

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

Cannabis Farmers Alliance, Inc.,

Index No.:

Plaintiff,

v.

VERIFIED COMPLAINT

New York State Office of Cannabis Management and
New York State Cannabis Control Board,

Defendants.

Plaintiff Cannabis Farmers Alliance, Inc. (“CFA” or “Plaintiff”), by and through its attorneys, Centolella Law, P.C., by way of its Verified Complaint against Defendants New York State Office of Cannabis Management (“OCM” or the “Office”) and New York State Cannabis Control Board (the “Board”)¹ alleges as follows:

THE PARTIES

1. Plaintiff is a domestic not-for-profit corporation with its primary business location at 930 Chambers Rd., Horseheads, New York 14845, consisting of a group of one-hundred twenty (120) entities (“Members”) licensed pursuant to New York’s cannabis laws (“Cannabis Laws”) and regulations (“Regulations”).

2. Upon information and belief, Defendants are New York State agencies with an address at W. Averell Hariman State Office Building Campus, Building 9, Albany, New York 12226.

¹ For ease of reference, OCM and the Board will be referred to collectively and in the singular as “OCM” or the “Office” unless a particular fact discussed requires identification solely of the Board.

3. OCM is tasked with implementing a regulatory framework for medical and adult-use cannabis and hemp in the State of New York. The Board is the oversight body of OCM and is responsible for approving the comprehensive regulatory framework for New York’s cannabis industry.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction for this action pursuant to CPLR §§ 301 and 3001.

5. Venue is proper in Onondaga County pursuant to CPLR § 503 because several of Plaintiff’s Members reside in Onondaga County and because material events giving rise to this action occurred in Onondaga County.

FACTS COMMON TO ALL CAUSES OF ACTION

I. The Failed Rollout of New York’s Cannabis Program.

6. On March 31, 2021, Governor Andrew Cuomo signed the Marihuana Regulation and Taxation Act (“MRTA”) into law, legalizing recreational cannabis use for adults over the age of twenty-one and establishing OCM as the principal regulatory agency for cannabis in New York.

7. On December 14, 2022, OCM published its first draft of proposed regulations concerning adult-use recreational cannabis sales. *See* 2022 NY REG TEXT 630960 (NS).

8. Contained within these regulations were provisions that would directly affect, and in some cases severely handicap, participants at all levels of the cannabis industry – from growers to dispensaries.

9. Subsequently, on June 14, 2023, OCM published a revised version of its proposed rules. *See* 2023 NY REG TEXT 630960 (NS).

10. However, OCM's Assessment of Public Comment that accompanied this revision did not address many of the comments provided to OCM following its first draft of the proposed regulations.

11. By way of example only, Leafly Holdings, Inc. ("Leafly"), who would later successfully sue OCM in Supreme Court, Albany County, resulting in a decision that declared unconstitutional a provision of the Cannabis Laws, submitted an omnibus comment responding to the areas of its greatest concern on February 7, 2023; those comments were in large part ignored.

12. On September 12, 2023, OCM adopted Parts 118 through 121, 123 through 125, and 131 of Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York. The Cannabis Laws and Regulations govern adult-use cannabis, medical cannabis and cannabinoid hemp.

13. OCM's rollout of legalized cannabis in New York has been disastrous, to put it charitably. Its regulatory decisions have been repeatedly and successfully challenged in court and its enforcement failures have allowed illicit dispensaries to supply products of unknown quality and safety to New York's consumers.

14. This failed rollout has had a devastating impact on industry participants at all levels.

15. For example, in late August 2023, a mental health survey of New York cannabis industry participants revealed the psychological toll being caused by OCM's missteps. Many

survey respondents said a causal reason for their stress was that “they invested time and resources into an industry they were told would be up and running by now, and feel duped.”²

16. This failed process over the course of two years has led lawmakers to announce oversight hearings and initiate a comprehensive investigation by the New York State Office of General Services (“OGS”).

17. On May 8, 2024, 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.

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

- a) OCM has no internal control officers.
- b) OCM was not properly staffed, with over 55 vacant critical positions that need filling in the agency.
- c) There have been some applicants who have purchased property and executed leases while not being told their application would never be processed because they have no procedure in place for denying, appealing application decisions, or communicating that an application is procedurally abandoned.
- d) Complete lack of transparency for timing requirements and no guidance for making operational decisions.
- e) The bulk of the agency’s operations, including licensing and enforcement, are led by one director and a chief operating officer while there are seven (7) others who do not oversee operational areas.
- f) There is no clear accountability or ownership for licensing and pre-opening activities spread across multiple OCM teams.

