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

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:

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:

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 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.

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(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 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.¹ *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

¹ 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 16390 of Title 7 of the U.S.C. Section 16390 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 of sale 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.

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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: N

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

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<u>EXHIBIT 1</u>

BARGAIN AND SALE DEED WITHOUT COVENANTS AGAINST GRANTOR'S ACTS

THIS INDENTURE, dated May 7, 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 148th Street, 3rd 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:

Name: Stephen D. Rosen Title: Manager

STATE OF FLORIDA) COUNTY OF Polm Beach-55

On the 5^{+1} 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.

Notary Public



Bargain and Sale Deed

BLOCK: 429 LOT 2 COUNTY: NEW YORK

WITHOUT COVENANTS AGAINST GRANTOR'S ACTS

NESOR ASSOCIATES, L.L.C.

тo

14 FIRST AVE LLC

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

8801578 v2

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."

8801578 vl

EXHIBIT 2

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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 Kie

Sworn to before me this $\frac{4^{n}}{2022}$ day of $\frac{4^{n}}{2022}$ Notary Public

Alen Mark Tominello Notay Rubber State of Even York No. OIT46348602 Qualified in Nassan County Commission expires 10/03/2024

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.

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STATE OF NEW YORK) : ss.:

COUNTY OF NEW YORK)

Police Officer Natanya Gelin, Shield Number $\underline{7283}$, being duly sworn, deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9th 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."

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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 <u>310</u> day of <u>Jaruary</u> 2023

Notary

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





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



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Arresting Officer	N/A		OCME.FB No.	
Investigating Officer	N/A			Police Lab Evid.Ctrl.No.
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PCD Storage No. -Page No.1 of 2

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



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Invoice No. 1001591272

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POLICE DEPARTMENT PL CIP 20 PL CIP 20 PD CIP 2	NYPD Property Clerk Invoice PD 521-141(Rev.12/18)			Invoice No. 1001591272	
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NYPD Property Clerk Invoice PD 521-141(Rev.12/18)



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Invoice No. 1001593213

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

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Page No.1 of 2


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



Invoice No. 1001593213

Approvals	Mank Sold		Tax Mo.	Command Calles States	instantina <mark>Date</mark> (2003) (2013)	Time again
Entered By	LT	ODEN, JERMAINE T		009 PRECINCT	12/22/2022	21:19
Invoicing Officer	LT	ODEN, JERMAINE T J. T. O.		009 PRECINCT	12/23/2022	01:25
Approved By	LT	HWANG, ALEXANDER O		009 PRECINCT	12/23/2022	01:35



Property Clerk Copy printed: 12/23/2022 17:49 PCD Storage No. --Page No.2 of 2



POLICE							LA	BORATOR	REPORT	
DEPARIME	(1)	NEW	YORK CITY F	POLICE DEP	ARTMENT		LABORATORY	' #	2022-0	44163
	g / 1	Polic	E LABORAT	DRY			LABORATORY	REPORT#	1	
		CONT	ROLLED SUE	STANCE AN	ALYSIS SEC	TION	COMPLAINT #			
\checkmark				-			INVOICE #		100159	90971
INVOICED BY	7* *	LT JI Preci	ERMAINE OD	EN Tax#	Comman	nd: 009	DATE SUBMIT	TED:	12/17/2	2022
DEFENDANT	(s):	Inves	tigation		AGE:		ANALYSIS ST	ARTED:	12/27/2	2022
							ANALYSIS CO	MPLETED:	12/28/2	2022
TYPE OF AN	ALYSIS:	co	NTROLLED S	SUBSTANCE			<u>)</u> 		11	
		•				<u>.</u>				
			<u>.</u>					1337 8 54 6 60 146 1 80 		
					—					
			IZED ON INVOIC	E: X YES		SEE REMARKS	3)			
RESULTS OF	EXAMINA	TION/	ANALYSIS							
ltem #	<u>Qty.</u>	<u>[</u>	Description			Result	ts	Weig	ht	
1	1	Z	Ciplock bag(s)	cont. vegeta	tive matter	Canna	Cannabis 3.493 g (aggregate v			ate wt.)
SUMMARY OF		IS		-					- 3 (~ 33, 43,	210 1117
Substance le	dentified				lten	<u>1#</u>	<u>Weight</u>			
Cannabis					1		3.493 g	g (aggregate	wt.)	
REMARKS										
% oz = 3.544 g	% c 14.1		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=
							400.000 g	2201.3020		45359.2370

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

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.

12/28/2022 DATE PREPARED

12/28/2022 DATE ISSUED PAGE 1 OF 1

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Alexys Berison

ANALYST SIGNATURE

LABORATORY REPORT

CITIL INC.						-			
DEPARTMENT RECEIPTION	NEW YORK CITY POLICE DEPARTMENT Police Laboratory Controlled Substance Analysis Section					LABORATORY # LABORATORY REPORT # COMPLAINT #		2022-0 1)44238
						INVOICE #		10015	91272
INVOICED BY:	LT JE Preci	RMAINE OD	EN Tax#	Comman	d: 009	DATE SUBMIT	ITED:	12/18/	2022
DEFENDANT(S):						ANALYSIS STARTED: ANALYSIS COMPLETED:		12/27/2 12/28/2	
TYPE OF ANALYSIS:	со	NTROLLED (SUBSTANCI	EANALYSIS					<u>,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,</u>
EVIDENCE PRESENT			e: 🗙 Yes	No (s	EE REMARKS	;)			
item # Qty.	<u>c</u>	Description			<u>Result</u>	<u>s</u>	Weig	ht	
1 1	1 1 Ziplock bag(s) cont. vegetative matter Ca					annabis 3.559 g (aggregate wt.)			
SUMMARY OF ANAL	<u>YSIS</u>								
Substance Identifie	bd			ltem	<u>#</u>	<u>Weight</u>			
Cannabis			1		3.559 g	g (aggregate	wt.)		
REMARKS									
1/s oz = 1/	02 =	2 oz =	3 oz =		8 oz =				

