal sale of cannabis. In contrast, the City of New York, and the public at large which it is required to protect, will benefit greatly if the

threat of this type of continued unlicensed activity is eliminated from the subject premises.

40. Accordingly, plaintiff has established a *prima facie* case that defendants have maintained a public nuisance, and has satisfied the traditional three-pronged test used to determine whether a preliminary injunction is appropriate. Therefore, plaintiff is entitled to a preliminary injunction pursuant to Section 7-707 of the Administrative Code as well as CPLR § 6301.

41. In addition, temporary relief pending the hearing on the motion for the preliminary injunction is authorized pursuant to Section 7-707(a) of the Administrative Code, and may remain in effect pending further order of the Court. Section 7-707(a) states, in relevant part, as follows:

A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted.

42. It is respectfully submitted that the above criteria have been met. Not only has plaintiff shown by clear and convincing evidence that there exists a public nuisance within the scope of the Nuisance Abatement Law, but it is also clear that the public health, safety and welfare require immediate abatement of the public nuisance by an order closing the premises against all use pending the determination of this action as the subject premises is allowing the unlicensed sale of cannabis to minors.

43. This Court is respectfully referred to the fact that on three (3) separate dates cannabis was sold to an underage auxiliary officer within the subject premises. It is submitted that arrests and criminal proceedings alone will not stop the illegal activity or the threat that it will continue or reoccur. Given the prior violations of the law, plaintiff submits that an injunction alone

will likely not be honored by those responsible for conducting, maintaining or permitting the illegal activity. Thus, an order closing the subject premises against all use during the pendency of this action is the best assurance that this public nuisance will be abated.

44. Plaintiff asserts that defendants JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, have a duty to be aware of the unlicensed sale of cannabis within the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty because the extent of the business may preclude his personal supervision and compel reliance on subordinates. *See People ex rel. Price v. Sheffield Farms, etc., Co.*, 225 N.Y. 25, 30 (1918).

45. Since a serious public nuisance exists at the subject premises, and defendants JOHN DOE and/or JANE DOE, the tenant/operator(s), were aware, should have been aware, or had a reason or a duty to be aware of the unlawful activity since it occurred openly, an order closing the subject premises against all use during the pendency of this action is the best assurance that this persistent public nuisance will be abated.

46. The relief sought upon this application is expressly authorized by Section 7-707 of the Administrative Code.

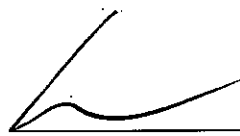
*[This space has been intentionally left blank]*



47. No prior application for this relief has been made to this or any other court or justice. No other provisional remedy has been secured or sought in the same action against the same defendants.

WHEREFORE, it is respectfully requested that plaintiff's application be granted in all respects.

**DATED:** New York, New York  
February 6, 2023



---

Evan Gluck, Esq.

**LIST OF EXHIBITS**

- Exhibit 1: Copy of Deed**
- Exhibit 2: Affidavit of Senior Investigator Dawn Kiely**
- Exhibit 3: Affidavit of Police Officer Natanya Gelin**
- Exhibit 4: Property Clerk Invoices**
- Exhibit 5: NYPD Laboratory Reports**

**EXHIBIT 1**

**BARGAIN AND SALE DEED**  
**(without covenants)**

**THIS INDENTURE**, made as of the 28<sup>th</sup> day of June 2013, BETWEEN 734-6 BROADWAY LLC, a Delaware limited liability company ("Grantor"), with an address of c/o Extell Development Company, 805 Third Avenue, 7<sup>th</sup> Floor, New York, New York 10022 and UD 736 Broadway LLC, a New York limited liability company ("Grantee"), with an address of 736 Broadway, New York, New York, 10003.

**WITNESSETH**, that Grantor, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, paid by Grantee, does hereby grant and release unto Grantee, and the successors and assigns of Grantee forever,

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City, County and State of New York, described as follows:

**[See attached Exhibit A]**

**TOGETHER** with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the above-described premises to the center lines thereof, **TOGETHER** with the appurtenances and all the estate and rights of Grantor in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto Grantee, and the heirs or successors and assigns of Grantee forever.