² NY Cannabis Insider Staff Survey: *New York cannabis entrepreneurs see decline in mental health*. SYRACUSE.COM (Aug. 23, 2023); <https://www.syracuse.com/marijuana/2023/08/survey-new-york-cannabis-entrepreneurs-see-decline-in-mental-health.html>.

- g) 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.
 - h) OCM underspent its Fiscal Year 2023-24 budget by \$26 million.
19. Upon information and belief, the full report and findings of the OGS’s investigation is even more scathing.

II. The Cannabis Farmers Alliance.

20. Plaintiff Cannabis Farmers Alliance is not-for-profit corporation dedicated to advocating for the rights and interests of its Members, who consist of cannabis farmers and small cannabis businesses in New York State.

21. CFA’s mission is to champion the economic stability, growth, and success of its Members in New York’s cannabis marketplace.

22. At the heart of its mission are efforts to – consistent with the Cannabis Laws themselves – cultivate an environment that empowers growers, promoting sustainable farming practices, providing education, and advancing equitable policies.

23. CFA’s vision is of a thriving, inclusive, and sustainable cannabis industry where all farmers and stakeholders have the resources, knowledge, and opportunities they need to succeed.

24. CFA’s mission and vision are consistent with the Cannabis Laws, and, in a world where the OCM was equally dedicated to implementing and managing New York’s adult-use Cannabis program, CFA and OCM would move in lockstep.

25. However, that is far from the case.

26. Instead, small cannabis farmers in New York are facing severe financial distress, and upon information and belief, 97% are operating at a loss, nearly two-thirds under a 1% profit margin, and over 90% in need of operating funds to maintain solvency.

27. Despite this fact, and as set forth in further detail below, OCM has allowed other entities and groups of licensees free reign at dominating the market, in clear violation of the Cannabis Laws.

28. Without relief, the industry is at risk of collapse.

29. OCM's failed roll-out and continued mismanagement of the entire adult-use program have devastated CFA's Members, crippling their ability to operate and threatening their very existence.

30. In response to challenges faced by CFA Members due to the state's slow rollout of the legal cannabis market, the CFA has actively engaged in advocacy efforts with the government.

31. For example, they have highlighted issues such as the financial strain on farmers who have harvested crops but lack sufficient retail outlets to sell their products.

32. The CFA has also called for the release of relief funds to support farmers struggling with these challenges.

33. Additionally, the CFA has collaborated with lawmakers to address these concerns.

34. For instance, they have supported legislation aimed at defining cannabis as an agricultural crop, which would grant cannabis growers the same benefits and protections as farmers of other crops.

35. CFA, with a coalition of partners, was instrumental in advocating for the repeal of the THC potency tax to the flat Distribution Tax. Further, CFA was able to successfully lobby the Senate and Assembly to offer a relief package of \$128M and \$80M in the 2024 budget, though this relief package was never signed by the Governor.

36. They have also advocated for the creation of Cannabis Showcase Event Permits to provide cultivators with more avenues to sell their products.

37. Through these initiatives, the CFA strives to create a more equitable and sustainable cannabis industry in New York, ensuring – consistent with the Cannabis Laws – that small farmers have the resources and opportunities needed to succeed.

38. To date, insufficient relief has been provided to CFA’s Members despite OCM’s awareness that the struggles the CFA faces are a product of OCM’s failed roll-out of the cannabis program, and OCM’s subsequent failure to comply with the Cannabis Laws by steadfastly refusing to take actions to alleviate the financial harm the CFA Members face.

39. As set forth in detail below, this is in contravention of a number of specific provisions of the Cannabis Laws and Regulations.

III. OCM’s Failure to Monitor New York’s Cannabis Market.

40. Section 10 of the New York Cannabis Laws sets forth the duties of the Board. It gives the Board “[s]ole discretion to limit, or not to limit, the number of registrations, licenses and permits of each class to be issued within the state or any political subdivision thereof, in a manner that prioritizes social and economic equity applicants with the goal of fifty percent awarded to such [SEE] applicants, and considers small business opportunities and concerns, avoids market

dominance in sectors of the industry, and reflects the demographics of the state.” Cannabis Laws § 10.