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
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ANALYST SIGNATURE



12/28/2022 DATE PREPARED 12/28/2022 DATE ISSUED PAGE 1 OF 1

Alexys Benson

TILLINE	5					LA	BORATORY	'REPORT	
DEPARIMEN	I) NE	W YORK CITY I		PARTMENT		LABORATORY	#	2022-044884	
	🕴 Po	LICE LABORAT	ORY			LABORATORY	REPORT #	1	
	Co Co	NTROLLED SU	BSTANCE AN	NALYSIS SEC	TION	COMPLAINT #			
\checkmark						INVOICE #		1001593213	
INVOICED BY:		JERMAINE OD	EN Tax#	Commar	nd: 009	DATE SUBMITTED:		12/24/2022	
DEFENDANT(S	s): In	vestigation		AGE:		ANALYSIS ST	ARTED:	12/27/2022	
						ANALYSIS CO	MPLETED:	12/28/2022	
TYPE OF ANA	LYSIS:	CONTROLLED	SUBSTANCE	E ANALYSIS					
EVIDENCE PRE		EMIZED ON INVOIO I <mark>N/ANALYSIS</mark>	e: X Yes	No (s	EE REMARKS)	N		
Item #	Qty.	Description			<u>Result</u>	<u>s</u>	Weig	<u>ht</u>	
1	1	Ziplock bag(s)	cont. vegeta	tive matter	Canna	bis	4.094	g (aggregate wt.)	, ,
SUMMARY OF	ANALYSIS	•							
Substance Id	lentified			ltem	<u>1#</u>	Weight			
Cannabis				1		4.094 g	(aggregate	wt.)	
REMARKS						-		÷	
% oz = 3.544 o	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= 100 lb 4535.924 g 45359.2	
**			A			Contract R		4505.524 9 45358.2	

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 #	<u>ltem #</u>	Methods Used
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		Examination, GC/MS

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CRIM IB

Alexys Benson

ANALYST SIGNATURE

12/28/2022 DATE PREPAR

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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 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.

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

ACN. SYLVIA O. HINDS-RADL
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
EVAN GLUCK, ESQ.
375 Pearl Street, Box 39
New York, New York 10038
(646) 610-4498

By:

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(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

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.¹

¹ 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 16390 of Title 7 of the U.S.C. Section 16390 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 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
EVAN GLUCK, ESQ.
375 Pearl Street, Box 39
New York, New York 10038
(646) 610-4498

By:

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 <u>THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS</u>

> 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

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

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.

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.¹ *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."

¹ 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 16390 of Title 7 of the U.S.C. Section 16390 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 of sale 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

Évan 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 8th 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 31st 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 2nd Street, New York, New York, and, as more particularly described in <u>Schedule A</u> 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: Name: Alan Luke Title: Managing Member

STATE OF NEW YORK COUNTY OF NEW YORK

On the <u>441</u> day of <u>Felonuary</u> 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.

)

)

) ss.:

Notary P ic

Deed

Title No. RANY-34815

148-150 E. 2 St LLC

To

24 Avenue A LLC

- ORLY SONNENKLAR Notary Public, State of New York No. 01SO6153655 Qualified in Queens County Commission Expires October 10, 20

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

{Client/085198/1/01723713.DOCX;1 }

.. 2

{Client/085198/1/01723713.DOCX;1 }

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 or 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 Kel DAWN KIELY

Sworn to before me this $\underline{4^{4}}$ day of <u>Januar</u>, 202<u>7</u>

Notary Public

Alex Marke Tuminello Notary Rubbis - State of New York No. OITLEG348602 Qualified in Nassau County Commission Expires: 10/03/2024

EXHIBIT 3

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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, also known as 148-150 EAST 2nd STREET, et al.

Defendants. STATE OF NEW YORK) : ss.:

COUNTY OF NEW YORK)

Police Officer Natanya Gelin, Shield Number <u>7283</u>, being duly sworn, deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9th 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.

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Police Officer Natanya Gelin

Sworn to before me this $\frac{1}{100}$ day of $\frac{1}{100}$, 2023

AMM . Lunth

Notary Public

Jason w. Krawitz Notwy Public, State of New York NO. O2KR6399273 Qualifics in nassan County Commission Foxpives October 15, 2023