**AND** the Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

**[no further text on this page—signatures follow]**


IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

734-6 BROADWAY LLC

By:   
Gary Barnett, President

State of New York  
County of New York ss:

On the 27<sup>th</sup> day of June, in the year 2013, before me, the undersigned, personally appeared Gary Barnett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary  
[seal]

**MALYA SCHULMAN**  
Notary Public, State of New York  
No. 08C6257122  
Qualified in New York County  
Commission Expires April 9, 2016

**SEAL**

**BARGAIN AND SALE DEED  
WITHOUT COVENANTS**

SECTION:  
BLOCK: 545  
LOT: 22  
COUNTY OR TOWN: New York

**RETURN BY MAIL TO:**

EXHIBIT A  
TO DEED

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

**BEGINNING** at a point on the easterly side of Broadway distant 117 feet 1  $\frac{1}{4}$  inches, more or less, southerly from the intersection of the southerly side of Astor Place with the easterly side of Broadway, at the southerly face of the southerly wall of the building on the premises adjoining on the north;

**RUNNING THENCE** southerly and along the easterly side of Broadway 24 feet 11  $\frac{3}{4}$  inches, more or less, to the southerly face of the southerly wall of the building on the premises herein described;

**THENCE** easterly along the southerly face of said southerly wall, 115 feet 11 inches to the westerly face of the westerly wall of the building on the premises adjoining the east;

**THENCE** northerly along the westerly face of said wall, 10 feet to an angle in said wall;

**THENCE** northeasterly still along the face of said wall, 15 feet and  $\frac{1}{2}$  inch;

**HTENCE** northerly along said wall, 7 feet 1 inch to a line drawn easterly in continuation of a line along the northerly face of the northerly wall of the building on the premises herein described;

**THENCE** westerly along the northerly face of the northerly wall of the building on the premises herein described and a line in continuation 125 feet 10  $\frac{3}{4}$  inches to the point or place of **BEGINNING**.

**EXHIBIT 2**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----  
THE CITY OF NEW YORK,

Plaintiff,

AFFIDAVIT

- against -

THE LAND AND BUILDING KNOWN AS  
736 BROADWAY, et al.,

Defendants.

-----  
STATE OF NEW YORK )

: ss.:

COUNTY OF RICHMOND )

**DAWN KIELY**, being duly sworn, deposes and says:

1. I am a senior investigator with the New York State Office of Cannabis Management (“OCM”). OCM is charged with issuing licenses for businesses to participate in New York State’s adult-use, medical, and cannabinoid hemp industries.

2. I have full access to official records of Adult-Use Retail Dispensary Licenses and Conditional Adult-Use Retail Dispensary Licenses for the entire State of New York. This includes all licenses that have been granted, as well as applied for within New York County, including 736 Broadway, New York, New York (the “subject premises”).

*[This space has been intentionally left blank]*




3. I have made a diligent search of the records of my office and have found that no retail licenses have been issued by OCM to any individuals and/or establishments operating at the subject premises, furthermore they do not have any applications pending. A further record search revealed the location, 736 Broadway, New York, New York, 10003, was issued a hemp license (OCM-HMPR-22-03618) on 11/14/2022 under the name Varieties on Broadway Corporation. The license is valid until 11/14/2023.

**False statements herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law.**

  
DAWN KIELY

Sworn to before me this 2<sup>nd</sup>  
day of February, 2023

  
Notary Public

**BRYANT PAREDES**  
Notary Public, State of New York  
No. 01PA6338629  
Qualified in Queens County  
Commission Expires March 14, 2024

**EXHIBIT 3**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
THE CITY OF NEW YORK,

Plaintiff,

**AFFIDAVIT**

- against -

THE LAND AND BUILDING KNOWN AS  
736 BROADWAY, et al.

Defendants.

----- X

STATE OF NEW YORK )  
  : ss.:  
COUNTY OF NEW YORK )

Police Officer Natanya Gelin, Shield Number 7283, being duly sworn,  
deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9<sup>th</sup> Precinct where my duties include, but are not limited to, the enforcement of laws connected with the sale of cannabis.

2. I submit this affidavit in support of the plaintiff's motion for a preliminary injunction against the commercial premises operating as "Broadway," at 736 Broadway, New York, New York ("subject premises"), enjoining the use of the subject premises for the sale of cannabis, in violation of the licensing requirements of the Cannabis Law.

**December 15, 2022**

3. On December 15, 2022, I participated in an undercover investigation targeting the subject premises.

4. On December 15, 2022, I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

5. At approximately 8:10 p.m., the underage auxiliary police officer and I then entered the subject premises. As we entered I observed that the awning affixed to the storefront reflected the subject premises was operating as "Broadway." Once inside, I observed the underage auxiliary police officer purchase a mylar bag containing alleged cannabis from the store's cashier in exchange for twenty-five dollars (\$25.00). The cashier did not ask the underage auxiliary police officer his/her age or request any identification. Furthermore, while inside the subject premises, I also purchased a mylar bag containing alleged cannabis in exchange for twenty-five dollars (\$25.00)

6. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag containing the alleged cannabis. The bags that the underage auxiliary police officer and I had just purchased were photographed and vouchered under Property Clerk Invoice Number 1001590961. The mylar bags had various words on them, including larger letters stating "CA."

7. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that a sample of the recovered substance was, in fact, cannabis.

