

**STATE OF NEW YORK  
COURT OF CLAIMS**

Jenny’s Baked at Home Company, LLC,

Index No.:

Claimant,

v.

**VERIFIED COMPLAINT**

State of New York,

Defendant.

Claimant, through its attorneys, Centolella Law, P.C., alleges as follows:

**INTRODUCTION**

This action is commenced by Jenny’s Baked at Home Company, LLC (“Claimant” or “Jenny’s”) against the State of New York (“Defendant”) for defamation, prima facie tort, abuse of process, violation of the New York Constitution Article I, Section 8, and intentional interference with business relations.

**PARTIES**

1. Jenny’s is a New York Limited Liability Company with its primary business location at 417 Sharptown Road, Stuyvesant, New York 12173. Jenny’s is owned and operated by its sole member, Jennifer Argie (“Ms. Argie”).

2. Defendant formed and currently exercises control over the New York State Office of Cannabis Management (“OCM”) with an address at W. Averell Hariman State Office Building Campus, Building 9, Albany, New York 12226.

**JURISDICTION AND VENUE**

3. Jurisdiction in this matter is pursuant to N.Y. Court of Claims Law § 9.

**FACTS COMMON TO ALL CAUSES OF ACTION**

4. Jenny's is a New York State licensed Adult-Use Cannabis Processor.
5. About ten (10) years ago, Ms. Argie entered the cannabis industry as a single mother, a cancer survivor, and an entrepreneur.
6. Jenny's is one of the few women-owned processors operating in the United States.
7. Ms. Argie's tireless efforts made her and her company one of the first to be licensed in New York State in both hemp and cannabis processing.
8. Her business is entirely self-funded, and Ms. Argie took a second mortgage on her home in order to acquire the expensive equipment necessary to make high quality cannabis products for Jenny's.
9. Jenny's produces zero-glycemic sweetener, vegan, kosher, and all organic ingredient cannabis products.
10. Upon information and belief, Jenny's is the only cannabis processor producing such products.
11. It is no secret that the roll out of legalized cannabis in New York has been, in the words of Governor Hochul, a "disaster," with a myriad of problems plaguing the rollout of the program.
12. Because of her commitment to being part of a well-run industry that serves the people of the State of New York, Ms. Argie has followed these issues closely; and when Ms. Argie has felt that it is in the public's best interest, Ms. Argie has been vocal about her concerns.
13. To that end, in August 2023, Ms. Argie contacted OCM on multiple occasions to voice concerns. Ms. Argie spoke to several different people, including but not limited to Axel Bernabe, the inaugural Chief of Staff and Policy Director of OCM.

14. On August 23, 2023, Ms. Argie published an Op-Ed that appeared on Syracuse.com called “Don’t Overlook the Supply Chain: Issues Facing NY Cannabis Processors” (the “First Argie Op-Ed”) detailing her concerns regarding questionable practices that were taking place – with full knowledge by OCM – in dispensaries throughout New York State that materially violated New York’s cannabis laws and regulations.

15. The practices described in the article were not only unlawful, but also hurt small businesses such as Jenny’s.

16. That same afternoon, mere hours after publishing, Ms. Argie received an email from the OCM’s (now suspended) Chief Equity Officer, Damian Fagon (“Mr. Fagon”), demanding a phone call.

17. In response to the email, Mr. Fagon and Ms. Argie spoke by phone on August 28, 2023, at 1 p.m.

18. Ms. Argie recorded this conversation to ensure that there was proof of what was said between them, as Ms. Argie was concerned that her words might be twisted or somehow used against her (the “Recorded Conversation”).

19. During the Recorded Conversation, Mr. Fagon admitted that: (1) OCM was aware of illegal activity occurring in some dispensaries; and (2) that OCM had no plan to correct or police any such unlawful behavior.

20. More specifically, Mr. Fagon said that he “felt bad for operators and would let them do what they need to survive.”

21. Mr. Fagon further said: “if I enforce regulations on licensed operators, I would have to close down half of them.”

22. Mr. Fagon also discussed other infractions, such as deep-pocketed brands helping retailers “box out” smaller brands such as Jenny’s.

23. Needless to say, Ms. Argie found this conversation deeply troubling.

24. Mr. Fagon admitted that OCM – the agency charged by New York State with developing and enforcing the guidelines of the cannabis marketplace – was allowing individuals and companies to violate the law to the detriment of other law-abiding business owners and the public.

25. When Ms. Argie first started raising her concerns publicly, Ms. Argie wrongly assumed that OCM was unaware of the widespread nature of the illegal activity occurring throughout New York, and ignorant of the impact on businesses like Jenny’s that were complying with the law.

26. In short, Ms. Argie was appalled upon learning that Mr. Fagon knew – and admitted to her – that OCM was aware of, allowing, and thus encouraging, an unfair playing field in the adult-use cannabis marketplace.

27. Based, in part, on Ms. Argie’s statements in the First Argie Op-Ed, concerns like Ms. Argie’s became well-documented and public.