EXHIBIT 4

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



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Invoice No. 1001590950

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

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Invoice No. 1001591278

voice Date			Property Type				Property Categ
2/16/2022	22 CONTROLLED SUBSTANCE						INVESTIGATOR
			NAME OF BRIDE AND ADDRESS OF BRIDE	ax No. Comman	d states i s		
officiers lager and all		Name (S.J.) (S.S.S.S.S.S.S.S.S.S.S.S.S.S.S.S.S.S.S.			RECINCT	OCME.EU N	
nvoicing Officer	LT	ODEN, JERMAINE T	A Mar 2 1 1 1 1	00011			
Arresting Officer	N/A					OCME.FB N	·
investigating Officer	N/A				•	Police Lab I	Evid.Clrl.No,
Det Squad Supervisor	N/A	111 I I I I I I I I I I I I I I I I I I	· ······			Det Sod. Ca	se No.
CSUJECT Processing	N/A			****		CSU/ECT R	tun No.
				<u></u>			
tem 👘 Total QTY	Article(e	NERSE E PERSONA	Ngrain, ing pakalak	C. C. Company Catimated	Vaka 🚲 Pkg. No. 😳 🔍 🔅	S., ag QTY (1, a) (-	g Disposition of the second
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Prisoner(s) Nerrie Finder Owner	922 23:2 922 02:2 8 - 2 - 2 - 2 9 - 2 - 2 - 2 9 - 2 - 2 - 2 9 - 2 - 2 9 - 2 - 2 9 - 2 - 2 9 - 2 92 9 - 2 9	9 : ITEM VOUCHEREI MENTION ESTABL 88 : Invoice Approved and Code/Decorption PL 221,35/CRIMINAL S D.O.B Age	Activese	BY AUXILIARY P 3 OF MARIJUANA Crime Clessification MISDEMEANOR Address	DLICE OFFICER DURING A FOR \$30. Related To Arrest	AN OPERATI	ON IN WHICH BELOW Receipt NYSID No. 2
Prisoner(a) Nerre Version Vehicle Taker	22 23:2)22 02:2 ()22 02:2	9 : ITEM VOUCHEREI MENTION ESTABL 88 : Invoice Approved and Code/Decorption PL 221,35/CRIMINAL S D.O.B Age	Activese	BY AUXILIARY P 3 OF MARIJUANA Crime Clessification MISDEMEANOR Address	DLICE OFFICER DURING A FOR \$30. Related To Arrest	AN OPERATI	ON IN WHICH BELOW Receipt NYSID No. 2
Prisoner(a) Name Finder Owner Person Vehicle Taker Complaint No. N/A	22 23:2 22 02:2 5 5 6 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7	9 : ITEM VOUCHEREI MENTION ESTABL 88 : Invoice Approved and Code/Decorption PL 221,35/CRIMINAL S D.O.B Age	Activese	BY AUXILIARY P 3 OF MARIJUANA Crime Clessification MISDEMEANOR Address	DLICE OFFICER DURING A FOR \$30. Related To Arrest	AN OPERATI	ON IN WHICH BELOV Receipt



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



Invoice No. 1001591278

Approvala 🔄 🔡	Rank	Nama Response with a start of a	Tex No. 1988	Command Control Control	to toto, , Date (`strand	Time
Entered By	LT	ODEN, JERMAINE T		009 PRECINCT	12/16/2022	23:29
Invoicing Officer	LT	ODEN, JERMAINE T		009 PRECINCT	12/17/2022	01:15
		A. T. O.				
Approved By	SGT	ANTHONY, CHARSEL J		009 PRECINCT	12/17/2022	02:28
		Sox Contas				
		32110110				



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

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Invoice No. 1001593222

nvoice Date	Property 1	Гуре	Property Calogo
2/22/2022	CONT	ROLLED SUBSTANCE	INVESTIGATOR
		u u maaa uu - waa ila baaraa inaa uu ahaa ahaa ahaa ahaa ahaa ahaa aha	
Officers (1997)	Rank	009 PRECINCT	ÖCME,EU No.
nvoicing Officer	LT ÖDEN, JERMAINE T		anarar para arang mananakan kananakan kanana kan T
Arresting Officer	N/A	د. مېرو د ۱۹۰۰ - مېرو د بې و بې و بې وې	CCME.FB No,
nvestigating Officer	N/A	ی در این	Police Lab Evid.Ctri.No.
Det Squad Supervisor	N/A	· · · · · · · · · · · · · · · · · · ·	Det Sqd. Case No.
CSU/ECT Processing	N/A		CSU/ECT Run No.
item	Ando(s)	Estimated Value 200 Pkg. N	lorg taking the other states and the position
1 1	ALLEGED MARIJUANA	120	4889150 1
·*	COLOR: GREEN FORM: VEGETATIVE IS: ALLEGED PACKAGED IN: BLUNT		00393167
	PRE-ROLLED UP IN A GLASS TUBE	DESCRIPTION:	
	MARIJUANA PRE-ROLLED UP INTO A CIGARETTE PACKAGED IN A GLASS		
	"PREMIUM ROLL 2020 FUTURE BUB		:
	DAMAGE/DEFACEMENT DESCRIPTIO	· · · · · ·	
	BROKEN AND TAPED UP BY THE UN FURTHER VOUCHERING AND INTEG		1
	FORTHER TODOTLENING AND INTER	Total Cash Value 0.00	
2/22/20		RCHASED BY AUXILIARY POLICE OFFI OLD PRE-ROLLED MARIJUANA CIGARE	CER DURING AN OPERATION IN WHICH THE
100000	22 01:39 : Invoice Approved B		n - En al e e en el e La en el e
423/20			
Data of Incident	Penal Code/Description	Crime Classification	Related To
12/22/2022	PL 221.35/CRIMINAL SALE OF M	ARIJUANAMISDEMEANOR	•
24.2. (* 1616)	an para sang panang taun sa		
Prisoner(s) Name	D.O.B		Arrest No /Summons No. NY SID No.
ene-Hadik	Name	Tax No. Address	Phone.No age of State
Finder			
Owner	SOGIE EXOTIC & SMOKE SHOP	24 AVENUE A NEW YORK, N	Y 646-226-8479
Person Vehicle Taken	Fign		
Complaint No. N/A			
Related Comp No.(s)	N/A		
Related Comp No.(s) Alded/Accident No.(s)			