41. In addition, Section 64 of the Cannabis Laws states: “The board shall develop regulations for use by the Office in determining whether or not an applicant should be granted the privilege of an initial adult-use cannabis license, based on, but not limited to, the following criteria ... the number, classes, and character of other licenses in proximity to the location and in the particular municipality, subdivision thereof or geographic boundary as established by the board.” Cannabis Law § 64(g)(ii); see also § 85(12).

42. OCM’s initial roll-out of the program, in particular the paucity of adult-use retail stores receiving licenses and opening to the public, wreaked havoc on CFA’s Members (and others) who had no outlet for their product.

43. After this initial stumble, OCM now grants licenses without, upon information and belief, any analysis on the impact to the marketplace.

44. In particular, on or about October 10, 2024, OCM issued Resolution 2024-99 (“Resolution 99”) whereby more than one hundred (100) applicants were granted licenses.

45. These new licensees include dozens of entities with the same license type as CFA’s Members, despite the fact that the CFA Members are financially distressed and risk becoming financially insolvent due to the increase in licenses to competing entities.

46. Worse, OCM admits in Resolution 99 that despite Section 10’s requirement that it grant licenses “in a manner that prioritizes social and economic equity applicants with the goal of fifty percent awarded to such [SEE] applicants, and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the

state” the Board’s members “waive[d] their right pursuant to Section 10(1) of the Cannabis Law to” analyze the Board’s Chairperson’s rubberstamp approval of licenses.

47. In addition, some CFA Members with conditional licenses still have not transitioned to full licensure from their conditional status. This has led to confusion in reporting and towns threats to shut these Members down for lack of license status. This is in contravention to promises OCM made to conditional licensees for a quick transition to full licensure. This resulted in loss of retail space and potential investment in these Member’s businesses.

48. OCM’s woeful failures to comply with Section 10 and Section 64 of the Cannabis Laws by granting licenses *en masse* has had a devastating effect on CFA Members, as well as other market participants.

49. In addition, and as described in detail below, Section 78 of the Cannabis Laws, and the concomitant Regulations, mandate seed-to-sale tracking of cannabis throughout the supply chain of the cannabis market, ensuring that cannabis products are accurately tracked from cultivation to sale.

50. Failure to adhere to these requirements results in products bypassing necessary safety checks, creating health risks for consumers.

51. For example, unregulated products may contain harmful pesticides, contaminants, or unreported THC levels, leading to serious health consequences to the consumer.

52. OCM’s failure to adhere to its legislative mandates under Section 10 has resulted in illicit cannabis products entering the market, undermining efforts to control the industry and prevent criminal enterprises from gaining a foothold.

53. Put simply, OCM's failures have resulted in its inability to identify or track the existence criminal and/or out of state actors, exacerbating the unlicensed market.

54. Sections 10 and 64 are also intended to protect the economic viability of licensed cannabis businesses by creating a level playing field.

55. OCM's failure to attend to its legislative mandate in enforcing Sections 10 and 64 has allowed unlicensed operators to flood the market, hurting legitimate operators who are trying to comply with state regulations, and resulting in a financial loss to compliant businesses such as the CFA Members, as well as a significant reduction in tax revenue to the state.

56. More particularly, Section 10's requirements around proper labeling and testing of cannabis products helps ensure that consumers are well-informed about what they are purchasing.

57. OCM's failure to attend to its legislative mandate in enforcing Section 10 has resulted in consumers being misled about product strength, ingredients, or dosage.

58. In addition, upon information and belief, incorrect labeling has led to unintended overconsumption or other adverse effects.

59. Moreover, public trust is crucial to ensure compliance.

60. OCM's failure to follow the Cannabis Laws and enforce the Regulations effectively have eroded public confidence in New York's ability to regulate the cannabis industry.

61. Upon information and belief, OCM's failure to follow the law and enforce regulations reduced compliance by industry participants.

62. OCM has also failed in adhering to the provisions of Section 10 and Section 64 of the Cannabis Laws that address equity and the fair distribution of licenses.

63. Ignoring these requirements moots any efforts to ensure that communities disproportionately impacted by cannabis prohibition have an opportunity to participate in the legal market, perpetuating historical inequities.