28. For example, on September 20, 2023, Syracuse.com published an article titled “NY’s Testing Failures Expose Legal Weed Consumers to Unsafe Cannabis; a ‘Serious Health Threat’” which disclosed evidence that numerous products in the New York market contained rates of bacteria, yeast, and mold at a rate one hundred (100) times the rate allowed under New York State regulations.

29. After being confronted with allegations of high mold-counts, however, OCM took no action to recall or quarantine (as they ultimately did Jenny’s) the offending products. Rather,

OCM simply changed the rules, as documented in the article “NY Just Loosened Its Marijuana Testing Requirements in A Big Way,” published on Syracuse.com on September 20, 2023.

30. The September 20, 2023, article revealed that OCM chose to target enforcement on entities randomly – and at its choosing – and relax regulations for others in order to provide grace to a new industry.

31. As detailed below, OCM chose not to extend such grace to Jenny’s – even though Jenny’s was not violating the cannabis laws – due to Ms. Argie’s public criticism of OCM and Mr. Fagon.

32. Instead, OCM retaliated against Jenny’s for trying to shed light on the failures of OCM to do its job.

33. The September 20, 2023, article also documented that there were cannabis products in the market that contained drastically lower THC levels than advertised, stating: “[I]n mid-August, we tested 10 top-selling products and found three had advertised 15%-or-higher THC content than independent lab results indicated, a violation of OCM regulations (one flower strain’s potency tested at 32% lower than the label).”

34. Notably, no recalls or quarantines of these products were ever announced.

35. In other words, despite the fact that OCM had knowledge of illegal and health-threatening products in the marketplace, it took no action, either by recall or quarantine.

36. Following her conversation with Mr. Fagon, Ms. Argie sent several communications to OCM detailing the illegal behaviors and activities that Ms. Argie knew were occurring. By way of example only:

- On September 1, 2023, Ms. Argie emailed Mr. Fagon concerning unlawful out of state products.

- On September 5, 2023, Ms. Argie emailed Mr. Fagon concerning solicitation from an out of state buyer.
- On September 10, 2023, Ms. Argie sent OCM a letter regarding illegal cannabis products being sold in New York.

37. OCM did not respond to any of these communications, despite the fact that OCM is tasked with enforcing New York’s cannabis laws.

38. More particularly, in the letter dated September 10, 2023, addressed to the then Executive Director of OCM, Chris Alexander (“Mr. Alexander”), Ms. Argie informed him that a New York City dispensary was selling California products falsely marketed as New York State products.

39. Ms. Argie had bought the product from a licensed dispensary, photographed it, and sent the photos and descriptions to Mr. Alexander. More particularly, the QR code on the packaging confirmed that the product was in fact manufactured in California; as such it must have been brought into New York – across state lines – illegally.

40. Yet, OCM did nothing, despite the fact that such product could *not* have complied with OCM’s regulations, and despite the fact that the product was illegally transported into New York.

41. On September 25, 2023, Ms. Argie wrote a second Op-Ed titled “Let’s Keep New York Cannabis Jobs, Profits, and Innovation in New York” (the “Second Argie Op-Ed”) for Syracuse.com.

42. After the Second Argie Op-Ed was published, Mr. Fagon called Ms. Argie and told her that he “was not happy with [their] calls and he would no longer be speaking with [her].”

43. On October 30, 2023, Ms. Argie spoke before the New York State Senate Subcommittee on Cannabis to explain how, among other things, New York companies were importing illegal products and passing them off as grown within the State of New York.

44. On November 15, 2023, an article was published by Syracuse.com titled “New York’s Cannabis Regulators Know Out-Of-State Brands are Breaking the Rules – But Agency Won’t Enforce Until 2024.”

45. This article described the Recorded Conversation between Ms. Argie and Mr. Fagon.

46. Upon information and belief, a reporter contacted Mr. Fagon prior to the article being published, and asked him about the Recorded Conversation.

47. As reported in the media, “[t]he day after the story published, Fagon called a NY Cannabis Insider reporter, yelling, cursing and singling out Argie by name as the source of the leaked audio.”

48. Within a week, OCM conducted what can only be described as a “raid” on an Albany dispensary selling Jenny’s products (the “Albany Raid”).

49. The Albany Raid resulted in the *only publicized cannabis product recall in New York State history* – and it was for one of Jenny’s gummy products.

50. Clearly, the Albany Raid was a targeted attack against Jenny’s and Ms. Argie, and purely retaliatory in nature for Ms. Argie daring to speak out publicly against Mr. Fagon individually, and OCM generally.

51. Worse, on December 12, 2023, OCM published a national press release (the “Defamatory Press Release” attached hereto as Exhibit A) that Jenny’s product “did not undergo

the required testing for consumer safety and product quality” – falsely identifying Jenny’s product as contaminated and unsafe for consumption.

52. The Defamatory Press Release resulted in an article by Newsweek titled “*Weed Gummies Recall Sparks Warning Not to Eat Them*” (the “Newsweek False Report” attached hereto as Exhibit B).

53. The Newsweek False Report would not have been written were it not for the false and misleading Defamatory Press Release published by OCM.

54. There is no doubt that the Defamatory Press Release was issued because of Ms. Argie’s vocal and public efforts to improve the “disaster” that has been the rollout of the cannabis program in New York.