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PCD Storage No. -Page No.1 of 2

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P. C. ST		PD Property Clerk Invoice 141(Rev.12/18)		Invoice No. 1001593222			
Approvals	Rank	Name Name Name Autority States	Tax No.	Commend	Date set at 19	.>	
Entered By	LT	ODEN, JERMAINE T		009 PRECINCT	12/22/2022	21:42	
sevolcing Officer	LT	ODEN, JERMAINE T		009 PRECINCT	12/23/2022	01:24	
		A. T. O.					
Approved By	LT	HWANG, ALEXANDER O		009 PRECINCT	12/23/2022	01:39	
		Lt Strong 3					

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EXHIBIT 5

	- .						L	ABORATORY	REPORT	
DEDARTMEN CEDARTMEN CEDARTMEN] / I	Polici	ORK CITY P	RY			LABORATOR LABORATOR	Y REPORT #	2022-0 1	44164
	/ (CONTR	ROLLED SUB	STANCE AN	IALYSIS SEC	TION	COMPLAINT	Ħ	100159	90950
INVOICED BY	:	LT JERMAINE ODEN Tax#					DATE SUBMI	TTED:	12/17/2	2022
DEFENDANT((S):	Investigation AGE:					ANALYSIS S ANALYSIS C		12/27/2 12/28/2	
TYPE OF AN	ALYSIS:	COI	NTROLLED S	UBSTANCE	ANALYSIS	<u>,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,</u>				MAN 80000 11 1 1
EVIDENCE PR			ZED ON INVOIC	e: X Yes	No (s	SEE REMARK	S)		•·	
Item #	Qty.	<u>D</u>	escription			<u>Resu</u>	<u>its</u>	Weig	<u>ht</u>	
1	1	С	igar(s) cont.	vegetative m	atter	Cann	nabis 1.769 g (aggregate wt.)			ate wt.)
SUMMARY OF	F ANALY	SIS								
Substance	dentified	l	-		lten	<u>1#</u>	<u>Weigt</u>	<u>nt</u>		
Cannabis					1		1.769	g (aggregate	wt.)	
REMARKS										
% oz ≍ 3.544 g		oz.= 175 g	2 oz = 56.700 g	3 oz = 85.049 g	4 cz = 113.399 g	8 oz = 226.797 g	16 oz = 453.593 g	5 lbs= 2267.962g	10 ibe= 4535.924 g	100 lbs= 45359.237g
The should	recult of		hie ie haeod	in nert, on a	o evaluation o	f total delta	9-tetrahydroc	annahinol (de	lta Q_	

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9tetrahydrocannabinol 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 DOES NOT CONSTITUTE THE 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: <u>http://www.criminaljustice.ny.gov/forensic/labreportstandards.htm</u>

indegration of the second se

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

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.

ANALYST SIGNATURE

12/28/2022

12/28/2022 DATE ISSUED PAGE 1 OF 1

CRIM IB

Alexys Benson

						LA	BORATORY	REPORT	
	Polic	YORK CITY P E LABORATC ROLLED SUB	RY			LABORATORY LABORATORY COMPLAINT #		2022-0 1	44241
	00111					INVOICE #		100159	91278
INVOICED BY:	Precinct					DATE SUBMIT	TED:	12/18/2	2022
DEFENDANT(S):						ANALYSIS STA ANALYSIS COI		12/27/2 12/28/2	
TYPE OF ANALYSIS	CO	NTROLLED S	SUBSTANCE	ANALYSIS	4				,
EVIDENCE PRESENT		,	e: X Yes	No (s	EE REMARKS	3)			
item # Qty.	C	Description			Resul	t <u>s</u>	Weig	ht	
1 1	Z	liplock bag(s)	cont. vegeta	tive matter	Canna	abis	3.498	s g (aggreg:	ate wt.)
SUMMARY OF ANAL	YSIS								
Substance Identifi	ed			lterr	<u>1 #</u>	<u>Weight</u>			
Cannabis				1		3.498 g	(aggregate	wt.)	
Remarks									
	4.175 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 9tetrahydrocannabinol and decarboxylated delta 9- tetrahydrocannabinolic acid).

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ANALYST BIONATURE

12/28/2022 DATE PREPARED

12/28/2022 DATE ISSUED PAGE 1 OF 1

CRIM IB RANK/TITLE

Alexys Benson AUTHORIZER/ANALYST NAME

					LA	BORATORY	REPORT	
DEPARIMENT	NEW YORK CITY		ARTMENT		LABORATORY	#	2022-0	44880
	POLICE LABORATO		-		LABORATORY	REPORT #	1	
	CONTROLLED SUE	BSTANCE AN	ALYSIS SECT		COMPLAINT #		100159	3222
INVOICED BY:						TED	12/24/2	
INVOICED BY.	LT JERMAINE ODEN Tax# Command: 009 Precinct				DATE SUBMIT	IED.	12/24/2	:022
DEFENDANT(S):	Investigation		AGE:		ANALYSIS STA ANALYSIS COI		12/27/2 12/28/2	
			·····		ANAL1515 CUI	MPLEIED.	1212012	.022
TYPE OF ANALYSIS:	CONTROLLED	SUBSTANCE	ANALYSIS					
							1.000 1.000	
EVIDENCE PRESENT	AS ITEMIZED ON INVOIO	CE: X YES	No (s	EE REMARKS)			
RESULTS OF EXAMI	NATION/ANALYSIS							
ltem # Qty.	Description			<u>Result</u>	<u>s</u>	Weig	ht	
1 1	Cigar(s) cont.	vegetative ma	atter	Canna	bis	1.306	g (aggrega	ate wt.)
SUMMARY OF ANAL	YSIS							
Substance Identifie	ed .		lterr	<u>1.#</u>	<u>Weight</u>			
Cannabis			1		1.306 g	(aggregate	wt.)	·
Remarks								
<u>% oz ≠</u>	2 oz = 2 oz =	3 oz =	4 oz =	8 oz *	16 oz =	5 lbs=	10 lbs=	100 lbs=

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9tetrahydrocannabinol 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

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CRIM IB

RANK/TITLE

Unit/Item #	ltem #	Methods Used
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		Examination, GC/MS

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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.