64. In addition, the cannabis industry operates in a complex space between state legality and federal prohibition. Inconsistent enforcement or failure to adhere to Regulations could draw unwanted federal scrutiny or intervention in the New York cannabis program, especially if public health issues or large-scale diversion to the illicit market are evident.

65. In sum, the failure of OCM and the Board to adhere to Section 10 and Section 64 of the Cannabis Law could have significant consequences, including endangering public health, undermining consumer protection, destabilizing the legal market, eroding public trust, and exposing the state to legal risks.

66. OCM has also woefully failed to administer the Cannabis Laws and Regulations in a way that “considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.”

67. In sum, rather than roll-out a sensible cannabis program aimed at keeping the public safe, and market participants solvent, OCM has created a “wild west” market inundated with unsafe product, endangering both the health of New Yorkers and the economic viability of New York entities trying to compete in the market.

IV. OCM’s Failure to Keep New Yorkers Safe from Illicit Products.

68. Pursuant to the Cannabis Laws, OCM was tasked with developing regulations consistent with the language and purpose of the statute.

69. In order to do so, OCM was compelled by law to adhere to the State Administrative Procedures Act (“SAPA”).

70. The SAPA process is comprehensive and complex, and designed to ensure that only those regulations that are studied, vetted, and found to be consistent with the mandates of the underlying statute become law.

71. Rather than follow these mandates, OCM has routinely established regulations without adhering to this process, and often times sought to foist upon market participants compliance with the Cannabis Laws by way of “Guidance” rather than properly enacted regulations.

72. However, “Guidance” documents have no force of law.

73. More particularly, New York’s Department of State, Division of Administrative Rules, published in May 2012 a primer titled “Rule Making in New York” for the following purposes: “How to prepare SAPA notices for publication in the *State Register*” and “How to file adopted rules for publication in the Official NYCRR” (herein the “Rules Instructions”).

74. The “Introduction” to the Rules Instructions states: “SAPA distinguishes between rules and administrative guidance documents Administrative Guidance documents are exactly that – *guidance* documents.” (Emphasis in original).

75. The Rules Instructions further state that guidance documents “do not have the full force and effect of law”

76. As such, attempts by OCM to bind or regulate licensees pursuant to “Guidance” is without the full force and effect of law.

77. Beginning in or about September 2023, OCM became aware of significant issues concerning the safety of products reaching New York's adult-use consumers.

78. By way of 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.

79. After being confronted with allegations of high mold-counts, however, OCM took no action to recall or quarantine the offending products.

80. 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.

81. The September 20, 2023, article revealed that OCM chose to target enforcement on entities randomly – at its choosing – and relax regulations for others.

82. 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)."

83. The owner of one market participant put individuals at the highest echelons of OCM on notice of these and other issues.

84. OCM took no action other than, as set forth in the complaints of two publicly available lawsuits, retaliatory conduct by OCM.

85. More particularly, OCM's former Chief Equity Officer Damien Fagan was given information detailing the illegal behaviors and activities concerning the infiltration into New York of out-of-state products and solicitations from out-of-state entities.

86. OCM did not respond to any of these communications, despite the fact that OCM is tasked with enforcing New York's Cannabis Laws.

87. In addition to the communications with Mr. Fagan, the now former Executive Director of OCM, Chris Alexander ("Mr. Alexander") was given direct proof that a New York City dispensary was selling California products falsely marketed as New York State products.

88. Yet, OCM took no action despite the fact that the product was illegally transported into New York.

V. Seed-to-Sale and Its Role in Combatting Diversion, Inversion, and Illicit Market Activity.

89. One way to combat the above-described assault on New York's cannabis market of dangerous out-of-state product is "seed-to-sale" (herein "Seed-to-sale") tracking is also referred to more broadly as "traceability."

90. Traceability in the cannabis industry is essential to ensuring regulatory compliance and maintaining the integrity of the legal and consumer market.

91. Seed-to-sale tracking ensures that all cannabis products are monitored from cultivation (seed) of the product by farmers, through to retail sale, providing a record of every transfer and transformation.

92. “Diversion” refers to the illegal movement of cannabis products out of the regulated supply chain, typically into unlicensed or “black market” sales channels.

93. By maintaining a tightly regulated supply chain, Seed-to-sale tracking reduces the influx of illegal cannabis by fostering a reliable and safe legal market.

