

CARMINE FIORE, WILLIAM NORGARD,
STEVE MEJIA, and DOMINIC SPACCIO,

Plaintiffs,

-against-

NEW YORK STATE CANNABIS CONTROL
BOARD, NEW YORK STATE OFFICE OF
CANNABIS MANAGEMENT, TREMAINE
WRIGHT, in her official capacity as the
Chairwoman of the New York State Cannabis
Control Board, and CHRIS ALEXANDER, in
his official capacity as Executive Director of the
New York State Office of Cannabis Management,

Defendants.

Index No.: 907282-23
(Bryant, J.)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS, on August 7, 2023, Supreme Court temporarily enjoined Defendants from awarding or further processing CAURD licenses, as well as from conferring operational approval

on provisional or existing CAURD licensees pending a hearing and determination of Plaintiffs' application, (NYSCEF No. 32); and

WHEREAS, on August 11, 2023, the Court granted an oral motion on the record for Conbud, LLC, 82-J, LLC, Kush Culture Industry, LLC, and Summit Canna, LLC (collectively, "Intervenors") to intervene in this matter as additional defendants; and

WHEREAS, on August 18, 2023, the Court granted Plaintiffs' motion for a preliminary injunction, enjoining Defendants from "further processing, approving or investigating pending applications for CAURD licenses" until further order of the Court (subject to certain exceptions and exemptions by application and Court order), (NYSCEF No. 152); and

WHEREAS, on September 11, 2023, Defendants appealed the Preliminary Injunction to the Appellate Division, Third Department, which appeal remains pending as Case No. CV-23-1710 (the "Appeal"); and

WHEREAS, Defendants filed an Answer on September 14, 2023, denying the allegations contained in the Complaint, (NYSCEF No. 342, "Answer"); and

WHEREAS, following good-faith negotiations, Plaintiffs, Defendants, and Intervenors (the "Parties") have reached a Stipulation to resolve the issues raised in this litigation, without further proceedings and without any admission of fault or liability; and

WHEREAS, the Parties acknowledge that the actions taken by the Board on September 12, 2023, which approved the adult use regulations, as well as the October 4, 2023 opening of the general adult use application period, addressed aspects of the harms alleged by Plaintiffs in the Complaint. The Parties further acknowledge that the Court-ordered injunctions, which paused the CAURD licensing program for more than three months, have addressed aspects of the alleged harms, including aspects of Plaintiffs' concerns regarding the claimed advantages of provisional

CAURD licensees over other individuals and businesses waiting to enter the adult use retail cannabis market; and

WHEREAS, the Parties acknowledge and agree that the terms of this Stipulation are fair, reasonable, adequate, in their mutual best interest, and the product of joint negotiation through counsel; and

WHEREAS, the Parties acknowledge that they are waiving legal rights and/or claims by entering into this Stipulation, and each Party has consulted with legal counsel, has a full and complete understanding of the terms and legal effect of this Stipulation, and intends to be bound thereby; and

WHEREAS, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed by and between the Parties as set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the respective Parties to the above-captioned action, as follows:

1. Pursuant to CPLR 3217(c) and upon the last to occur of (a) this Stipulation being so-ordered by Supreme Court or (b) the issuance of the provisional licenses provided for under paragraph 5.i and ii. of this Stipulation, Plaintiffs dismiss this Action with prejudice and without damages, costs, interest, or attorneys' fees.

2. As part of the consideration for the Parties' entering into this Stipulation, within one (1) business day of the execution of this Stipulation, Plaintiffs shall present the Stipulation to be so-ordered by Supreme Court. The Parties acknowledge that the filing of the executed Stipulation in Supreme Court, Albany County, constitutes a request by Plaintiffs to the Court to

dissolve the Preliminary Injunction. In the event the Court fails to dissolve the Preliminary Injunction within ten (10) business days after the presentation of this Stipulation to the Court (or such additional time as the Parties may agree upon to allow the Court time to consider the terms of this Stipulation), this Stipulation, including, but not limited to, any acknowledgments contained in this Stipulation, the provision for dismissal of this Action, and any licenses (whether provisional or final) issued and site protection granted pursuant to paragraph 5 of this Stipulation shall be null and void, and the Parties will return to their litigation positions as they existed prior to the execution of this Stipulation, with each Party maintaining any arguments in support of their respective litigation positions as they existed before the Stipulation was executed.