12/28/2022 CRAGED.

DATE P

12/28/2022 DATE ISSUED PAGE 1 OF 1

Alexys Benson AUTHORIZER/ANALYST NA

ANALYST SIGNATURE

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

THE CITY OF NEW YORK,

Plaintiff,

-against-

SUMMONS

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.

Filed On:

Index No.:

YOU ARE HEREBY SUMMONED TO ANSWER the complaint in this action and serve a copy of your answer on plaintiffs 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
EVAN GLUCK, ESQ.
375 Pearl Street, Box 39
New York, New York 10038
(646) 610-4498

By:

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.²

² 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.

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.

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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 16390 of Title 7 of the U.S.C. Section 16390 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
EVAN GLUCK, ESQ.
375 Pearl Street, Box 39
New York, New York 10038
(646) 610-4498

By:

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 <u>THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS</u>

> 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

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

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.

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:

J.S.C.

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

THE CITY OF NEW YORK,

Plaintiff,

Defendants.

-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,

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.¹ *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."

¹ 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."

<u>December 22, 2022</u>

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 16390 of Title 7 of the U.S.C. Section 16390 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 of sale 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.

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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

7285

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

THIS INDENTURE, made the 7th day of June New

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

Standard N.Y.B.T.U. Form 8004 - Quitclaim Deed - Uniform Acknowledgment (single sheet) Form 2216

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 Na > Sav ss:

State of New York, County of

On the 7^tday of J~2 in the year 2017 before me, the undersigned, personally appeared BANYAW 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(les), 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.

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. (signat	ùre a	nd office	of individ	inal tak	ing acknowled	amenti

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 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.

5\$:

SS:

(signature and office of individual taking acknowledgment)

HECTOR ALEXIADES	
Notary Public, State of New York	
Registration #02AL60164/0	
Qualified In Queens County	
Commission Expires Jan. 16, 2019	
TO BE USED ONLY WHEN THE ACKNO	DWLEDGMENT IS MADE OUTSIDE NEW YORK STATE

State (or District of Columbia, Territory, or Foreign Country) of

day of

On the

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 the year

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
TCLAIM DEED	LOT 48
	COUNTY OR TOWN New York
No	STREET ADDRESS 103 St. Marks Place

Title ALLIED XVII LLC

Qu

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

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS

NEW YORK TITLE BESEARCH CORFORMION	Distributed By NEW YORK TITLE Research Corporation 15 Fisher Lane White Palms, NY 10603 914682-9019 Fax 914-982-9182 www.xyttile.com

Recorded at Request of NEW YORK TITLE

RETURN BY MAIL TO:

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

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE



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 103 ST. MARKS PLACE, et al.,

Defendants. STÁTE 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.

Jawn DAWN KIELY

Sworn to before me this _444 . 2022 day of January

Notary Public

Alex Mark Tuminello Notary Rublis - State of New York No. 01746348602 Runlified in Nassau County Commission Expires: 10/03/2024

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EXHIBIT 3

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 103 ST. MARKS PLACE, et al.

Defendants. -----X STATE OF NEW YORK) : ss.: COUNTY OF NEW YORK)

Police Officer Natanya Gelin, Shield Number $\underline{7283}$, being duly sworn, deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9th 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

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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 $\int_{1}^{1} day \text{ of } \int_{1}^{1} \frac{1}{2} \int_{1}^{1} \frac{1}{2}$

otary Public

Jason W. Kravitz Notary Auslic, State of New York NO. O2KR6399273 Qualifiel in Nassan County Commission Fax pives Occuber 15, 2023

EXHIBIT 4

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								LAI	BORATORY	REPORT	
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INVOICED BY:	:	LT JER Precinc		EN Tax##	Comman	d: 009	DATE S	SUBMIT	TED:	12/17/2	2022
Defendant(s):	Investig	-		AGE:		ANALY: ANALY:		RTËD: MPLETED:	12/27/2 12/28/2	-,
TYPE OF ANA	ALYSIS:	CONT		SUBSTANCE	ANALYSIS						
EVIDENCE PR				æ: 🗙 Yes	No (5	SEE REMARK	S)				
<u>ltem #</u>	<u>Qty.</u>	De	scription			Resu	<u>ilts</u>		Weigl	ht	
1	1	Zip	lock bag(s)	cont. vegeta	tive matter	Canr	nabis		3.456	g (aggreg	ate wt.)
SUMMARY OF	F ANALYS	IS									
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% oz = 3.544 g	% (14.1		2 oz = 56.700 g	3 oz = 85.049 g	4 oz = 113.399 g	8 oz = 226.797 g		oz = 593 g	5 lbs# 2267.962g	10 lbs= 4535.924 g	100 lbs# 45359.237g
The above	result of	cannahi	s is hased	in part on a	n evaluation o	f total delta	9-tetrah	vdroca	nnabinol (de	lta 9-	

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delt 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
<u>-</u>	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.