94. A robust legal market with traceable products is more likely to attract consumers, reducing demand for illicit products.

95. The existence of a parallel illegal market undermines regulated businesses and deprives the state of tax revenue while putting consumers at risk with unregulated products.

96. “Inversion” in the context of cannabis regulation refers to the unlawful practice of introducing unregulated, illicit cannabis products into the legitimate, state-regulated supply chain.

97. This deceptive act allows black-market cannabis to masquerade as legally produced and tested goods, fundamentally undermining the integrity of the licensed cannabis market.

98. Inversion poses significant risks to the marketplace for several reasons.

99. First, it erodes consumer trust in the legal cannabis system. Consumers assume that all products sold through licensed dispensaries are subjected to rigorous quality control, including testing for contaminants, pesticides, and accurate labeling of THC levels.

100. When illicit products enter the market through inversion, the reliability of these assurances is compromised, leading to potential health risks for consumers.

101. Products that have not undergone regulatory testing may contain harmful substances, such as pesticides or contaminants, or inaccurate THC concentrations, which can result in adverse health effects or unintended overconsumption.

102. As set forth above, OCM was given direct proof that a New York City dispensary was selling California products falsely marketed as New York State products.

103. Yet, OCM took no action despite the fact that the product was illegally transported into New York.

104. Moreover, inversion disrupts the economic viability of the legal cannabis industry. By allowing unlicensed products to compete with those produced by compliant operators, inversion undermines the substantial investments made by licensed businesses, such as those by Plaintiff's Members, who must adhere to stringent regulatory requirements and bear the associated costs.

105. Illicit cannabis can often be sold at lower prices because it avoids these costs, which creates an uneven playing field that disadvantages law-abiding businesses, threatens their financial stability, and ultimately risks pushing them out of business.

106. Inversion also violates federal laws, including the Controlled Substances Act, by allowing illicit, untested, and potentially dangerous out-of-state products into the New York marketplace.

107. Inversion also poses a danger to public safety by allowing criminal enterprises to exploit the regulated system, undermining efforts to dismantle the black market.

108. By allowing inversion to proliferate, OCM has failed to enforce the Cannabis Laws intended to create a secure, controlled cannabis market that protects consumers, supports legal operators, and limits illicit market activity.

109. As OCM is well aware, traceability is crucial to combatting diversion and inversion, and necessary for the establishment of an economically viable marketplace for industry participants, including the CFA's Members.

110. Seed-to-sale systems are also necessary for the health, safety, and welfare of New York's adult-use consumers.

111. Diverted and inverted products bypass regulatory testing, which may allow unsafe or mislabeled cannabis products into the marketplace, creating potential harm to consumers.

112. Seed-to-sale systems are designed to log data at every step, which deters operators from diverting products. Regular inspections and audits based on this data help ensure compliance.

113. By meticulously documenting every step, regulators can detect anomalies that might indicate product diversion, such as discrepancies in inventory or irregularities in reporting.

114. These systems thus create a deterrent against diversion and provide a means to trace the origin of any discrepancies back to responsible parties.

115. Seed-to-sale systems also protect against inversion.

116. By requiring licensed distributors to adhere strictly to Seed-to-sale standards, OCM can also ensure that only safe, state-approved, tax-compliant cannabis enters the marketplace.

117. This prevents illicit operators, who sidestep regulations and tax obligations, from infiltrating the legal supply chain, which would threaten the health of New Yorkers, undercut legal businesses and reduce state tax revenues.

118. By way of example, if a product is found to be contaminated or otherwise unsafe, the tracking system enables a targeted recall, minimizing public health risks and reinforcing public trust in the legal market.

119. Traceability systems also allow transparent monitoring which aids in compliance with state laws, helps prevent underreporting or misreporting of sales (affecting tax collection), and provides data that may support policy improvements.

120. New York's legislature recognized the necessity of traceability and Seed-to-sale tracking to combat diversion and inversion by including in the Cannabis Laws the requirement that OCM implement regulations concerning the same.

121. As admitted in OCM's September 29, 2023, guidance entitled *NYS BioTrack THC: Electronic Inventory Tracking System FAQs* (the "BioTrack FAQs"): "Pursuant to Section 78 of the Cannabis Law, the Office of Cannabis Management (OCM) requires all licensees to utilize an electronic system that tracks cannabis as it moves through the supply chain from seed to sale."