55. At that time, other than a single instance in which one of Jenny’s products was *slightly underpowered* by merely a fraction of a milligram, OCM had never claimed that Jenny’s failed to comply with OCM’s rules.

56. Jenny’s was already in motion to submit a new batch of gummies for testing, and within three days, test results passed, and OCM released them to the market, ending the recall.

57. However, OCM did not retract the Defamatory Press Release, instead letting the public continue to falsely believe that Jenny’s was selling an untested and unsafe product.

58. At this time, Ms. Argie was terrified of further retaliation and damage to Jenny’s reputation, so Jenny’s focused on repairing its good name within the industry and producing its product.

59. Periodically, Ms. Argie met with a reporter who was writing about the rollout of the cannabis program in New York State.



60. Upon information and belief, Ms. Argie was one of many licensees who shared their experience with this reporter.

61. Upon information and belief, the reporter then reached out to OCM for comment, and, upon information and belief, told OCM that Ms. Argie had “gone on record.”

62. *Within a week*, on or about March 5, 2024, OCM stormed Jenny’s processing facility for an “unscheduled inspection” (the “Jenny’s Raid”).

63. R134, also known as 1,1,1,2-Tetrafluoroethane, is a non-flammable, non-toxic substance widely used for various applications, even medical devices like asthma inhalers for children.

64. Its safety profile and versatility make it a preferred choice in industries where human health and environmental concerns are paramount.

65. At Jenny’s, R134 is used to extract cannabis oil from the cannabis flower but is not an ingredient in the cannabis product itself.

66. At the start of the Jenny’s Raid, OCM representatives bypassed all other parts of the processing plant and headed straight for the machine using the R134 solvent – as if they knew exactly what they were looking for as an excuse to shutter Jenny’s doors.

67. To be clear, OCM had previously inspected Jenny’s packaging after the Albany Raid, which clearly states: “Processing type: R-134a.”

68. For this and other reasons OCM was already aware that Jenny’s used a solvent called R134 in the extraction process required to make its products.

69. Indeed, for the nine months leading up to the Jenny’s Raid, Jenny’s used the solvent R134 in the extraction process.

70. Never – not once – had there been a report or even hint of any adverse reaction from a user of Jenny’s products, including any and all products using R134 in the extraction process.

71. To this day, there has never been a report of any adverse reaction from a user of Jenny’s products.

72. R134 is in fact the cleanest, safest, and purest solvent used in the extraction process for the creation of cannabis products for consumption by humans; and it is the cleanest process for the environment.

73. Again, OCM was well aware of Jenny’s use of R134 in the production process of Jenny’s products because every seized product in the Albany Raid in December 2023, had R134 listed conspicuously on the packaging.

74. Despite this knowledge, and only after Ms. Argie angered Mr. Fagon – four months later – and after Ms. Argie’s statements regarding her concerns with the OCM’s failures to monitor the industry, did OCM take any action against Jenny’s.

75. When OCM finally acted, it was swift, severe, and designed to put Jenny’s out of business.

76. Indeed, it set forth a course of events that entirely stopped Jenny’s business for more than three months.

77. More particularly, on March 5, 2024, OCM issued an immediate stop work order and quarantined all of Jenny’s products throughout the State of New York (the “Stop Work Order” and “Quarantine”). See Exhibits C and D.

78. On March 5, 2024, OCM also informed Jenny's that it needed to submit a Corrective Action Plan ("CAP") *within twenty-four hours*, even though OCM could have – by law – given Jenny's 15 days.

79. Even though OCM had entirely stopped Jenny's ability to process cannabis, and entirely prevented Jenny's from selling product, OCM gave Jenny's no reason why a twenty-four hour turn around for the CAP was necessary.

80. Indeed, the requirement of twenty-four hours to respond was not necessary because Jenny's was entirely prohibited from processing or selling products.

81. The only logical conclusion to be drawn from OCM's timing demands is that it was looking for additional reasons to close Jenny's doors for good by claiming that Jenny's failed to comply with a twenty-four-hour response.

82. During Jenny's Raid, Jenny's staff provided to the OCM "auditors" the required Material Data Safety Sheet ("MSDS") outlining the properties of R134.

83. The auditors asked for a Certificate of Analysis ("COA") but had been told by one of the suppliers of R134 that "one did not exist."

84. That said, following the Jenny's Raid, Ms. Argie provided a COA from the original R134 supplier that tied directly to cannisters on site at the facility showing that the R134 used by Jenny's is *99.978% pure*.

85. Within twenty-four hours of this second raid, Jenny's sent OCM a CAP and supplemental documentation that was requested during the so-called audit. See Exhibit E.

86. Even if it was proper for OCM to take some type of action against Jenny's for its use of R134 – which it was not, because OCM was already aware Jenny's was using R134 – OCM

could have employed less drastic options available to it by law other than the nuclear bomb option of the issuance of the Stop Work Order and Quarantine that threatened to end Jenny's business.

87. Worse, the March 5, 2024, Stop Work Order and Quarantine were merely the start of a months long process during which OCM continuously and unreasonably prevented Jenny's from resuming operations.