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.

12/28/2022 DATE PREPARED

12/28/2022 DATE ISSUED PAGE 1 OF 1

Alexys Benson

ANALYST SKINATURE

						ĹA	BURATUR	REPORT	
DEDARIM	Ροι	W YORK CITY F LICE LABORATO	DRY		ON	LABORATORY LABORATORY COMPLAINT #	REPORT #	2022-0 1)44239
\checkmark						INVOICE #		10015	91283
INVOICED B		JERMAINE OD	EN Tax#.	Command	: 009	DATE SUBMIT	TED:	1 2/18 /2	2022
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TYPE OF AN	VALYSIS: (CONTROLLED S	SUBSTANCE	E ANALYSIS					
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<u>item #</u>	<u>Qty.</u>	Description			<u>Result</u>	-	<u>Weig</u>		
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SUMMARY C	OF ANALYSIS								
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Cannabis				1		3.081 g	(aggregate	wt,)	
REMARKS				-		-			
% oz ≭ 3.544 g	½ 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
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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

CRIM IB

RANK/TITLE

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.

Alexys Benson 12/28/2022 12/28/2022 AUTHORIZERVANALYST NAME ANALYST SIGNATURE DATE PREPAREO DATE ISSUED PAGE 1 OF 1

				e.		LAI	BORATORY	REPORT	
	Polic	YORK CITY P E LABORATC ROLLED SUB	RY	ARTMENT ALYSIS SECT		LABORATORY LABORATORY COMPLAINT #		2022-0 1	
~						INVOICE #		100159	
INVOICED BY:	LI JE Preci	RMAINE OD	EN Tax#	Comman	g: 00a	DATE SUBMIT	TED:	12/24/2	2022
DEFENDANT(S):		tigation		AGE:		ANALYSIS STA		12/27/2	
						ANALYSIS CO	MPLETED:	12/28/2	2022
TYPE OF ANALYS	<u>sis:</u> CO	NTROLLED S	UBSTANCE	ANALYSIS					
EVIDENCE PRESE			E: X YES	No (s	EE REMARKS)	*****************		
item #	v. I	Description			Resul	s	Weigt	<u>nt</u>	
1 1	Z	iplock bag(s)	cont. vegeta	tive matter	Canna	ibis	2.423	g (aggrega	ate wt.)
SUMMARY OF A			•						
Substance Iden	tified			item	<u>. #</u>	<u>Weight</u>			
Cannabis				1		2.423 g	(aggregate	wt.)	
REMARKS									
% oz ≠ 3.544 g	% oz = 14,175 o	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 DATE 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.

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.

12/28/2022 DATE PREPARED

12/28/2022 DATE ISSUED PAGE 1 OF 1

CRIM IB

Alexys Benson

ANALYST SIGNATURE

EXHIBIT 5

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



12/15/2022 CONTROLLED SUBSTANCE INVESTIGATOR ORGE Nerre Tig No. Command Order Diverting Officer LT ODEN, JERMAINE T OOM ED No. Arresting Officer NA OOM ED No. Arresting Officer LT ODEN, JERMAINE T OOM ED No. Office Lit ODEN, JERMAINE T OOM ED No. Projectable End Coltino. Obil Squad Superviser N/A ODEN, JERMAINE T Projectable End Coltino. CSUECT Processing N/A ODEN, JERMAINE T Order En No. CSUECT Processing N/A CSUECT Fun No. CSUECT Fun No. CSUECT Processing N/A CSUECT Fun No. CSUECT Fun No. Imm. Total OTY Addedo CSUECT Fun No. CSUECT Fun No. Imm. Total OTY MARUUANA ODE OSTITIVE DESCRIPTORY NO. 3.5 G OF 1.1408353174 1 Immanue Total Cash Value 0.00 0.00 0.00 1.1408353174 1 PENALL MULTI-COLORED BAG TITLED "SAVAGE NEW YEAR" 1.1408353174 1 1 Immanue Coline Classification Nake Top State State Programmer No. NURCHASED State State Programmer No. NURCHASED State State State Programmer No. 1.1408353174 Ital State Programmer Nove			المتحد					
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Investing Officer LT ODEN, JERMAINE T OD						1.12.20 1.1.12.00 1.1.12.00.00.00.00.00.00.00.00.00.00.00.00.00		
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Property Clerk Copy printed: 12/16/2022 15:33

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A CONSTRUCTION OF

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



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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.	nvoice Daie	Property Ty		
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Invoice No. 1001591283

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

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Invoice No. 1001591283

Approvals (1994)	Rank	Name 2014 No. 2014	📩 🖄 🖓 Tax No. 🖓 🖓	Command	Date	ça Time Sişa
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NYPD Property Clerk Invoice PD 521-141 (Rev. 12/18)



Invoice No. 1001593230

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NYPD Property Clerk Invoice PD 521-141(Rev. 12/18) Invoice No. 1001593230 Tax No. Date Approvals Rank SECO ODEN, JERMAINE T Entered By LT ٨ **009 PRECINCT** 12/22/2022 22:00 Invoicing Officer ODEN, JERMAINE T LT **009 PRECINCT** 12/23/2022 01:25 5. ۶ HWANG, ALEXANDER O Approved By LT **009 PRECINCT** 12/23/2022 01:33



Invoicing Officer Copy printed: 12/23/2022 01:45 PCD Storage No. --Page No.2 of 2

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.

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.

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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

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

By:

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, VERIFIED COMPLAINT

Index No.:

Filed On:

Defendants.