122. More particularly, Section 78 of the Cannabis Laws states: "The board shall, by regulation, require each licensee pursuant to this article to adopt and maintain security, tracking, record keeping, record retention and surveillance systems, relating to all cannabis at every stage of acquiring, possession, manufacture, sale, delivery, transporting, testing or distributing by the licensee, subject to regulations of the board."

123. OCM's failure to enforce these regulations has invited (and in some cases already resulted in) dangerous conditions, including:

- a) **Increased Availability of Unregulated Cannabis:** Lack of enforcement invites opportunities for illegal distribution channels, facilitating an unchecked influx of cannabis products into the market.
- b) **Health Risks from Unregulated Products:** Noncompliant products can contain pesticides, harmful additives, or unsafe levels of THC, posing

health risks. Upon information and belief, in extreme cases, poorly regulated products have led to illnesses and hospitalizations.

- c) **The Undermining of Market Competitiveness:** If legal cannabis businesses are competing with unregulated sellers who evade taxes and safety costs, this undermines the legal market's viability and credibility.
- d) **Erosion of Consumer Trust:** Consumers rely on the regulatory system to ensure product safety. If unregulated products enter the market, public confidence in legal cannabis products could deteriorate.

124. For consumers, the absence of a robust Seed-to-sale system endangers their health and well-being in several ways:

- a) **Exposure to Contaminants:** Without effective traceability, cannabis products may contain harmful substances that regulators cannot track or recall if issues arise.
- b) **Loss of Medical Benefits:** For consumers who use cannabis for medical reasons, traceability ensures they receive a reliable and safe product that meets therapeutic standards.
- c) **Compromised Public Safety:** In communities, an unregulated market can also contribute to crime associated with illegal cannabis trafficking, including organized crime activities, jeopardizing public safety.

125. OCM has woefully failed in its obligations to protect New York consumers from out-of-state and illicit products.

126. In addition, CFA's Members have suffered due to, among other things, their inability to compete with illegal market participants, which, among other things, results in a reduced demand for legal product.

127. Section 10 gives the Board discretion to:

- 3. To revoke, cancel or suspend, after notice and an opportunity to be heard, any registration, license, or permit issued under this chapter for a violation of this chapter or any regulation pursuant thereto.

3-a. To impose or recover a civil penalty, as otherwise authorized under this chapter, against any person found to have violated any provision of this chapter, whether or not a registration, license, or permit has been issued to such person pursuant to this chapter.

128. Despite these provisions, OCM has, and continues to, refuse to properly investigate unlawful activity and enforce the law to the detriment of legally operating Members of CFA.

VI. OCM's Failure to Comply with SAPA.

129. Presumably in response to the legislative mandate of Section 78 of the Cannabis Laws, OCM established Cannabis Regulations at 9 NYCRR 125.8 (the "Seed-to-sale Regulations") that was meant to establish regulatory requirements concerning "Inventory and Tracking."

130. However, upon information and belief, OCM failed to comply with SAPA prior to the establishment of the Seed-to-sale Regulations.

131. More particularly, state agencies like OCM are required to adhere to specific procedures when adopting rules and conducting adjudicatory proceedings. Key requirements include:

- a) **Notice of Proposed Rulemaking:** Before adopting a rule, an agency must submit a notice of proposed rulemaking to the Secretary of State for publication in the State Register. This notice must provide the public with an opportunity to submit comments on the proposed rule.
- b) **Regulatory Impact Statement ("RIS"):** Agencies are required to prepare an RIS that outlines the statutory authority, purpose, benefits, costs, and potential impacts of the proposed rule. This statement ensures transparency and informs the public and stakeholders about the implications of the rule.
- c) **Public Hearings:** Public hearings provide a platform for stakeholders to present their views and concerns.
- d) **Review of Existing Rules:** Agencies are obligated to periodically review their existing rules to assess their effectiveness and relevance. This process involves

evaluating whether rules should be continued, modified, or repealed to ensure they remain current and effective

132. Upon information and belief, OCM has failed to comply with SAPA.

133. More particularly, pursuant to SAPA an RIS must address specific elements, including but not limited to: (1) a statement of statutory authority; (2) the need for the rule; (3) the objectives of the rule; (4) a cost analysis, including direct costs to affected parties and government entities; (5) an analysis of alternative regulatory approaches considered and the reasons for their rejection; (6) an evaluation of the feasibility and flexibility of the rule; (7) an assessment of the potential impact on jobs; (8) an analysis of paperwork and record-keeping requirements; (9) an analysis of the impact on competition; and (10) public consultation and stakeholder engagement.