88. On March 11, 2024, a week after Jenny's submitted its CAP, OCM responded stating it was "unsatisfied," and required further information and proof regarding Jenny's use of R134 including:

- (a) The licensee must provide scientific data, to OCM's satisfaction, which demonstrate the level at which residual r-134a would not be harmful if vaporized, smoked, or ingested;
- (b) The licensee must clearly demonstrate the effectiveness of the exact degassing procedures that will be used to remove residual r-134a from products produced using that solvent; and
- (c) The licensee must address how, if the solvent is approved, they will comply with EPA rules which will require the phasing down of the solvent by January 1, 2025.

See Exhibit F.

89. That same day – again complying with OCM's second unreasonable timeline of a twenty-four-hour response – Jenny's submitted a second CAP responding to each of OCM's requests. See Exhibit G.

90. Notably, OCM gave Jenny's no reason why, for example, one of its reasons for the Stop Work Order and Quarantine was a failure to provide information about an EPA rule that was not even in effect until January 1, 2025, and that OCM knew or should have known would not ever impact Jenny's processing in any way.

91. On March 13, 2024, Jenny's filed a Petition, supporting Affidavits, Memorandum of Law, and a Proposed Order to Show Cause in Supreme Court, Albany County – which included

requests for relief of a temporary restraining order (“TRO”) and preliminary injunction (the “Injunction Motion”). *Jenny’s Baked at Home Company, LLC v. New York State Office of Cannabis Management*, Supreme Court, Albany County, Index No.: 902522-24.

92. On March 15, 2024, the parties made oral arguments regarding the TRO, which was ultimately denied.

93. Counsel from the New York Attorney General’s office, at oral argument, stated that the Stop Work Order and Quarantine were lawful because Jenny’s use of R134 might be dangerous to the public.

94. Of course, and again, OCM was aware of Jenny’s use of R134 since the Albany Raid, five months earlier, and allowed Jenny’s to continue processing its products with full knowledge of the same until Ms. Argie again angered OCM officers Mr. Fagon and Mr. Alexander.

95. On March 18, 2024, OCM issued a response to Jenny’s second CAP, still unsatisfied with Jenny’s substantial submissions done under significant and unnecessary time constraints – and at considerable expense. Also on March 18, 2024, OCM issued a Statement of Findings, despite the fact that Nicole Rosa, Pharm.D., OCM’s Director of Health and Safety, affirmed under the penalties of perjury in an affidavit (the “Rosa Affidavit”) submitted in OCM’s response to the Injunction Motion, that a Statement of Findings was supposed to *precede* the CAP process. Instead of complying with its own procedures, OCM thus intentionally forced Jenny’s – multiple times – to provide responses within twenty-four (24) hours, ostensibly with the hope that Jenny’s would fail to comply with a short window. Exhibit H.

96. OCM submitted its opposition papers to the request for an Injunction Motion on March 22, 2024.

97. Jenny's – now a slave to OCM's unreasonable deadlines – continued to respond, over and over – to OCM's demands for information, at the risk of going out of business.

98. By way of example only with respect to the unnecessary demands of OCM, in late March 2024, OCM continued to demand that the "licensee [Jenny's] must address how, if the solvent is approved, they will comply with EPA rules which will require the phasing down of the solvent by January 1, 2025."

99. Apart from the unnecessary nature of such a demand, Jenny's had already answered this question in prior communications. OCM just ignored those responses, making more work for Jenny's as it continued to scramble with its business on life support.

100. OCM continued over the course of the next several months to keep enforcing the Stop Work Order and Quarantine, often for reasons entirely unrelated to the solvent R134, including but not limited to issues such as fire safety protocols.

101. Despite the above, OCM was *still* unsatisfied with Jenny's second CAP.

102. On May 6, 2024, OCM sent a notice to its licensed laboratories (the "May 6 Notice"). Therein, OCM stated:

Based on the information submitted by the licensee, the Office believes extraction using r-134a as a solvent poses minimal risk to the health and safety of cannabis consumers and would be acceptable for use by an adult-use processor as a solvent for extraction if used in accordance with applicable regulatory requirements.

103. Within the May 6 Notice was a link to a document that confirmed that *as of March 15, 2024 (the day of the judicial hearing resulting in a denial of Jenny's request for a TRO – and only ten (10) days after the Stop Work Order and Quarantine – that R134 had been added to OCM's testing program as a permissible solvent (the "March 15 R134 Approval").* Exhibit I.

104. In other words, at the same time OCM was making Jenny's jump through hoops – to no avail – to satisfy OCM that R134 was safe, and *on the same day that* OCM was arguing in

Supreme Court that R134 was not an approved substance for the processing of cannabis – OCM had independently deemed that R134 was a permissible solvent.

105. However, OCM never disclosed the May 6 Notice or the March 15 R134 Approval to Jenny’s or the Court.

106. In addition, the Rosa Affidavit – filed weeks after the March 15 R134 Approval – stated that R134 was an “unapproved solvent” even though OCM had already determined as of March 15, 2024, that R134 was approved as a solvent for cannabis processing.

107. Despite all of the foregoing, as set forth above, it was on March 18, 2024 – three days after it approved R134 as a solvent for cannabis processing – that OCM sent its second CAP and Statement of Findings.

