| | | |
|---|---|---|
| DOCKET NO. HHB-CV22-6074716-S | : | SUPERIOR COURT |
| CONNECTIBUDS LLC, | : | |
| VS. | : | J.D. OF NEW BRITAIN |
| THE SOCIAL EQUITY COUNCIL (WITHIN | : | AT NEW BRITAIN |
| THE DEPARTMENT OF ECONOMIC AND | : | |
| COMMUNITY DEVELOPMENT FOR | : | |
| ADMINISTRATIVE PURPOSES) ET AL. | : | |
| DOCKET NO. HHB-CV22-6074637-S | : | |
| THE HARTFORD CANNABIS COMPANY | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL ET AL. | : | |
| DOCKET NO. HHB-CV22-6074638-S | : | |
| THE GOODS THC CO. | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL ET AL. | : | |
| DOCKET NO. HHB-CV22-6074315-S | : | |
| LET'S GROW HARTFORD, LLC | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL ET AL. | : | **MOTION TO CONSOLIDATE** |
| DOCKET NO. HHB-CV22-6074336-S | : | |
| ELM CITY AGG LLC | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL ET AL. | : | |
| DOCKET NO. HHB-CV22-6074337-S | : | |
| COASTAL CANNABIS LLC | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL ET AL. | : | |
| DOCKET NO. HHB-CV22-6074233-S | : | |
| NAUTILUS BOTANICALS LLC | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL ET AL. | : | |
| DOCKET NO. HHB-CV22-6074609-S | : | |
| SMITH-BOLDEN ET AL. | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| CONNECTICUT DEPARTMENT OF | : | |
| CONSUMER PROTECTION ET AL. | : | |
| DOCKET NO. HHD-CV22-6159444-S | : | |
| CORE CULT, LLC | : | J.D. OF HARTFORD |
| V. | : | AT HARTFORD |
| SOCIAL EQUITY COUNCIL ET AL. | : | |

| | | |
|---|---|---|
| DOCKET NO. HHB-CV22-6074360-S | : | |
| DF C3 LLC | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL ET AL. | : | |
| DOCKET NO. HHB-CV22-6074406-S | : | |
| LEAF CT LLC | : | J.D. OF NEW BRITAIN |
| V. | : | AT NEW BRITAIN |
| SOCIAL EQUITY COUNCIL, CONNECTICUT DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT ET AL. | : | AUGUST 31, 2022 |

**MOTION TO CONSOLIDATE**

Under Practice Book § 9-5, Defendants[1] move to consolidate each of the above-captioned matters. **All plaintiffs have consented to this Motion except for the plaintiff in HHD-CV22-6159444-S, Core Cult LLC v. Social Equity Council et al., who has not responded to requests concerning a position on this Motion.** Each of these matters is an administrative appeal arising from a decision by the Connecticut Social Equity Council that the plaintiff does not qualify as a "social equity applicant" for the purpose of obtaining a license to operate a certain type of cannabis business establishment under General Statutes § 21-420 *et seq*. because of failure to meet the required criteria for "ownership and control" of the business. As of the time of this filing, all but two of the matters are pending in the New Britain J.D.; two others are in the Hartford J.D. and subject to pending motions to transfer to New Britain pursuant to the Court's Standing Order on Administrative Appeals. The Court should order consolidation because each of the appeals arises out of an application for "social equity applicant" status in connection with the same type of cannabis license, the legal issues

[1] This Motion is brought by each defendant in each respective case.

involved in the appeals are similar if not identical, and judicial economy favors the consolidation of these matters.