134. Despite these clear statutory mandates, upon information and belief OCM failed to conduct a proper RIS in accordance with SAPA, resulting in serious harm to CFA Members and other market participants. In particular, upon information and belief, OCM violated SAPA for the following reasons:

- a. **Failure to Conduct a Comprehensive Cost Analysis:** OCM did not adequately assess the financial burden that compliance with the Seed-to-sale Regulations would place on licensees. Plaintiff's Members have incurred significant costs associated with the implementation of Seed-to-sale tracking systems, including software subscriptions, integration and setup fees, digital tagging expenses, and ongoing compliance costs. These burdens have disproportionately affected small business operators like CFA's Members, and no meaningful analysis of these costs was provided in OCM's regulatory materials.
- b. **Lack of Consideration of Alternatives:** OCM failed to consider less burdensome or more cost-effective alternatives in implementing the Seed-to-sale tracking. Alternatives that may have mitigated the financial impact on small businesses such as the CFA's Members, such as a phased compliance schedule, waivers for financial hardship, or different tracking methods, were not explored or documented in any meaningful way.

- c. **No Evaluation of the Impact on Small Businesses:** OCM did not fulfill its obligation to assess the potential impact of the Seed-to sale Regulations on small businesses. Plaintiff's Members, who are small-scale cannabis cultivators and distributors, have been severely impacted by the regulatory requirements. OCM failed to conduct an analysis on how these rules would affect their viability, or to propose measures that could alleviate the disproportionate burden placed on smaller operators like CFA's Members.
- d. **Inadequate Public Consultation and Stakeholder Engagement:** The RIS must include evidence of public consultation and stakeholder engagement. OCM did not adequately involve stakeholders in the regulatory process. Many of the comments provided by industry participants, including Plaintiff's Members, were not addressed or were disregarded without sufficient explanation. Specifically, OCM's Assessment of Public Comment failed to engage meaningfully with the substantive concerns raised by industry stakeholders regarding the economic feasibility of compliance.
- e. **Failure to Address Economic Feasibility and Flexibility:** OCM failed to evaluate whether the Seed-to sale Regulations were economically feasible for stakeholders or if adequate flexibility measures were incorporated. The RIS lacked any consideration of phased implementation, grace periods, or financial assistance programs that could have made compliance more feasible for struggling industry participants like CFA's Members.
- f. **Insufficient Analysis of Job Impact:** OCM did not adequately assess the likely impact of Seed-to-sale Regulations on employment within the cannabis industry. CFA's Members, as well as other small businesses, have faced significant financial hardship as a direct result of the burdensome compliance requirements imposed by OCM, which has led to economic instability.
- g. **Failure to Analyze Regulatory Impact on Competition:** The RIS must include an assessment of the impact of regulations on competition within the market. OCM failed to properly conduct this analysis, resulting in regulations that have favored undermined smaller market participants. As set forth below, the failure to prevent unlawful license stacking and the consolidation of licenses has led to reduced competition and market instability, to the detriment of small businesses like Plaintiff's Members.

135. By failing to comply with these essential elements of SAPA, OCM has promulgated regulations without sufficient transparency, without proper economic assessment,

and without taking into account the interests and viability of stakeholders, particularly small businesses like Plaintiff's Members.

136. OCM's actions have resulted in unreasonable regulatory burdens, economic hardship, and a marketplace that does not align with the statutory intent of promoting social and economic equity.

137. Worse, OCM unreasonably demands compliance despite the fact that *OCM itself has not yet completed the application program interface ("API") necessary for licensees to transmit data.*

138. Despite eleven months having passed since the BioTrack FAQs, New York's API is still not available, and upon information and belief, will not be implemented until some time in 2025.

139. Upon information and belief, representatives from BioTrack are unable to confirm that its software will be implemented before the second quarter of 2025.

140. More specifically, OCM has left licensees, including the struggling CFA Members, on an island with respect to implementing BioTrack (or similar software) despite the significant expense of doing so.