**December 16, 2022**

8. On December 16, 2022, I participated in another undercover investigation inside the subject premises.

9. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

10. At approximately 7:30 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for thirty dollars (\$30.00) in United States currency. The cashier did not ask the underage auxiliary police officer

his/her age or request any identification.

11. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag of alleged cannabis. The mylar bag of alleged cannabis was photographed and vouchered under Property Clerk Invoice Number 1001591264. The mylar bag had various words on it, including larger letters stating "CA."

12. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

**December 22, 2022**

13. On December 22, 2022, I participated in another undercover investigation inside the subject premises.

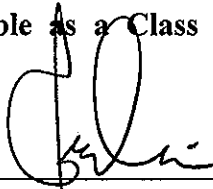
14. On the above date I was assigned to work in an undercover capacity along with an underage auxiliary police officer. Prior to entering the subject premises, I examined the underage auxiliary police officer's identification and verified that the information contained on his/her identification stated that he/she was twenty (20) years of age.

15. At approximately 7:30 p.m., the underage auxiliary police officer and I entered the subject premises. Once inside, I observed the underage auxiliary police officer purchase a small mylar bag containing alleged cannabis from the store's cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The cashier did not ask the underage auxiliary police officer his/her age or request any identification.


16. After exiting the subject premises, I returned to the staging area with the underage auxiliary police officer. The underage auxiliary police officer provided me with the mylar bag containing the alleged cannabis. The purchased item was photographed and vouchered under Property Clerk Invoice Number 1001593250. The mylar bag had various words on it, including larger letters stating "CA."

17. Subsequent testing conducted by the New York City Police Department Laboratory confirmed that the recovered substance was, in fact, cannabis.

False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

  
\_\_\_\_\_  
Police Officer Natanya Gelin

Sworn to before me this  
2<sup>nd</sup> day of February, 2023

  
\_\_\_\_\_  
Notary Public

Jason W. Krawitz  
Notary Public, State of New York  
NO. 02KR6399273  
Qualified in Nassau County  
Commission Expires October 15, 2023

**EXHIBIT 4**



**NYPD Property Clerk Invoice**  
PD 521-141 (Rev.12/18)



Invoice No. **1001590961**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/15/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No. | Command      | OCME EU No.              |
|-----------------------|------|------------------|---------|--------------|--------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T |         | 009 PRECINCT |                          |
| Arresting Officer     | N/A  |                  |         |              | OCME.FB No.              |
| Investigating Officer | N/A  |                  |         |              | Police Lab Evid.Ctrl.No. |
| Det Squad Supervisor  | N/A  |                  |         |              | Det Sqd. Case No.        |
| CSU/ECT Processing    | N/A  |                  |         |              | CSU/ECT Run No.          |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 2         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC IS:<br>FIELD TESTED POSITIVE PACKAGED IN: SMALL PINK<br>MYLAR PACKAGING BAG DESCRIPTION: MARIJUANA<br>PACKAGED IN A SMALL PINK MYLAR FILM PACKAGING<br>BAG TITLED "CAI" |                 | 1204889149<br>- 1400393176 | 2   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/15/2022 23:57 : ITEMS VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH BELOW MENTION ESTABLISHMENT SOLD 3.5 G SNOW MAN WEED FOR \$ 25 EACH.  
 12/16/2022 01:07 : Invoice Approved By

Date of Incident: 12/15/2022  
 Penal Code/Description: PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR  
 Crime Classification:  
 Related To:  
 Receipt:

Prisoner(s) Name: D.O.B: Age: Address: Arrest No./Summons No.: NYSID No.:

Name: Tax No.: Address: Phone No.:

Finder:  
 Owner: BROADWAY SMOKE SHOP 738 BROADWAY NEW YORK, NY 646-861-0956

Person Vehicle Taken From:

Complaint No. N/A  
 Related Comp No.(s) N/A  
 Aided/Accident No.(s) N/A  
 Related Invoice(s) N/A



Invoice No. **1001590961**

Property Clerk Copy  
 printed: 12/16/2022 15:34

PCD Storage No.

Page No.1 of 2





**NYPD Property Clerk Invoice**  
PD 521-141 (Rev.12/18)



Invoice No. 1001591264

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/16/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No. | Command      | OCME,EU No.             |
|-----------------------|------|------------------|---------|--------------|-------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T |         | 009 PRECINCT |                         |
| Arresting Officer     | N/A  |                  |         |              | OCME,FB No.             |
| Investigating Officer | N/A  |                  |         |              | Police Lab Evid.Ckt.No. |
| Det Squad Supervisor  | N/A  |                  |         |              | Det Sqd. Case No.       |
| CSU/ECT Processing    | N/A  |                  |         |              | CSU/ECT Run No.         |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC IS:<br>FIELD TESTED POSITIVE PACKAGED IN: SMALL PINK<br>MYLAR PACKAGING BAG DESCRIPTION: MARIJUANA<br>PACKAGED IN A SMALL PINK MYLAR FILM PACKAGING<br>BAG TITLED "CAI" |                 | 1204889154<br>- 1400393169 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
 12/16/2022 22:48 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH BELOW MENTION ESTABLISHMENT SOLD 3.5 G MARIJUANA FOR \$ 30.  
 12/17/2022 02:27 : Invoice Approved By 948174