3. Upon the Court's so ordering this Stipulation, this Stipulation settles any and all of the existing claims in this Action between the Parties, including any claims for monetary relief, damages, attorneys' fees, expert witness fees and expenses, and all other expenses and costs that have been or will be incurred in connection with the Action at any time against any Party.

4. Upon the Court entering the so-ordered Stipulation in Supreme Court, Defendants shall take all necessary actions to withdraw the Appeal.

5. Upon execution of this Stipulation, Defendants will award one (1) adult use retail dispensary license to each Plaintiff and take all other steps necessary to allow each Plaintiff to become fully operational, including but not limited to a compliance inspection and approval. The award of licenses to Plaintiffs shall occur subject to the following procedures and provisions, agreed by the Parties:

- i. Initially, Defendants will award each Plaintiff one (1) provisional adult use retail dispensary license with site protection for one (1) location per Plaintiff based on the presentation to OCM of a letter of intent, lease, or deed of ownership.
- ii. The provisional approval of each Plaintiff's adult use retail dispensary license will be issued immediately upon, and at the same time as, execution

of this Stipulation by the Cannabis Control Board, which shall take place immediately following the meeting of the Board at which the Board will vote on execution of this Stipulation. Defendants will then confirm to Plaintiffs' undersigned counsel that each Plaintiff has been granted a provisional license.

iii. Site protection will be granted to each Plaintiff immediately upon, and at the same time as, execution of this Stipulation, provided that each Plaintiff submits to OCM a letter of intent, lease, or deed at or before such time and the subject location is confirmed by OCM to comply with the regulatory distance requirements.

a. If a Plaintiff has not presented OCM with a lease, letter of intent, or deed at or before the time of execution of this Stipulation, site protection will be granted to that Plaintiff as soon as such Plaintiff submits the required documentation and the subject location is confirmed by OCM to comply with the regulatory distance requirements, including distances between licensed dispensaries and licensed microbusinesses.

b. As of November 24, 2023, (i) Plaintiff Fiore has submitted a letter of intent, and OCM has confirmed that the location in the letter of intent complies with the regulatory distance requirements and that site protection will be provided for that location upon execution of the Stipulation, provided that Mr. Fiore or a related entity executes a lease for the location within 90 days of the date this Stipulation is so-ordered by the Court; (ii) Plaintiff Norgard has submitted a letter of intent, and OCM has confirmed that the location in that letter of intent complies with the regulatory distance requirements and that site protection will be provided for the location upon execution of the Stipulation; (iii) Plaintiff Spaccio has submitted a lease, and OCM has confirmed that the location complies with the regulatory distance requirements and, subject to the applicable municipality lifting its opt-out decision, that site protection will be provided for that location; and (iv) Plaintiff Mejia has not yet submitted a letter of intent, lease, or deed of ownership.

c. For purposes of this Stipulation, "site protection" means that OCM (i) approves the location for use as a retail dispensary by the applicable Plaintiff, subject to each Plaintiff meeting the requirements for a final license as set forth in this Stipulation; and (ii) agrees that no other retail dispensary license or microbusiness license shall be granted for any other premises within the applicable distances set forth in 9 N.Y.C.R.R. 119.4(a).

- d. Plaintiffs agree to update OCM on efforts to secure site control in accordance with OCM procedures applicable to all other provisional licensees, and each Plaintiff who has received location protection in connection with a letter of intent agrees to update OCM as requested regarding the status of any efforts by the individual Plaintiff to obtain site control of the premises.
 - e. Site protections granted by OCM will continue pursuant to the same process and conditions imposed on all other provisionally approved adult use retail dispensary license applicants, provided that such processes and conditions are publicly announced and posted in a publicly available format.
- iv. Upon submission by a Plaintiff of all materials required for a provisional and final adult use retail dispensary license, including the application fee, Defendants will award that Plaintiff one (1) final adult use retail dispensary license.
 - a. With respect to the final license, Defendants must complete their review of a Plaintiff's application for a final adult use retail dispensary license, and notify the Plaintiff of such approval or deficiency, within five (5) business days after a Plaintiff submits its application. If a final application is deficient for any reason, the Plaintiff shall be permitted to update its application to satisfy any law, regulation, or guidance. Defendants will not deny a Plaintiff's application because of a deficiency and will allow a Plaintiff to cure such a deficiency.
 - b. If a Plaintiff applicant demonstrates to OCM that it has completed all requested requirements and is ready to receive an on-site inspection, OCM will work with the Plaintiff to schedule the on-site inspection or its equivalent within five (5) business days. Consistent with OCM procedure for any provisional licensee, if approval is not granted, OCM will promptly conduct a compliance inspection of Plaintiff's dispensary once the Plaintiff has satisfied any outstanding deficiencies.
- v. The Parties acknowledge and agree that each Plaintiff must satisfy the cannabis law, regulations, and guidelines applicable to receiving and maintaining an adult use retail dispensary license, including, but not limited to, requirements for true parties of interest of the applicable Plaintiff, any social and economic equity ("SEE") certification documents, and submitting to Defendants all required application information and payments/fees necessary to receive a provisional adult use retail dispensary license. Plaintiffs acknowledge and agree that OCM is vested with the sole authority and discretion to determine whether a Plaintiff has satisfied the