108. Therein, OCM still required Jenny’s to provide additional, unrelated, unresponsive, and previously unrequested documents including:

- (a) A final certification letter from a licensed professional engineer or registered architect which certifies the completed installation of a professionally designed, commercially manufactured extraction system, that is compliant with all applicable state or local fire, safety, or building codes.
- (b) A letter from the municipal’s jurisdiction’s fire marshal, or their designee, stating that a final inspection of the facility has been conducted (or a statement from such official that such inspection is not required) and that the processor has demonstrated compliance with all applicable fire codes and/or regulations’ and
- (c) A certificate of occupancy, or equivalent documentation, from the local building official that all permits for extraction related room or areas have been closed as applicable.

109. Upon information and belief, no other processor has had to submit such documentation.

110. These additional requirements, which were not mentioned in the initial Stop Work Order and Quarantine, continued to demonstrate OCM’s goal of forcing Jenny’s to the point of closure.

111. Despite OCM constantly changing the goal posts, and Jenny's approaching the brink of closure, Jenny's complied with OCM's unreasonable demands, time after time.

112. Notably, OCM claimed in its initial Stop Work Order, and its subsequent responses, that R134 was not a permissible solvent for cannabis extraction despite the fact that R134 had been deemed safe by even the FDA for use in asthma inhalers for children.

113. As such, not only did OCM continue to force Jenny's to spend an inordinate amount of time and dwindling resources trying to rescue its dying business by getting approval to use R134, OCM did so without notifying Jenny's that it had already approved R134 as a solvent for cannabis processing as of March 15, 2024.

114. On May 8, 2024, the New York State Office of General Services ("OGS") issued a summary of findings (the "OGS Summary") concerning the operations of OCM during the roll-out of the State's adult use marijuana program. Exhibit J.

115. The OGS Summary is detailed in its criticism of the rollout of OCM. By way of example only, the OGS Summary found that:

- OCM has no internal control officers.
- There is no standardized quality assurance process (QA), and the individuals who review applications are also involved in crafting policy, creating the appearance of a conflict of interest.
- OCM is not properly staffed, with over 55 vacant critical positions that need filling in the agency.
- OCM's delays and obscure operating procedures have allowed thousands of illegal stores to operate while legitimate businesses are hindered.
- The bulk of the agency's operations, including licensing and enforcement, are led by one director and a chief operating officer while there are 7 others who do not oversee operational areas.
- There is no clear accountability or ownership for licensing and pre-opening activities spread across multiple OCM teams.



116. Upon information and belief, the full report and findings of the OGS's investigation (the "Full OGS Report") is even more scathing; and, as it respects this pleading, specifically addresses the retaliatory conduct against Jenny's by the still suspended Mr. Fagon, as well as former OCM Executive Director Mr. Alexander's role in the failed implementation of New York's cannabis program.

117. On May 17, 2024, OCM partially lifted Jenny's Stop Work Order. However, Jenny's still could not process or sell many products, with OCM parsing out approval of processing to Jenny's edible products and requiring "scientific proof" for the safety of Jenny's vape products.

118. OCM knew or should have known that Jenny's vape products constituted its largest revenue stream, and thus despite this limited lift of the Stop Work Order, Jenny's remained without the ability to successfully operate.

119. In addition, all products that were already processed remained subject to the Quarantine, despite the fact that OCM knew since the Albany Raid that Jenny's was using R134, and despite the fact that OCM had agreed that as of March 15, 2024, R134 was an "approved solvent."

120. There was no legitimate reason, therefore, to keep already processed product under Quarantine when Jenny's was free to use the exact same process it had always used moving forward. This was just another intentional roadblock to Jenny's resuming its business.

121. On May 17, 2024 – the same day OCM partially lifted the Stop Work Order – Jenny's responded to OCM's request for "scientific proof" of the safety of its vape products. Exhibit K.

122. It was not until a week later, on May 23, 2024, that OCM emailed Jenny's to inform it that the "stop work order issued March 5, 2024, is hereby lifted."

123. May 23, 2024, marked seventy-nine (79) days after the unlawful imposition of the Stop Work Order. In other words, OCM's actions caused Jenny's to be entirely stagnant for more than two and half months.

124. If it were not for the creativity and personal sacrifice of Ms. Argie, Jenny's would have been forced to shut its doors.

125. Notably, the law prohibits cannabis entities from seeking bankruptcy protection.

126. In other words, all of the time, energy, and significant resources of Ms. Argie in building her company would have been destroyed by OCM simply because Ms. Argie dared to shine a light on OCM's failure to do its job – failures that were later confirmed in the OGS Summary.

127. Rather than the truth setting Jenny's and Ms. Argie free, the truth nearly caused the corporate demise of Jenny's, and near financial ruin for Ms. Argie.

128. Although the May 17, 2024, email allowed Jenny's to begin processing again, the damage to its reputation is irreversible, and it is impossible for Jenny's to recoup all it has lost by merely resuming operations.

129. In addition, OCM continued to force Jenny's – at considerable expense – to test quarantined products that OCM already knew to be safe, and then provide it with COAs before it would lift its Quarantine of Jenny's products.