Date of Incident: 12/16/2022  
 Penal Code/Description: PL 221.35/CRIMINAL SALE OF MARIJUANA MISDEMEANOR  
 Crime Classification:  
 Related To:  
 Receipt:

Prisoner(s) Name: D.O.B: Age: Address: Arrest No./Summons No.: NYSID No.:

Finder:  
 Owner: BROADWAY SMOKE SHOP 736 BROADWAY NEW YORK, NY 646-86-1-09  
 Person Vehicle Taken From:

Complaint No. N/A  
 Related Comp No.(s) N/A  
 Aided/Accident No.(s) N/A  
 Related Invoice(s) N/A



Invoice No. 1001591264

Invoicing Officer Copy  
 printed: 12/17/2022 02:33

PCD Storage No. --  
 Page No.1 of 2



**NYPD Property Clerk Invoice**  
 PD 521-141(Rev.12/18)



Invoice No. **1001591264**

| Approvals         | Rank | Name               | Tax No.    | Command      | Date       | Time  |
|-------------------|------|--------------------|------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/16/2022 | 22:48 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED] | 009 PRECINCT | 12/17/2022 | 01:14 |
|                   |      | <i>J. T. O.</i>    |            |              |            |       |
| Approved By       | SGT  | ANTHONY, CHARSEL J | [REDACTED] | 009 PRECINCT | 12/17/2022 | 02:27 |
|                   |      | <i>Sgt Anthony</i> |            |              |            |       |



Invoice No. **1001591264**

Invoicing Officer Copy  
 printed: 12/17/2022 02:33

PCD Storage No.

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Page No.2 of 2



**NYPD Property Clerk Invoice**  
FD 521-141 (Rev. 12/18)



Invoice No. **1001593250**

Invoicing Command  
**9TH PRECINCT**

Invoice Status  
**OPEN**

Invoice Date  
**12/22/2022**

Property Type  
**CONTROLLED SUBSTANCE**

Property Category  
**INVESTIGATORY**

| Officers              | Rank | Name             | Tax No.    | Command      | OCME.EU No.                |
|-----------------------|------|------------------|------------|--------------|----------------------------|
| Invoicing Officer     | LT   | ODEN, JERMAINE T | [REDACTED] | 009 PRECINCT |                            |
| Arresting Officer     | N/A  |                  |            |              | OCME.FB No.                |
| Investigating Officer | N/A  |                  |            |              | Police Lab Evid. Ctrl. No. |
| Det. Squad Supervisor | N/A  |                  |            |              | Det Sqd. Case No.          |
| CSUJECT Processing    | N/A  |                  |            |              | CSUJECT Run No.            |

| Item                    | Total QTY | Article(s)  | Estimated Value | Pkg. No.                   | QTY | Disposition |
|-------------------------|-----------|---|-----------------|----------------------------|-----|-------------|
| 1                       | 1         | MARIJUANA<br>COLOR: GREEN FORM: VEGETATIVE NARCOTIC IS:<br>FIELD TESTED POSITIVE PACKAGED IN: SMALL PINK<br>MYLAR FILM PACK DESCRIPTION: 3.5 G OF SNOWMAN<br>WEED / MARIJUANA PACKAGED IN A SMALL PINK<br>MYLAR FILM PACKAGING BAG TITLED "CAI" |                 | 1204889156<br>- 1400393165 | 1   |             |
| <b>Total Cash Value</b> |           |   | <b>0.00</b>     |                            |     |             |

**REMARKS**  
12/22/2022 22:48 : ITEM VOUCHERED WAS PURCHASED BY AUXILIARY POLICE OFFICER DURING AN OPERATION IN WHICH THE BELOW ESTABLISHMENT SOLD 3.5 G SNOWMAN WEED / MARIJUANA FOR \$25,  
12/23/2022 01:38 : Invoice Approved By [REDACTED]

| Date of Incident | Penal Code/Description                             | Crime Classification | Related To | Receipt |
|------------------|--|----------------------|------------|---------|
| 12/22/2022       | PL 221.35/CRIMINAL SALE OF MARIJUANA INVESTIGATION |                      |            |         |

| Prisoner(s) Name | D.O.B | Age | Address | Arrest No./Summons No. | NYSID No. |
|------------------|-------|-----|---------|------------------------|-----------|
|                  |       |     |         |                        |           |

| Finder | Name                | Tax No. | Address                   | Phone No.    |
|--------|---------------------|---------|---------------------------|--------------|
| Owner  | BROADWAY SMOKE SHOP |         | 736 BROADWAY NEW YORK, NY | 646-861-0956 |