cannabis law, regulations, and guidelines applicable to receiving and maintaining a general provisional adult use retail dispensary license, but no Plaintiff shall be denied a license and instead shall be permitted to update its application, in accordance with applicable regulations, to satisfy any law, regulation, or guidance that OCM determines is not satisfied.

- vi. Defendants acknowledge and agree that Plaintiffs will be eligible for second licenses in the same way that all other applicants will be granted that opportunity when it becomes available.
- vii. Defendants acknowledge and agree that any Plaintiff may transfer the location of its license to another compliant location in accordance with the applicable rules and regulations. Defendants agree to promptly process any such request from a Plaintiff.

6. The Parties agree that Defendants shall not issue any new or additional provisional CAURD licenses until April 1, 2024, in order to dedicate OCM's application and licensing resources in the next coming months to the current application and licensing window for adult use licenses, including SEE applicant licenses.

7. The Parties further agree that Plaintiffs shall be afforded the opportunity to participate in all programs made available to other SEE applicants, including but not limited to licensees who qualify as Service-Disabled Veterans under Article 17-B of the Executive Law, and that the following programs will be offered to all SEE applicants:

- i. One-on-one, individualized application support services at no cost to SEE applicants;
- ii. Comprehensive cannabis compliance training and business development support services at no cost;
- iii. An opportunity to join the Our Academy Accelerator subject to contract expansion; and
- iv. Benefits from any loan-loss reserve program established for SEE licensed adult use business borrowers to assist them with obtaining commercial financing.

8. The Parties further agree that Defendants will work with the Division of Service-Disabled Veterans Business Development ("DSDVBD") to ensure maximum exposure of all

licensing and educational opportunities that are shared with DSDVBD's network of Service-Disabled Veteran-Owned Business ("SDVOB") entrepreneurs and creating specialized incubation/business development programming for SDVOBs. To do so, Defendants will:

- i. Establish a SDVOB taskforce and commit at least one OCM full-time employee staff person to specialize in business development for SDVOBs.
 - a. This interagency taskforce will have meetings with external stakeholders and will seek input from all veterans, including Plaintiffs, as part of the mission and duties of the taskforce.
- ii. Implement the following additional programs and initiatives to increase service-disabled veteran participation in the cannabis market and address issues of importance to the veteran community:
 - a. Develop, fund, and launch a comprehensive campaign that is specifically designed to educate the service-disabled veteran community about the opportunities readily available in New York and increase their participation in the adult use and medical markets.
 - b. Develop a program, in consultation with the aforementioned SDVOB taskforce, to expand cannabis research into factors related to veterans' health, such as improvements in mood and social functioning, impacts on other substance use, and changes in overall mental health and quality of life.
- iii. Defendants, through OCM, will provide monthly updates to the Plaintiffs on the progress of these efforts until they have been officially launched.

9. Plaintiffs and their attorneys agree that none of the Defendants, individually or as a group, nor the State of New York (including, but not limited to, any and all agencies, departments, and subdivisions thereof and any of its officials, employees, or agents, whether in their individual or official capacities), shall be responsible for any liens of any kind including but not limited to any and all liens for attorneys' fees, costs and expenses, or any other lien. Plaintiffs and their attorneys agree and acknowledge that they shall have no claim, right, or cause of action against Defendants, individually or as a group, and/or the State of New York including but not limited to any and all agencies, departments, and subdivisions thereof and any of its officials,

employees, or agents, whether in their individual or official capacities for the satisfaction of any such liens.