130. On June 10, 2024, after providing all necessary COAs and test results, Jenny's emailed OCM stating: "Jenny's has now 'passed' all compliance testing as requested in prior OCM correspondence and is in receipt of certificates of analysis (copies of which are attached) confirming the same for all of Jenny's products that are in quarantine. As such, we consider the

Quarantine Order issued March 5, 2024, to be fully lifted. If you disagree, please advise us by noon tomorrow, June 11, 2024.” Exhibit L.

131. OCM did not respond to this email.

132. The damage OCM inflicted on Jenny’s throughout the course of the past several months has been devastating to Jenny’s, its employees, and Ms. Argie.

133. Due to the OCM’s actions, Jenny’s was forced to shut down its entire facility and furlough five employees.

134. Worse, OCM knew it was devastating Jenny’s business, and yet continued to do everything in its power to keep Jenny’s from operating.

135. OCM also knew that the continued imposition of the Stop Work Order and Quarantine wrongfully and falsely painted Jenny’s as a bad actor to others in the cannabis industry.

136. By way of example only, on June 4, 2024, Jenny’s best customer terminated its business relationship.

137. By way of example only, even after OCM allowed Jenny’s to fully resume its business, a number of Jenny’s customers were afraid to sell Jenny’s products for fear of retaliation from OCM.

138. On June 27, 2024, Jenny’s sent an e-mail to OCM’s compliance department informing them that Jenny’s customers were not aware that they were allowed to sell Jenny’s products.

139. OCM stated that it would “typically rely on a licensee’s own internal procedures for notifying their supply chain of changes in recalls.” However, recognizing that its actions caused Jenny’s customers to be fearful, it agreed to send a notice and did so on June 28, 2024 (“OCM’s Notice”).

140. Rather than simply advising licensees that they were free to use Jenny's products, OCM's Notice specifically and unnecessarily referred to its unlawful Quarantine.

141. In particular, the OCM Notice stated:

This email serves as notification that the Office has released the quarantine of the following cannabis products supplied by Jenny's Baked at Home Company LLC (OCM-AUCP-22-000013):

**1. All batches of processed, non-flower products**

You may have already received notification from Jenny's Baked at Home Company LLC of the release of this quarantine. The quarantine of these products was partially released on May 17, 2024 (for the quarantined orally ingested cannabis products) and fully released on May 23, 2024 (for the remaining quarantined cannabis products).

As of the date of quarantine release, sales and distribution of these products may continue.

142. Despite OCM's admission that R134 was safe as far back as March 15, OCM failed to mention in the notice that the use of R134 had been approved months earlier.

143. The OCM Notice was also false and materially misleading given that the Stop Work Order and Quarantine were unlawful to begin with, and that OCM already knew that Jenny's used R134 as far back as the Albany Raid, and that Jenny's products had always been safe.

144. Jenny's lost many business relationships, and missed numerous business opportunities, due to OCM's unlawful actions.

145. Upon information and belief, over one hundred (100) cannabis retail dispensaries opened between March 2024 and June 2024.

146. Jenny's missed out on business relationships with each of them due to OCM's malicious and unlawful actions in instituting the Stop Work Order and Quarantine, and then making Jenny's unnecessarily jump through hoops to get approved to resume business using R134

in its processing, even though: 1) it knew Jenny's was using R134 as far back as the Albany Raid; and 2) that it had approved R134 for cannabis processing as far back as March 15, 2024.

147. The statements made and the actions taken by OCM have caused substantial harm to Jenny's reputation that it will never be able to restore.

148. The statements made and the actions taken by OCM have caused massive financial harm to Jenny's that it will never be able to recoup.

149. More particularly, due directly to the Stop Work Order and Quarantine, OCM:

- Stopped Jenny's sales for months.
- Stopped Jenny's operations entirely during a dramatic market-wide increase in sales of adult-use cannabis products.
- Barred Jenny's from acquiring new adult-use dispensary customers during a period of time when the number of dispensaries in New York doubled.
- Reduced Jenny's sales to \$0 while Jenny's still had to pay overhead to preserve its investment and intellectual property.
- Forced Jenny's to unnecessarily expend resources for testing and labels to comply with OCM's whims concerning the same.
- Irreversibly reduced Jenny's revenue potential for 2024, stunting Jenny's growth during a period of time when Jenny's was poised for market growth.

150. Due to the Defamatory Press Release which caused the Newsweek False Report, Jenny's will forever be known as the only entity in the State of New York that allegedly sold harmful products.

151. Due to the Defamatory Press Release which caused the Newsweek False Report, as well as OCM's action throughout the course of the last several months, Jenny's has been harmed financially in ways it can never recover.

152. OCM's intention through two recalls, a national press release, consistently moving the goal posts as Jenny's sought to satisfy its unreasonable demands, secretly approving R134 as a solvent and yet continuing to force Jenny's, at considerable expense, to keep making submission after submission to lift the Stop Work Order and Quarantine, was to shut down Jenny's legal, profitable, and compliant operation.

153. All of this was done to silence a company and an individual who dared to speak on behalf of the entire cannabis industry in the State of New York, all to protect a failed regulatory agency and its suspended Chief Equity Officer (Mr. Fagon), among others. Notably, Mr. Fagon was suspended just two days after an article was published describing the Recorded Conversation.