**BACKGROUND**

Each of the matters subject to this Motion is an administrative appeal under General Statutes § 4-183 alleging error in the Connecticut Social Equity Council's ("Council") determination of the plaintiff's application for "social equity applicant" status in an application for a cannabis license under the Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA), P.A. 21-1, Gen. Stat. § 21-420 *et seq.*

RERACA legalized adult-use cannabis in Connecticut and created a licensing system for the various entities in the cannabis supply chain with the Department of Consumer Protection (DCP) as the licensing authority. As a part of the licensing system for cannabis businesses, RERACA established certain opportunities for "social equity applicants," such as different license fees, access to certain financing opportunities, and eligibility for certain license categories. A "social equity applicant" is expressly defined in RERACA as:

> a person that has applied for a license for a cannabis establishment, where such applicant is at least sixty-five per cent owned and controlled by an individual or individuals, or such applicant is an individual, who:
>
> (A) Had an average household income of less than three hundred per cent of the state median household income over the three tax years immediately preceding such individual's application; and
>
> (B)
>
> (i) Was a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application; or
>
> (ii) Was a resident of a disproportionately impacted area for not less than nine years prior to attaining the age of

eighteen.

C.G.S. § 21a-420(48).

While RERACA vests the authority for issuing cannabis licenses with DCP, it specifically divests DCP of authority related to the law's social equity aims. Instead, those aspects are entrusted to a new, 15-member Social Equity Council, which is comprised of officials and community members with expertise or backgrounds in social justice, civil rights, and economic development, C.G.S. § 21a-420d(b), and is housed within the Department of Economic and Community Development for administrative purposes, *id.* § 21a-420d(a). The Council is tasked with, *inter alia*, "identif[ying] the criteria and the necessary supporting documentation for social equity applicants," C.G.S. § 21a-420e(a), and "confirm[ing] that an applicant qualifies as a social equity applicant," C.G.S. § 21a-420g(a). In the context of the Council's review of social equity applications, RERACA provides: "Not later than thirty days after an applicant is notified of a denial of a license application under this subsection, the applicant may appeal such denial to the Superior Court in accordance with section 4-183." *Id.*

While there are slight variations in the factual circumstances surrounding the plaintiffs' applications and denials, their common denominator is that each plaintiff is allegedly aggrieved by the Council's determination that they do not qualify as "social equity applicants" and are therefore ineligible to be considered for a particular cannabis license type. Each plaintiff claims that they applied for a cannabis cultivator license allowing only "social equity applicants" to apply for a license to cultivate cannabis in a "disproportionately impacted area"[2] as provided in Section 149 of RERACA, General

[2] A "disproportionately impacted area" is "a United States census tract in the state that has, as determined by the Social Equity Council under section 21a-420d, as amended

Statutes § 21a-420o (commonly called a "Section 149 Cultivator" or "DIA Cultivator" license). Each plaintiff claims that the Council determined that their business entity failed to meet the criteria for a "social equity applicant" under General Statutes § 21a-420(48) on the grounds that the entity was not "at least sixty-five per cent owned and controlled by" an individual with income below the statutory threshold and residence in a "disproportionately impacted area." As a result, each plaintiff claims they are aggrieved by the Council's decision that they are not a "social equity applicant" because that decision effectively terminates their application for a DIA Cultivator license.

Each plaintiff makes one or more of the same arguments, *e.g.*, that: (1) the standard applied by the Council in determining whether there was "sixty-five per cent owne[rship] and control[]" by a social equity applicant was in violation of General Statutes § 21a-420g; (2) the standard was not timely disclosed to applicants; and/or (3) the Council's decision about the plaintiff's ownership and control was factually erroneous, arbitrary, and/or an abuse of discretion.

**LEGAL STANDARD**

Under Practice Book § 9-5, "Whenever there are two or more separate actions which should be tried together, the judicial authority may, upon the motion of any party or upon its own motion, order that the actions be consolidated for trial." Prac. Bk. § 9-5(a). "[T]he decision to consolidate or sever the trial of different actions is within the sound discretion of the court, and that decision will not be reversed in the absence of a clear abuse of discretion." *Alpha Crane Serv., Inc. v. Capitol Crane Co.*, 6 Conn. App.

---

by this act, (A) a historical conviction rate for drug-related offenses greater than one-tenth, or (B) an unemployment rate greater than ten per cent." C.G.S. § 21a-420(17).