10. For and in consideration of the agreements set forth in this Stipulation and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and except for the rights and obligations set forth in this Stipulation, Plaintiffs, on behalf of themselves, and any and all of their other corporate entities, subsidiaries, affiliates, agents, representatives, directors, officers, employees, members, successors, personal representatives, agents, directors, shareholders, attorneys, administrators, fiduciaries, and assigns (collectively, "Releasing Parties"), hereby release and forever discharge OCM, the Board, Chris Alexander, and Tremaine Wright, each in their official capacity, and the State of New York, together with their present and former agencies, authorities, commissions, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, or any of them, or all of them (collectively, "Released Parties") from all manner of actions, proceedings, suits, grievances, injuries, debts, obligations, dues, sums of money, accounts, contracts, controversies, agreements, promises, damages, judgments, claims, and demands whatsoever, direct or indirect, known or unknown, discovered or undiscovered, that the Releasing Parties ever had, now have, or shall or may have in the future against some, any, or all of the Released Parties, related to the arguments made or relief sought in, or incurred in connection with, the Action up to and including the date of this Stipulation. Plaintiffs are not waiving or releasing any nonwaivable statutory protections, any constitutional rights, or any actions, proceedings, suits, grievances, injuries, debts, obligations, dues, sums of money, accounts, contracts, controversies, agreements, promises, damages, judgments, claims, and demands that may accrue after the execution of this Stipulation. The releases in this paragraph do not apply to

any claim or cause of action that may accrue as a consequence of a breach of this Stipulation and/or to enforce the terms of this Stipulation. The releases in this paragraph become effective only upon the last to occur of (a) this Stipulation being so-ordered by Supreme Court or (b) the issuance of the provisional licenses and site protection provided for under paragraph 5.i, ii., and iii in this Stipulation.

11. For and in consideration of the agreements set forth in this Stipulation and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and except for the rights and obligations set forth in this Stipulation, Intervenor, on behalf of themselves, and any and all of their other corporate entities, subsidiaries, affiliates, agents, representatives, directors, officers, employees, members, successors, personal representatives, agents, directors, shareholders, attorneys, administrators, fiduciaries, and assigns (collectively, "Intervenor Releasing Parties"), hereby release and forever discharge Carmine Fiore, William Norgard, Steven Mejia, and Dominic Spaccio, and any and all of their other corporate entities, subsidiaries, affiliates, agents, representatives, directors, officers, employees, members, successors, personal representatives, agents, directors, shareholders, attorneys, administrators, fiduciaries, and assigns (collectively, "Plaintiff Released Parties") from all manner of actions, proceedings, suits, grievances, injuries, debts, obligations, dues, sums of money, accounts, contracts, controversies, agreements, promises, damages, judgments, claims, and demands whatsoever, direct or indirect, known or unknown, discovered or undiscovered, that the Intervenor Releasing Parties ever had, now have, or shall or may have in the future against some against some, any, or all of the Plaintiff Released Parties, related to the arguments made or relief sought in, or incurred in connection with, the Action up to and including the date of this Stipulation. Intervenor Releasing Parties are not waiving or releasing any nonwaivable statutory protections, any

constitutional rights, or any actions, proceedings, suits, grievances, injuries, debts, obligations, dues, sums of money, accounts, contracts, controversies, agreements, promises, damages, judgments, claims, and demands that may accrue after the execution of this Stipulation. The releases in this paragraph do not apply to any claim or cause of action that may accrue as a consequence of a breach of this Stipulation and/or to enforce the terms of this Stipulation. The releases in this paragraph become effective only upon the last to occur of (a) this Stipulation being so-ordered by Supreme Court or (b) the issuance of the provisional licenses and site protection provided for under paragraph 5.i, ii., and iii of this Stipulation.

12. Other than this Action, Plaintiffs represent that they have not commenced, maintained, or prosecuted any action, charge, complaint, grievance, or proceeding of any kind that is still pending against the Released Parties that would be subject to the release contained in the previous paragraph, on their own behalf or on behalf of any other person and/or on behalf of or as a member of any alleged class of persons, that none of the foregoing is currently pending in any court or before any administrative or investigative body or agency, and acknowledge that this representation constitutes a material inducement for Defendants to enter into this Stipulation.

13. Each signatory to this Stipulation hereby represents and warrants that they have the requisite authority to enter into this Stipulation and have not previously assigned or transferred any rights or interests with respect to the matters covered by this Stipulation.