154. Jenny's damages include but are not limited to lost sales due to the Defamatory Press Release, Newsweek False Report, months of unnecessary compliance demands, and the defamatory consequences of OCM's Notice.

155. Those damages include, specifically, lost revenue for the production and distribution fees for the following Jenny's products: Magic Garden, HoneyPot, and Cultiv8.

156. For the duration of the OCM's Stop Work Order from March 5, 2024, to June 27, 2024, the New York legal cannabis market, including the number of dispensaries and amount of sales per store were climbing steeply.

157. Upon information and belief, OCM claimed total industry sales of \$150 Million for 2023, and 2024 sales were trending even higher.

158. In fact, OCM has reported \$200M in total industry sales through June, 2024.

Exhibit M. <https://www.governor.ny.gov/news/governor-hochul-announces-issuance-105-additional-adult-use-licenses>

159. In addition, industry data leader Headset stated that it saw "... an extraordinary year-over-year sales growth of 483.4%..." Exhibit N. <https://www.headset.io/markets/new-york>

160. Based upon these figures, due to OCM's actions Jenny's lost out on a 40.25% monthly growth rate in the market for 2024.

161. Prior to OCM's unlawful actions, Jenny's also lost out on an average sales growth of 31% per dispensary.

162. Due specifically to the unlawful actions of OCM as described above, Jenny's lost its business relationship with the following customers:

- The Flowery – <https://thefloweryny.com>
- Smacked Village – <https://getsmacked.online>
- Nug Hub – <https://nughubny.com>
- Legacy Dispensers – <https://legacy-dispensary.com>
- Elevate ADK – <https://elevateadk.com>
- Lenox Hill Cannabis – <https://lenoxhillcannabis.com>
- 420 Bliss – <https://420-bliss.com>

163. OCM's unlawful actions also kept Jenny's from increasing its business due to the dramatic increase in the number of operating dispensaries in 2024.

164. More particularly, on January 1, 2024, Jenny's products were sold in ten (10) of the forty (40) dispensaries that were open. As of June 27, 2024, the total number of open legal dispensaries expanded to one hundred forty-one (141). Setting aside Jenny's upward sales

trajectory and projections established in the time period leading up to the Stop Work Order and Quarantine, Jenny's products would currently be sold in more than thirty-five (35) stores if it were not for OCM's unlawful actions.

165. Taking into account Jenny's upward sales trajectory and projections prior to OCM's unlawful actions, Jenny's products would be sold in approximately sixty-six (66) stores were it not for OCM's unlawful actions.

166. In addition, Jenny's suffered losses due to: the cost of new labels for packaging unnecessarily required by OCM, the costs to test and re-test products during the Stop Work Order and Quarantine, extensive fees for product testing to satisfy OCM's unnecessary demands, lost product due to spoilage, and the costs of overhead and staff maintenance during the shutdown of Jenny's business.

167. In short, due to OCM's actions, Jenny's – who as a successful and established company was poised to reap the benefits of the explosive upward trends of the cannabis industry in 2024 – received zero dollars in revenue during the Stop Work Order and Quarantine.

168. Jenny's estimates that it has lost at least \$5,692,672 due to OCM's unlawful actions.

#### **FIRST CAUSE OF ACTION FOR DEFAMATION**

169. Claimant repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

170. On or about December 12, 2023, OCM issued a press release stating that a Jenny's product "did not undergo the required testing for consumer safety and product quality."

171. This statement was and is blatantly false and purposefully misleading.

172. This statement was issued to the public via the platform "X" (formally Twitter).



173. A national news media outlet, Newsweek, upon seeing the false and defamatory statement, published an article *Weed Gummies Recall Sparks Warning Not to Eat Them*.

174. OCM knew that this statement was false and purposefully misleading.

175. OCM's false and purposefully misleading statement caused significant harm to Jenny's reputation and business.

176. Even though: 1) OCM knew Jenny's was using R134 as far back as the Albany Raid; and 2) that it had approved R134 for cannabis processing as far back as March 15, 2024, OCM's refusal to lift the Stop Work Order and Quarantine continued to mislead the public as to the safety of Jenny's products.

177. In addition, OCM's Notice to licensees defamed Jenny's given that it unnecessarily referred to the unlawful Quarantine and failed to notify the public that it had already independently deemed R134 safe as of March 15, 2024.

178. Due to Defendant's unlawful actions, Jenny's has been damaged in an amount to be determined at trial.

179. More specifically, due to the allegations set forth above, including but not limited to paragraphs 146-168 above, Jenny's has been damaged in at least the amount of \$5,692,672.

180. This total includes but is not limited to, lost sales due to the Defamatory Press Release, Newsweek False Report, months of unnecessary compliance with OCM's unnecessary demands, and the language of OCM's Notice.

### **SECOND CAUSE OF ACTION FOR PRIMA FACIE TORT**

181. Jenny's repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

182. OCM's unlawful inspection of Jenny's facility leading to the Stop Work Order and Quarantine were unlawful and without justification.