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(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

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.²

² 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 16390 of Title 7 of the U.S.C. Section 16390 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 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

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

By:

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 <u>THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS</u>

> 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

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

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.

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:

J.S.C.

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

THE CITY OF NEW YORK,

Plaintiff,

Defendants.

-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, 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 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.¹ 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."

¹ 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 \S 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 16390 of Title 7 of the U.S.C. Section 16390 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 of sale 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.

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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

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EXHIBIT 1

BARGAIN AND SALE DEED (without covenants)

THIS INDENTURE, made as of the 28th day of June 2013, BETWEEN 734-6 BROADWAY LLC, a Delaware limited liability company ("<u>Grantor</u>"), with an address of c/o Extell Development Company, 805 Third Avenue, 7th Floor, New York, New York 10022 and UD 736 Broadway LLC, a New York limited liability company ("<u>Grantee</u>"), 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

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By: Gary Barnett, President

State of New York County of New York ss:

On the 27th 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.

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BARGAIN AND SALE DEED WITHOUT COVENANTS

MALYA SCHULMAN Notary Public, State of New York No. OISC6259122 Qualified in New York County Commission Expires April 9, 2016

> SECTION: BLOCK: 545 LOT: 22 COUNTY OR TOWN: New York

JAL.

RETURN BY MAIL TO:



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 ¼ 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 % 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 ½ 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 % inches to the point or place of BEGINNING.



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, <u>et al.</u>,

·	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.

AFFIDAVIT

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").

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

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DAWN KIELY

Sworn to before me this day of February Notary Public

BRVANT PAREDES Notary Public, State of New York No. 01PA6338629 Qualified in Queens County Commission Explice Meets 14, 20,24

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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 NEW YORK)

Police Officer Natanya Gelin, Shield Number <u>1283</u>, being duly sworn, deposes and says:

1. I am a member of the New York City Police Department and am currently assigned to the 9th 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 <u>16, 2022</u>

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

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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."

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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^{12} day of f_{14} , 2023

Notary Publi

Jason W. Krawitz Notary Public, State of New York NO. O2KR6399273 Qualified in Nassau County Commission EXPITES October 15, 2023

EXHIBIT 4

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

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POLICE DEPARTMENT PLATER PLATER PLATER PLATER PLATER NYPD Property Clerk Invoice PD 521-141(Rev.12/18)



Invoice No. 1001591264

Approvals - Secol	Rank	Name Charles Market Market Chief Street	aline is in the Tax No. (1997)	Command 2 - 2 2 2	QUEST Date States (18)	Time T _e -
Entered By	LT	ODEN, JERMAINE T		009 PRECINCT	12/16/2022	22:48
Involcing Officer	LT	ODEN, JERMAINE T		009 PRECINCT	12/17/2022	01:14
		4.9.0.				
		ANTHONY, CHARSEL J		009 PRECINCT	12/17/2022	02:27
Approved By	SGT	ANTHONY, CHARGELS	and the second second	UUS PRECINCI	1211712022	VZ.ZI
		Sar Crothing				

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



Invoice No. 1001593250

Invoice Date 12/22/2022	•	NTROLLED SUBST		Property Calegory INVESTIGATORY
Officers	Rank Norm	Tax No.	Command 2500000 Concernent	
involcing Officer	LT ODEN, JERMAINE T	automatica, Para	009 PRECINCT	OCME.EU No.
Arresting Officer	N/A	and the second	•	OCME,FB No.
Investigating Officer	N/A	ann an tha ann a' Shan a' Shanadar ann a' Gullana a' Churn - Shan an an	na galagan barrini - na yogi mini kananay kanan bayana na anta ana manana 24 yangan	Police Lab Evid.Ctri.No.
Det Squad Supervisor	N/A	ang an	halayyan a an a Muuriy ya a saka in ya nanan antan yayaariyy na ayya ya aya ar gumuna	Cet Sqd. Case No.
CSU/ECT Processing	N/A	 If C y could find fin y could y make y many () in 	۲۳۵٬۵۵۵ میلی کور کې د ۲۳۵٬۵۵۵ مېلو کې د ۲۳۵٬۵۵۵ مېلو کې	CSU/ECT Run No.
Nem Total QTY	Article(s))		Estimated Value Pkg. No.	QTY Disposition
1 1	MARIJUANA COLOR: GREEN FORM: VEGETATI FIELD TESTED POSITIVE PACKAG MYLAR FILM PACK DESCRIPTION WEED / MARIJUANA PACKAGED I MYLAR FILM PACKAGING BAG TI	ED IN: SMALL PINK : 3,5 G OF SNOWMAN N A SMALL PINK	1204889156 - 1400393165	
		Total Cash Value	0.00	
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NYPD Property Clerk Invoice PD 521-141(Rev.12/18)



Involce No. 1001593250

Approvals	Rank Gol (Name		Commend	Data State	<u>ាក៖</u>
Entered By	LT	ODEN, JERMAINE T		009 PRECINCT	* 12/22/2022	22:48
Invoicing Officer	LT	ODEN, JERMAINE T $\mathcal{A}.\mathcal{P}.\mathcal{O}.$		··· 009 PRECINCT	12/23/2022	01:24
Approved By	LT	HWANG, ALEXANDER O	5. 14	009 PRECINCT	12/23/2022	01:38