60, 68 (1986) (*citing Rode v. Adley Express Co., Inc.*, 130 Conn. 274, 277 (1943)). *See also Rode*, 130 Conn. at 277 ("the public has an interest in the prevention of unnecessary litigation, both because of the burden it places on the State and the resulting crowding of the dockets of the courts").

"Whether the actions arise out of the same transaction or involve identical parties are important factors in determining the propriety of the joinder or the consolidation of actions." *Pellecchia v. Conn. Light & Power Co.*, Nos. HHD-X04-CV08-6003273S, HHD-X04-CV09-6004337S, 2009 Conn. Super. LEXIS 2865, at *4 (Super. Ct. Oct. 28, 2009). *See also Mola v. Home Depot U.S.A.*, No. FST-CV98-167635S, 2000 Conn. Super. LEXIS 918, at *3 (Super. Ct. Apr. 7, 2000) (granting motion to consolidate where "the two actions involve the same parties and arise from the same transaction and occurrence").

Administrative appeals involving the same subject matter or parties are commonly consolidated with one another, or with other related actions. *See, e.g.*, *Hall v. Planning & Zoning Comm'n of Newtown*, No. DBD-CV99-0336369S, 2001 Conn. Super. LEXIS 1230, at *1-2 (Super. Ct. May 4, 2001) (consolidation of appeals by multiple plaintiffs from town's planning and zoning commission arising from related zoning issues); *Miller v. Town of Westport*, 268 Conn. 207, 213 (2004) (noting consolidation of administrative appeal with related inverse condemnation action); *Kleen Energy Sys., LLC v. Conn. Light & Power Co.*, No. MMX-CV13-6008898S, 2013 Conn. Super. LEXIS 1358, at *3 (Super. Ct. May 2, 2013) (noting consolidation of two administrative appeals involving same parties).

## ARGUMENT

Consolidation is appropriate here because of the close similarity of the legal issues and because judicial economy favors consolidation rather than the litigation of 11 separate administrative appeals.

First, the matters should be consolidated because they involve near-identical legal issues. As discussed above, each appeal claims error in the process the Council used to determine whether the plaintiff met the "ownership and control" criteria for social equity status in applying for a DIA Cultivator license. Each plaintiff argues that (1) the standard applied by the Council in determining whether there was "sixty-five per cent owne[rship] and control[]" by a social equity applicant was in violation of General Statutes § 21a-420g; (2) the standard was not timely disclosed to applicants; and/or (3) the Council's decision about the plaintiff's ownership and control was factually erroneous, arbitrary, and/or an abuse of discretion.[3] Therefore, legal issues common to all of the appeals may include: (1) the sufficiency of the standard applied by the Council in determining ownership and control of putative social equity applicants; (2) the publication or disclosure of the standard to potential applicants; and (3) whether the application of the standard to the applicant's business structure was clearly erroneous, arbitrary and capricious, or an abuse of discretion. These legal issues should be decided by the same Court to avoid the possibility of inconsistent rulings, particularly as these appeals represent the first known litigation surrounding the interpretation of RERACA's social equity provisions. *Cf. Travelers Ins. Co. v. Howmet Corp.*, No. HHD-

[3] Indeed, many paragraphs in the various complaints relating to alleged errors by the Council, including those filed by different attorneys on behalf of different appellants, are word-for-word copies of one another, demonstrating the similarity of the appeals.

CV95-0550685S, 1997 Conn. Super. LEXIS 2101, at *22 (Super. Ct. July 31, 1997) (Sheldon, J.) (identifying "inconsistent legal rulings" as a factor weighing against "permitting [multiple] actions to proceed simultaneously").