Person Vehicle Taken From  
Complaint No. N/A  
Related Comp No.(s) N/A  
Aided/Accident No.(s) N/A  
Related Invoice(s) N/A



Invoice No. **1001593250**

Invoicing Officer Copy  
printed: 12/23/2022 01:47

PCD Storage No.  
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Page No. 1 of 2



**NYPD Property Clerk Invoice**  
 PD 521-141 (Rev. 12/18)



Invoice No. **1001593250**

| Approvals         | Rank | Name               | Officer No. | Command      | Date       | Time  |
|-------------------|------|--------------------|-------------|--------------|------------|-------|
| Entered By        | LT   | ODEN, JERMAINE T   | [REDACTED]  | 009 PRECINCT | 12/22/2022 | 22:48 |
| Invoicing Officer | LT   | ODEN, JERMAINE T   | [REDACTED]  | 009 PRECINCT | 12/23/2022 | 01:24 |
|                   |      | <i>J. J. O.</i>    |             |              |            |       |
| Approved By       | LT   | HWANG, ALEXANDER O | [REDACTED]  | 009 PRECINCT | 12/23/2022 | 01:38 |
|                   |      | <i>Lt Hwang</i>    |             |              |            |       |



Invoice No. **1001593250**

Invoicing Officer Copy  
 printed: 12/23/2022 01:47

PCD Storage No.

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Page No. 2 of 2

**EXHIBIT 5**



**NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION**

**LABORATORY REPORT**

INVOICED BY: LT JERMAINE ODEN Tax [REDACTED] Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

LABORATORY # 2022-044161  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001590961  
DATE SUBMITTED: 12/17/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  Yes  No (SEE REMARKS)

**RESULTS OF EXAMINATION/ANALYSIS**

| Item # | Qty. | Description                            | Results     | Weight                  |
|--------|------|--|-------------|-------------------------|
| 1A     | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis    | 5.215 g (aggregate wt.) |
| 1B     | 1    | Ziplock bag(s) cont. vegetative matter | No Analysis | N/A                     |

**SUMMARY OF ANALYSIS**

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1A     | 5.215 g (aggregate wt.) |

**REMARKS**

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =    | 10 lbs =   | 100 lbs =   |
|----------|----------|----------|----------|-----------|-----------|-----------|------------|------------|-------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962 g | 4535.924 g | 45359.237 g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

**TESTING METHODOLOGY**

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1.1         | 1A     | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |
| 1.2         | 1B     | N/A   |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.



**NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION**

**LABORATORY REPORT**

INVOICED BY: LT JERMAINE ODEN Tax#:939136 Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

LABORATORY # 2022-044240  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001591264  
DATE SUBMITTED: 12/18/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  Yes  No (SEE REMARKS)

**RESULTS OF EXAMINATION/ANALYSIS**

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 4.109 g (aggregate wt.) |

**SUMMARY OF ANALYSIS**

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 4.109 g (aggregate wt.) |

**REMARKS**

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =   | 10 lbs =   | 100 lbs =  |
|----------|----------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962g | 4535.924 g | 45359.237g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

**TESTING METHODOLOGY**

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT.

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THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.



**NEW YORK CITY POLICE DEPARTMENT  
POLICE LABORATORY  
CONTROLLED SUBSTANCE ANALYSIS SECTION**

**LABORATORY REPORT**

LABORATORY # 2022-044881  
LABORATORY REPORT # 1  
COMPLAINT #  
INVOICE # 1001593250  
DATE SUBMITTED: 12/24/2022  
ANALYSIS STARTED: 12/27/2022  
ANALYSIS COMPLETED: 12/28/2022

INVOICED BY: LT JERMAINE ODEN Tax#:939136 Command: 009  
Precinct  
DEFENDANT(S): Investigation AGE:

TYPE OF ANALYSIS: CONTROLLED SUBSTANCE ANALYSIS



EVIDENCE PRESENT AS ITEMIZED ON INVOICE:  YES  NO (SEE REMARKS)

**RESULTS OF EXAMINATION/ANALYSIS**

| Item # | Qty. | Description                            | Results  | Weight                  |
|--------|------|--|----------|-------------------------|
| 1      | 1    | Ziplock bag(s) cont. vegetative matter | Cannabis | 4.049 g (aggregate wt.) |

**SUMMARY OF ANALYSIS**

| Substance Identified | Item # | Weight                  |
|----------------------|--------|-------------------------|
| Cannabis             | 1      | 4.049 g (aggregate wt.) |

**REMARKS**

| 1/4 oz = | 1/2 oz = | 2 oz =   | 3 oz =   | 4 oz =    | 8 oz =    | 16 oz =   | 5 lbs =   | 10 lbs =   | 100 lbs =  |
|----------|----------|----------|----------|-----------|-----------|-----------|-----------|------------|------------|
| 3.544 g  | 14.175 g | 56.700 g | 85.049 g | 113.399 g | 226.797 g | 453.593 g | 2267.962g | 4535.924 g | 45359.237g |

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9-tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

The result of cannabis is based on the definition of cannabis in NYS Penal Law Article 222 as of March 31, 2021.