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EXHIBIT 5

		•				LA	BORATORY	REPORT	
	Polic	York City F De Laborato Rolled Sue	DRY			LABORATORY LABORATORY COMPLAINT # INVOICE #		2022-0 1 100159	
INVOICED BY:	LT J Prec	ERMAINE OD	EN Tax	Comman	d: 009	DATE SUBMIT	TED:	12/17/2	2022
DEFENDANT(S):		stigation		AGE:		ANALYSIS STA ANALYSIS COI		12/27/2 12/28/2	
TYPE OF ANALYSI	<u>s:</u> CC	NTROLLED S	SUBSTANCE	ANALYSIS					
EVIDENCE PRESEN			e: X Yes	No (s	EE REMARKS)			
Item # Qty.	<u> </u>	Description			<u>Result</u>	<u>s</u>	Weigl	<u>ht</u>	
1A 1	2	Ziplock bag(s)	cont. vegetal	live matter	Canna	Cannabis 5.215		g (aggrega	ate wt.)
1B 1		Ziplock bag(s)	cont. vegetal	tive matter	No Ana	No Analysis N/A			
SUMMARY OF ANA	LYSIS								
Substance Identii	ied			ltem	#	<u>Weight</u>			
Substance Identii Cannabis	<u>ied</u>			<u>ltem</u> 1A	<u>#</u>		(aggregate	wt.)	
	<u>ied</u>				<u>1#</u>		(aggregate	wt.)	

The above result of cannabis is based, in part, on an evaluation of total delta 9-tetrahydrocannabinol (delta 9tetrahydrocannabinol 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 DOES NOT CONSTITUTE THE 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/fabreportstandards.htm

International and the second second

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

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 RANKATITLE

Alexys Benson

ANALYST SIGNATURE

372742 _____

12/28/2022 DATE PREPARED 12/28/2022 DATE ISSUED PAGE 1 OF 1

						LAI	BORATORY	REPORT	
	Polic	YORK CITY P E LABORATO ROLLED SUB	RY	ARTMENT		LABORATORY LABORATORY COMPLAINT #		2022-04 1	14240
						INVOICE #		100159	1264
INVOICED BY:	LT JE Preci		EN Tax#:939	136 Comman	d: 009	DATE SUBMIT	TED:	12/18/2	022
DEFENDANT(S):	.,,	tigation		AGE:		ANALYSIS STA ANALYSIS COI		1 <i>2/27/2</i> 12/28/2	
TYPE OF ANALYSIS:	Type of Analysis: CONTROLLED SUBSTANCE ANALYSIS						un de la de la		
EVIDENCE PRESENT			e: X Yes	No (s	EE REMARKS))			
Item # Qty.	<u>[</u>	Description			Result	<u>s</u>	Weigt	<u>ht</u>	
1 1	Z	Ziplock bag(s)	cont. vegeta	tive matter	Canna	bis	4.109	g (aggrega	ite wt.)
SUMMARY OF ANAL	YSIS								•
Substance Identifie	ed			lterr	<u>1 #</u>	Weight			
Cannabis				1		4.109 g	(aggregate	wt.)	
Remarks									
	4.oz = 4.175 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 9tetrahydrocannabinol 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 #	ltem #	Methods Used
1	1	Color Test, Macroscopic Examination, Microscopic
		Examination, GC/MS

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CRIM IB RANK/TITLE

Alexys Benson AUTHORIZER/ANALYST NAME

372742 TAX #

12/28/2022 DATE PREPARED 12/28/2022 DATE ISSUED PAGE 1 OF 1

20110	-						ĹA	BORATORY	REPORT	
DEPARIME			YORK CITY F		ARTMENT		LABORATORY		2022-0	44881
	ő/		E LABORATO			-*	LABORATORY		1	、 、
		CONT	ROLLED SUB	ISTANCE AN	VALYSIS SEC		COMPLAINT #	i.	400451	
\sim							INVOICE #		100159	93250
INVOICED BY	:	LT JE Preci	ERMAINE OD	EN Tax#:939	9136 Commar	nd: 009	DATE SUBMIT	TED:	12/24/3	2022
DEFENDANT	(S):	Inves	tigation		AGE:		ANALYSIS ST		12/27/2	
							ANALYSIS CO	MPLETED:	12/28/2	2022
TYPE OF AN	ALYSIS;	co	NTROLLED S	SUBSTANCE	ANALYSIS					<u>.</u>
EVIDENCE P			IZED ON INVOIC ANALYSIS	e: X Yes	No (8	SEE REMARKS)			
<u>ltem #</u>	<u>Qty</u>	<u>[</u>	Description			Result	<u>s</u>	<u>Weig</u>	ht	
1	1	- 2	Ziplock bag(s)	cont. vegeta	tive matter	Canna	bis	4.049) g (aggrega	ate wt.)
SUMMARY O	F ANAL	YSIS								
Substance	Identifie	<u>əd</u>	·		<u>lten</u>	<u>n #</u>	<u>Weight</u>	,		
Cannabis					1		4.049 g	ı (aggregate	wt.)	
REMARKS										
% oz = 3.544 g		≤ oz = 1.175 g	2 oz = 56.700 g	3 oz = 85.049 g	4 oz = 113.399 g	8 cz = 226.797 g	16 oz = 453.593 g	5 lbs= 2267.962g	10 lba= 4535.924 g	100 lbs= 45359.237g

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TESTING METHODOLOGY

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

1 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

372742 TAX # 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 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.

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

By:

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."²

 $^{^2}$ 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 16390 of Title 7 of the U.S.C. Section 16390 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 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 EVAN GLUCK, ESQ. 375 Pearl Street, Box 39 New York, New York 10038 (646) 610-4498

By:

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 <u>THE CITY OF NEW YORK v. THE LAND & BUILDING KNOWN AS</u>

> 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