Second, efficiency favors consolidation. Separate litigation of each appeal is inefficient for all involved. It will require the parties and the Court keeping track of 11 different dockets, holding at least 11 status conferences, the filing of 11 sets of briefs, and 11 oral arguments. Consolidating the matters into one docket and litigating the common issues together is reasonably expected to reduce the administrative burden dramatically. Furthermore, the administrative record for each appeal is expected to include largely the same materials, such as the same Council meeting records and the same Council materials relating to ownership and control criteria. Finally, and significantly, consolidation could offer the parties a more streamlined process to work towards a common resolution, further saving duplicative litigation efforts and easing the burden placed on the court, as noted above. While individual differences will exist by virtue of the varying applications for each applicant, the "burden…on the State and the resulting crowding of the dockets of the courts" to be saved by consolidation, *Rowe*, 130 Conn. at 277, far outweighs any individual differences.

## CONCLUSION

The Court should order consolidation of each of the above-captioned matters because of the commonality of the legal issues involved and because of the interests of judicial economy to be served by consolidation.

DEFENDANTS

WILLIAM TONG
ATTORNEY GENERAL

*/s/ Jonathan J. Blake*
Jonathan J. Blake, Juris No. 426816
Joseph E. Gasser, Juris No. 443231
Rebecca Quinn, Juris No. 443678
Assistant Attorneys General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
Phone: 860-808-5400
Fax: 808-808-5593
Jonathan.blake@ct.gov
Joseph.gasser@ct.gov
Rebecca.quinn@ct.gov

**CERTIFICATION**

This is to certify that a copy of the foregoing has been, or immediately will be, served on the following counsel and self-represented parties of record on August 31, 2022.

| | |
|---|---|
| Matthew J. Schenker<br>Fox Rothschild LLP<br>101 Park Avenue<br>17th Floor<br>New York, NY 10178<br>*Via Email, mschenker@foxrothschild.com (By Consent)* | HHB-CV22- 6074716-S |
| Michael J. Donnelly<br>Murtha Cullina LLP<br>280 Trumbull Street<br>Hartford, CT 06103<br>*Via First-Class Mail* | HHB-CV22-6074638-S<br>HHB-CV22-6074637-S |
| Peregrine Zinn Rowthorn<br>P.O. Box 370496<br>West Hartford, CT 06137<br>*Via Email, perry@jeprow.com (By Consent)* | HHB-CV22-6074315-S |
| Sarah A. Westby<br>Shipman & Goodwin LLP<br>One Constitution Plaza<br>Hartford, CT 06103-1919<br>*Via Email, swestby@goodwin.com (By Consent)* | HHB-CV22-6074233-S |
| Dana M. Hrelic<br>Pullman & Comley, LLC<br>90 State House Square<br>Hartford, CT 06103-3702<br>*Via Email, dhrelic@pullcom.com (By Consent)* | HHB-CV22-6074336-S<br>HHB-CV22-6074337-S |
| Glenn A. Duhl<br>Zangari Cohn Cuthbertson Duhl & Grello, P.C.<br>59 Elm Street, Suite 400<br>New Haven, CT 06510<br>*Via Email, gduhl@zcclawfirm.com (By Consent)* | HHB-CV22-6074609-S |

Robert M. Langer
John P. Foley
Wiggin and Dana LLP
20 Church Street, 16th Floor
Hartford, CT 06103-3402
*Via Email: rlanger@wiggin.com*
*jfoley@wiggin.com (By Consent)*

Laura Blanch Platt
41 Crossroads Plaza, Suite 286
West Hartford, CT 06117
*Via Email, core23llc@gmail.com (By Consent)*

HHD-CV22-6159444-S

Liam S. Burke
Carmody Torrance Sandak & Hennessey LLP
1055 Washington Blvd.
Stamford, CT 06901
*Via Email, lburke@carmodylaw.com (By Consent)*

HHB-CV22-6074360-S

Mary Mintel Miller
Reid & Riege, P.C.
One Financial Plaza
Hartford, CT 06103
*Via Email, mmiller@rrlawpc.com (By Consent)*

HHB-CV22-6074406-S

*/s/ Jonathan Blake*
Jonathan Blake