**TESTING METHODOLOGY**

| Unit/Item # | Item # | Methods Used  |
|-------------|--------|---|
| 1           | 1      | Color Test, Macroscopic Examination, Microscopic Examination, GC/MS |

THE RESULTS STATED ABOVE RELATE ONLY TO THE ITEMS TESTED OR SAMPLED AND APPLY TO THE SAMPLE AS RECEIVED. THIS REPORT DOES NOT CONSTITUTE THE ENTIRE CASE FILE. THE CASE FILE MAY BE COMPRISED OF WORKSHEETS, IMAGES, ANALYTICAL DATA AND OTHER DOCUMENTS. THIS REPORT SHALL NOT BE REPRODUCED EXCEPT IN FULL WITHOUT APPROVAL OF THE LABORATORY TO PROVIDE ASSURANCE THAT PARTS OF A REPORT ARE NOT TAKEN OUT OF CONTEXT. THE DEFINITIONS OF TERMS USED IN THIS REPORT CAN BE LOCATED AT THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES WEBSITE: <http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm>

**THE RESULTS ARE THE OPINIONS / INTERPRETATIONS / CONCLUSIONS OF THE UNDERSIGNED.**

I HEREBY CERTIFY THAT I TESTED/EXAMINED/ANALYZED THE ABOVE DESCRIBED ITEM(S) AND THAT THIS REPORT IS AN ORIGINAL REPORT MADE BY ME. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE NEW YORK STATE PENAL LAW.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 736 BROADWAY, TAX BLOCK #545, TAX LOT #22, COUNTY of NEW YORK, CITY and STATE of NEW YORK; UD 736 BROADWAY LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

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**SUMMONS**

Index No.:


Filed On:

YOU ARE HEREBY SUMMONED TO ANSWER the complaint in this action and serve a copy of your answer on plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

*[The remainder of this page has been intentionally left blank]*

The venue of this action designated by plaintiff is New York County, the county in which the property affected by this action is located. Plaintiff designates New York County as the place of trial.

**DATED:** New York, New York  
February 2, 2023



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HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff

By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

THE CITY OF NEW YORK,

Plaintiff,

-against-

THE LAND AND BUILDING KNOWN AS 736 BROADWAY, TAX BLOCK #545, TAX LOT #22, COUNTY of NEW YORK, CITY and STATE of NEW YORK; UD 736 BROADWAY LLC; "JOHN DOE" and "JANE DOE," fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of the commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

---

**VERIFIED COMPLAINT**

Index No.:

Filed On:

Plaintiff, the City of New York, by its attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, Carrie B. Talansky, Acting Deputy Commissioner for Legal Matters, New York City Police Department, of counsel, alleges as follows upon information and belief:

**INTRODUCTION**

1. Plaintiff brings this action pursuant to and by the authority of Section 20 of the General City Law, Section 394 of the New York City Charter and Sections 7-704(a) and 7-706(a) of the Administrative Code of the City of New York.

**THE PARTIES**

2. Plaintiff THE CITY OF NEW YORK is a municipal corporation incorporated under the laws of the State of New York.

3. Defendant THE LAND AND BUILDING KNOWN AS 736 BROADWAY, TAX BLOCK #545, TAX LOT #22, COUNTY of NEW YORK, CITY and STATE of NEW YORK, is the real property which is the site of the subject premises. The commercial premises operating as "Broadway," located within the ground floor of the building at 736 Broadway, New York, New York, is the subject premises where the unlawful activities complained of herein have taken place.

4. Defendants UD 736 BROADWAY LLC and ALLIED V LLC are the last recorded owners of the real property which is the site of the subject premises according to a deed recorded in New York County, Office of the City Register.

5. Defendants "JOHN DOE" and "JANE DOE" are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the site of the subject premises.

6. An employee of the New York State Office of Cannabis Management (OCM) conducted a diligent search of the records of premises licensed to sell cannabis maintained by OCM and determined that on the incident dates referenced below, the subject premises was not listed as a premises that was granted a Conditional Adult-Use Retail Dispensary (CAURD) license authorizing the lawful sale of adult-use cannabis as is required by Section 125, and is not presently licensed pursuant to the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis is a CAURD license.