14. The Parties represent that they have thoroughly discussed with counsel all aspects of this Stipulation, and the Parties represent that they have carefully read and fully understand all of the provisions of this Stipulation. The Parties represent that they execute and deliver this Stipulation voluntarily after being fully informed of its terms, contents, and effect, and acknowledge that they understand its terms, contents, and effect. The Parties acknowledge that no

compromise or representation of any kind, other than as set forth or referred to herein, has been made to any Party or anyone acting on behalf of any Party.

15. The Parties acknowledge that each Party has cooperated in the drafting and preparation of this Stipulation. The language in all parts of this Stipulation shall be construed according to its fair meaning and not strictly for or against any Party.

16. The undersigned attorneys for Plaintiffs do hereby release and waive any attorneys' lien they may have on the claims asserted in the Action pursuant to any state law, statute, contract, or otherwise, but only to the extent any such lien could be enforced against Defendants.

17. Plaintiffs represent and warrant that besides the undersigned attorneys for Plaintiffs, there are no other attorneys that have a lien on the claims asserted in the Action pursuant to any state law statute, contract, or otherwise.

18. It is understood and agreed that any actions taken pursuant to this Stipulation are made solely to avoid the burdens and expense of protracted litigation; that this Stipulation and the actions taken pursuant hereto are not to be construed as constituting any determination on the merits of any claims in this dispute or as constituting any admission of wrongdoing or liability on the part of Defendants, the State of New York, or their present and former agencies, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, whether in an individual or official capacity, or any of them, or all of them; and that Defendants expressly deny any wrongdoing or liability. Nothing contained in this Stipulation shall be deemed to constitute a policy or practice of OCM, the Board, or the State of New York.

19. This Stipulation shall not in any manner be construed as determinative of the issues raised in the Action or any other proceeding and shall have no precedential value. In addition, notwithstanding the provisions of any paragraph herein, this Stipulation shall not bind or

collaterally estop the individual Defendants, OCM, the Board, the State of New York, or their present and former agencies, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, whether in an individual or official capacity, or any of them, or all of them, in pending or future actions or proceedings in which the same or similar issues are raised, from defending any and all issues raised in said actions or proceedings, or from advancing any defenses.

20. This Stipulation constitutes the entire agreement between the Parties hereto pertaining to the Action, and supersedes and embodies, merges, and integrates all prior and current agreements and understandings of the Parties, whether written or oral, with respect to the Action and this Stipulation, and may not be clarified, modified, changed, or amended except in a writing duly executed by the Parties or an authorized representative of the Parties.

21. The terms of this Stipulation shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts to be performed wholly within the State of New York.

22. In the event that, within thirty (30) calendar days of the Court so ordering this Stipulation, a Party to this Stipulation believes that a breach of this Stipulation has occurred, that Party may so notify the breaching party in writing. The Party alleged to have breached this Stipulation then shall be provided a period of no less than five (5) calendar days to cure the breach to the satisfaction of the notifying Party. In the event that such breach is not cured to the satisfaction of the notifying Party within such five-day period, the notifying Party may move this Court, within the later of (i) ten (10) calendar days from the end of the five-day cure period, or (ii) thirty (30) calendar days of the Court so ordering this Stipulation, to compel enforcement of the terms of this Stipulation.

23. This Stipulation may be executed in several counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. Signatures transmitted by facsimile, e-mail, or e-mailed in portable document form shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties acknowledge that they have read this Stipulation, and accept and agree to the provisions set forth herein, and that each has executed this Stipulation to be effective on the day and date first above written.

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Dated: November 24, 2023



CLARK SMITH VILLAZOR LLP

Attorneys for Plaintiffs

Brian T. Burns, Esq.

Selbie L. Jason, Esq.

250 West 55th Street, 30th Floor

New York, New York 10019

Dated: November 25, 2023



VASQUEZ SEGARRA LLP

Attorneys for Intervenors

Jorge Vasquez, Esq.

Esperanza Segarra, Esq.

5 West 37th Street, Suite 6003

New York, NY 10018

Dated: November 24, 2023



CHRIS ALEXANDER, on behalf of himself in his official capacity, and on behalf of New York State Office of Cannabis Management

Dated: November 24, 2023



TREMAINE WRIGHT, on behalf of herself in her official capacity, and on behalf of New York State Cannabis Control Board

Dated: November __, 2023

LETITIA JAMES

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State of New York

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Digitally signed by Shannan C.
Krasnokutski
Date: 2023.11.25 16:06:48 -05'00'

Dated: Kingston, New York
November __, 2023

SO ORDERED:

HON. KEVIN BRYANT, J.S.C.
ULSTER COUNTY SUPREME COURT