183. OCM's unlawful inspection did not give rise to any other tort.

184. OCM's continued harassment and refusal to lift the Quarantine and Stop Work Order were done with malice, in retaliation for lawful conduct by Jenny's and Ms. Argie, and were designed to catastrophically harm Jenny's business.

185. OCM knew of the significant efforts taken by Jenny's to maintain its business in the face of the foregoing unlawful action.

186. Jenny's suffered special damages because it was unable to conduct its business due to Defendant's malicious and retaliatory actions, including but not limited to the damages stated above in paragraphs 146-168.

187. In sum, Jenny's suffered at least \$5,692,672 in damages, to be further quantified in an amount to be determined at trial.

### **THIRD CAUSE OF ACTION FOR ABUSE OF PROCESS**

188. Claimant repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

189. Upon information and belief, OCM is tasked with regularly inspecting cannabis businesses.

190. In this instance, OCM's inspection was purely retaliatory in nature, without justification, and unlawful.

191. OCM also failed to follow its own internal practices concerning the issuance of Statements of Findings and CAPs, and forced, multiple times, Jenny's to comply with twenty-four hour response times, with the hope that Jenny's would be unable to do so.

192. OCM's intent was to harm Jenny's without legal justification.

193. OCM used its regulatory powers to obtain a collateral objective, that is to harm Jenny's reputation, close its business, and cause its financial ruin.

194. OCM in fact caused catastrophic financial harm to Jenny's as set forth above.

195. More specifically, due to the allegations set forth above, including but not limited to paragraphs 146-168 above, Jenny's has been damaged in at least the amount of \$5,692,672, to be further quantified in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION FOR VIOLATION  
OF NEW YORK STATE CONSTITUTION ARTICLE I, SECTION 8**

196. Claimant repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

197. Article I, Section 8 of the New York State Constitution protects the rights of every citizen to freely speak, write and publish sentiments on all subjects.

198. OCM's retaliatory actions to Jenny's and Ms. Argie's statements concerning OCM's failure to properly enforce the cannabis laws and regulations violated said rights.

199. OCM's intent was to harm Jenny's without legal justification.

200. Jenny's is without financial recourse for the violation of its rights under the New York Constitution other than the filing of this complaint.

201. Jenny's has suffered damages due to OCM's unlawful violation of Article I, Section 8 of the New York State Constitution in an amount to be determined at trial.

202. More specifically, due to the allegations set forth above, including but not limited to paragraphs 146-168, Jenny's has been damaged in at least the amount of \$5,692,672, to be further quantified in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION FOR  
INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS**

203. Claimant repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

204. Prior to undertaking the myriads of unlawful actions set forth above, OCM was aware of the various and numerous business relationships Jenny's had with its customers, and that Jenny's was poised to secure many additional business relationships due to the explosive growth in the number of dispensaries opening in 2024.

205. Knowing of these relationships and potential relationships, OCM maliciously and intentionally, and for the purpose of disrupting those relationships and potential relationships, interfered with the same by defaming Jenny's and by instituting the Stop Work Order and Quarantine unlawfully and without justification.

206. OCM undertook these actions with malice, and for the express purpose of disrupting those relationships, and destroying Jenny's business.

207. More specifically, due to the allegations set forth above, including but not limited to paragraphs 146-168, Jenny's has been damaged in at least the amount of \$5,692,672, to be further quantified in an amount to be determined at trial.

**WHEREFORE**, Claimant demands judgment against Defendant as follows:

a. On the First Cause of Action, for Defamation, damages in an amount to be determined at the trial, but at least in the amount of \$5,692,672, plus interest, fees, costs, and such other and further relief as the Court deems just and proper.

b. On the Second Cause of Action, for Prima Facie Tort, damages in an amount to be determined at the trial, but at least in the amount of \$5,692,672, plus interest, fees, costs, and such other and further relief as the Court deems just and proper.

c. On the Third Cause of Action, for Abuse of Process, damages in an amount to be

determined at the trial, but at least in the amount of \$5,692,672, plus interest, fees, costs, and such other and further relief as the Court deems just and proper.

d. On the Fourth Cause of Action, for violation of Article I, Section 8 of the New York State Constitution, damages in an amount to be determined at the trial, but at least in the amount of \$5,692,672, plus interest, fees, costs, and such other and further relief as the Court deems just and proper.


e. On the Fifth Cause of Action, for Intentional Interference with Business Relations, damages in an amount to be determined at the trial, but at least in the amount of \$5,692,672, plus interest, fees, costs, and such other and further relief as the Court deems just and proper.

f. Such other and further relief as the Court deems just and proper.

Dated: July 25, 2024

**CENTOLELLA LAW, P.C.**

**Attorneys for Claimant**



**Dean DiPilato, Esq.**

**5793 Widewaters Parkway**

**Suite 210**

**DeWitt, NY 13214**

**315-254-9254**

**VERIFICATION**

**Jennifer Argie affirms as follows under the penalties of perjury:**

**I am the sole owner of Jenny's Baked at Home Company, LLC, Claimant in the above-entitled action. I have read the foregoing Verified Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.**

Dated: July 25, 2024

  
Jennifer Argie