7. As set forth below, the tenant/operator(s) of the subject premises are permitting the sale of cannabis without a CAURD license, which is a public nuisance under Administrative Code § 7-703(f), and which also constitutes a public nuisance under the New York City Nuisance Abatement Law § 7-703(l). *See* Administrative Code § 7-701, *et seq.*

**VIOLATIONS OF THE NEW YORK STATE CANNABIS LAW,  
PENAL LAW AND TAX LAW AT THE SUBJECT PREMISES**

8. On three separate dates since December 15, 2022, inclusive, individuals operating out of the subject premises have used the subject premises to sell cannabis without a CAURD license as is required under the New York State Cannabis Law. The most recent date was December 22, 2022. The illegal transactions were personally observed by a plainclothes officer, and on all three incident dates, the auxiliary police officer who purchased the cannabis was under the age of twenty-one (21).

**December 15, 2022**

9. On December 15, 2022, an underage auxiliary police officer entered the subject premises and purchased a mylar bag containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. Officer Gelin also purchased a mylar bag containing alleged cannabis from the cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The bags were subsequently vouchered under Property Clerk Invoice Number 1001590961. The mylar bags had various words on them, including larger letters stating "CA."<sup>2</sup>

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<sup>2</sup> In identifying a substance as a "cannabis," the Police Laboratory employs the definition of "cannabis" set forth in Article 222 of the New York State Penal Law. Section 222.00 of the Penal Law, which contains the definition of cannabis, excludes hemp as defined in the New York State Cannabis Law and by the FDA. Both the Cannabis Law and Federal Law state that a product is cannabis, and not hemp, cannabinoid hemp or hemp extract, if it contains more than .3% THC. As such, by identifying the substances as "cannabis" pursuant to Article 222 of the Penal Law, the laboratory is confirming that the substance has a concentration of more than .3% THC, and thus required a license issued by the New York State Office of Cannabis Management before it could be sold.

**December 16, 2022**

10. On December 16, 2022, an underage auxiliary police officer entered the subject premises and purchased a mylar bag containing alleged cannabis from a cashier in exchange for thirty dollars (\$30.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001591264. The mylar bag had various words on it, including larger letters stating "CA." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

**December 22, 2022**

11. On December 22, 2022, an underage auxiliary police officer entered the subject premises and purchased a mylar bag containing alleged cannabis from a cashier in exchange for twenty-five dollars (\$25.00) in United States currency. The transaction was observed by Police Officer Natanya Gelin, who was in plainclothes. The bag was subsequently vouchered under Property Clerk Invoice Number 1001593250. The mylar bag had various words on it, including larger letters stating "CA." The NYPD Police Laboratory subsequently determined that the recovered substance was, in fact, cannabis.

12. Upon information and belief, those individuals involved in the use of the subject premises for the unlicensed sale of cannabis may still have access to the subject premises, thus the opportunity for illegal activity and the consequential negative effect on the surrounding community still exists.

13. Accordingly, a closing order is necessary to abate this serious public nuisance.

**AS AND FOR A COMPLETE CAUSE OF ACTION**

14. Plaintiff repeats and realleges, as if fully set forth herein at length, the facts contained in the preceding paragraphs.

15. Pursuant to Section 7-703 of the Administrative Code a public nuisance includes:

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law.

16. Section 10 of the Cannabis Law states, in relevant part, as follows:

Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

1. Discretion to issue or refuse to issue any registration, license or permit provided for in this chapter, as follows: the chairperson, after receiving a recommendation and relevant application information from the office and providing such information to all board members, shall issue a preliminary determination on whether the license, registration or permit shall be granted, denied, or held for further action.

17. Section 72 of the Cannabis Law, entitled, "Adult-use retail dispensary license," states, in relevant part, as follows:

1. A retail dispensary license shall authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

18. Section 125 of the Cannabis Law states, in relevant part, as follows:

1. No person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter unless otherwise authorized by law.

19. Section 132 of the Consolidated Laws of New York states, in relevant part, as follows:

1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, may be subject to prosecution in accordance with article two hundred twenty-two of the penal law.

20. Section 3 of the Cannabis Law provides, in part, the following relevant definitions:

3. "Cannabinoid hemp" means any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

\* \* \*

5. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by this section or any drug products approved by the federal Food and Drug Administration.

\* \* \*

9. "Cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer.

\* \* \*

27. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section. ...

21, Section 222.00 of the New York State Penal Law provides, in part, as follows:



"Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined in section three of the cannabis law or drug products approved by the Federal Food and Drug Administration.

22. The U.S. Food and Drug Administration exists pursuant to Section 393 of the Title 21 of the U.S.C. Pursuant to 21 U.S.C. § 802(16)(B), the terms "marihuana" and "marijuana" do not include "hemp" as defined in Section 1639o of Title 7 of the U.S.C. Section 1639o of Title 7 of the U.S.C. defines hemp as follows:

Hemp. The term "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

23. Defendants have owned, leased, used, maintained or conducted the subject premises as a place wherein cannabis is sold without a CAURD license as is required by Section 125 of the Cannabis Law. At this time, the only type of license authorizing the sale of cannabis in New York State is a CAURD license.

24. Plaintiff further asserts that defendant(s) JOHN DOE and/or JANE DOE, the tenant/operator(s) of the subject premises, has/have a duty to be aware of the unlicensed sale of cannabis at the subject premises. A corporation is liable for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent. *See People v. Rochester R. & L.*, 195 N.Y. 102, 105 (1909). An employer has a personal duty to inquire into the conditions prevailing in his business, and he does not rid himself of that duty

because the extent of the business may preclude his personal supervision and compel reliance on subordinates. *See People ex rel. Price v. Sheffield Farms, etc., Co.*, 225 N.Y. 25, 30 (1918).

25. Defendant(s) JOHN DOE and/or JANE DOE, the tenant/operators of the subject premises, should have been aware of the use of the subject premises for the unlicensed sale of cannabis as such transactions were conducted openly by an employee of the subject premises.

26. Pursuant to Section 7-706 and Section 7-714 of the Administrative Code, plaintiff is entitled to a judgment against defendants, their agents, assigns and/or representatives, and any and all persons acting individually or in concert with them, permanently enjoining such public nuisance; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and directing the sale by the sheriff of such property; and closing the subject premises for a period of one (1) year from the posting of the judgment.

27. Defendants have owned, leased, used, maintained or conducted the subject premises for the purpose of the unlicensed sale of cannabis, and have permitted, promoted, condoned or acquiesced in the use of the subject premises for the illegal activity.

28. Pursuant to Section 7-706(h) of the Administrative Code, plaintiff is entitled to a judgment against the defendants ordering that each defendant pay a penalty of one thousand dollars (\$1,000.00) for each day that such defendant intentionally conducted, maintained or permitted the public nuisance.

**WHEREFORE**, plaintiff demands judgment against defendants as follows:

a. With respect to the **COMPLETE CAUSE OF ACTION**, directing that the subject premises described herein and made a defendant in this action shall be permanently and perpetually enjoined as a place which is conducted, maintained or permitted to be a public nuisance, by


defendants, their agents, assigns, employees and/or representatives, and any and all persons acting individually or in concert with them; directing the sheriff to seize and remove from the subject premises all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance; directing that the subject premises, which has been conducted and maintained as a public nuisance, shall be closed against all use for a period of one (1) year from the date of the posting of the judgment herein, pursuant to Section 7-714(c) of the Administrative Code, unless sooner released as provided by law; and awarding to plaintiff civil penalties in the amount of one thousand (\$1,000.00) dollars from each defendant for each and every day that such defendant intentionally conducted, maintained or permitted the public nuisance;

b. Taxing and allowing plaintiff's costs and disbursements against defendants pursuant to the Civil Practice Law and Rules, and directing that plaintiff have execution therefor;

c. Taxing and allowing plaintiff's actual cost, expenses and disbursements in investigating, bringing and maintaining the action, pursuant to Administrative Code § 7-714 (g), and directing that plaintiff have execution therefor; and

d. Granting to plaintiff such other and further relief as the Court may deem just and proper and equitable.

**DATED:** New York, New York  
February 2, 2023

  
\_\_\_\_\_  
HON. SYLVIA O. HINDS-RADIX  
Corporation Counsel of the  
City of New York  
CARRIE B. TALANSKY, ESQ.  
Acting Deputy Commissioner,  
Legal Matters  
New York City Police Dept.  
Attorney for Plaintiff  
By: EVAN GLUCK, ESQ.  
375 Pearl Street, Box 39  
New York, New York 10038  
(646) 610-4498

VERIFICATION

MARY O'SULLIVAN, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under the penalties of perjury, pursuant to CPLR 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an officer of the City of New York, the Plaintiff in the within action. I have read the foregoing complaint in THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS

736 Broadway,  
New York County Block #545, Lot #22,

and know the contents thereof, which are to my knowledge true, except as to matters therein alleged upon information and belief, and as to those matters, I believe them to be true. The grounds for my belief as to all matters not stated upon my knowledge are records of the City of New York and statements by officers, employees and agents of the City of New York.

The reason why this verification is not made by the Plaintiff is because Plaintiff is a corporation.

DATED:     New York, New York  
              February 2, 2023

  
\_\_\_\_\_  
MARY O'SULLIVAN