141. By way of example, implementing a Seed-to-sale tracking system compliant with OCM regulations involves several costs:

- a) **Software Subscription:** The cost of BioTrack and systems like it, while necessary for the reasons stated above, can be prohibitively expensive to entities like the Members of the CFA.
- b) Upon information and belief, some licensees have reported expenses exceeding \$500 per month for BioTrack's software.

- c) **Integration and Setup:** Apart from the monetary fees for the software subscription, establishing a compliant system requires time and resources that entities like the Members of the CFA cannot afford, particularly given that, upon information and belief, they need to hire professionals to handle the software, including data migration and system configuration.
- d) **Digital Tagging:** OCM also requires the use of unique 16-digit digital identifiers for tracking cannabis products. Upon information and belief, each tag costs \$0.10, and the total expense depends on the volume of products handled.
- e) **Ongoing Compliance and Maintenance:** Further adding to costs, maintaining compliance involves regular system updates, staff training, and potential adjustments. These ongoing efforts contribute to the overall cost of compliance.

142. In summary, while specific costs can vary based upon the chosen software and the scale of operations, the Members of the CFA face initial setup expenses and ongoing costs to ensure compliance with New York's cannabis tracking requirements that may devastate them financially.

143. CFA Members have scarce resources to implement these protocols, and OCM and New York State know this, and yet have failed to offer or develop financial measures or programs to assist CFA Members in their Seed-to-sale implementation efforts.

144. Worse, New York is not even ready to interface with licensees, mooting the effectiveness – indeed the very purpose – of Seed-to sale systems.

145. OCM has also unlawfully and repeatedly altered product testing requirements without complying with the strictures of SAPA, which has had disastrous effects on CFA Members.

146. The constantly shifting standards, including changes to the threshold for allowable contaminants like mold and the addition of onerous *Aspergillus* testing requirements, have led to significant financial burdens for small farmers.

VII. OCM's Allowance of "License Stacking."

147. Under New York's Cannabis Laws and Regulations, there are specific limitations on the types of licenses that an entity or individual may hold.

A. OCM's Unlawful Allowance of License Stacking for Vertical Integration.

148. Under the Cannabis Laws and Regulations certain license types are mutually exclusive, meaning that an entity holding a license in one category is prohibited from holding a license in another category.

149. The Regulations provide details on how the OCM enforces these ownership restrictions. OCM has a mandate to prevent anticompetitive behaviors, including through the enforcement of license limitations to promote a diverse industry.

150. These limitations are intended to prevent vertical integration, ensure fair competition, and promote a diverse and equitable cannabis market.

151. Despite this comprehensive regulatory scheme that is intended to foster a balanced and inclusive cannabis market in New York, upon information and belief, numerous licensees are engaging in "license stacking."

152. One version of "License stacking" refers to unlawful behavior whereby there is an aggregation of multiple licenses in violation of the foregoing intended structure, resulting in vertical integration that the complex regulatory scheme described above was specifically designed to prevent.

153. License stacking harms CFA Members by, among other things, unlawfully altering the licensing structure, wreaking havoc with an already compromised supply chain.

154. A detailed overview of the key restrictions on licenses is as follows:

1. The General Prohibition on Vertical Integration:

155. New York law generally prohibits an individual or entity from holding multiple types of cannabis licenses that span different levels of the supply chain unless specifically allowed by the Regulations. This is intended to prevent entities from dominating the entire cannabis production and distribution process.

2. Prohibition of Combinations of License Types:

156. Under the Cannabis Laws and Regulations issued by OCM, certain license types are mutually exclusive, meaning that an entity holding a license in one category is prohibited from holding a license in another category unless specifically exempted from that Regulation. The main categories of cannabis licenses and the restrictions are as follows:

i. Cultivator License:

157. An entity holding a cultivator license cannot also hold a retail dispensary license. Cultivators are allowed to grow and process cannabis, but they are restricted from engaging directly in the sale to consumers. Cultivators are permitted to also hold a processor license or a distributor license, but with significant limitations on how they can engage with the retail market.

ii. Processor License:

158. Similar to cultivators, processors, who are responsible for transforming raw cannabis into products like edibles or oils, cannot hold a retail dispensary license. Processors are allowed to hold distributor licenses, but they must comply with rules that prohibit cross-ownership with retail operations.

iii. Distributor License:

159. A distributor license allows entities to transport cannabis products between licensed entities (*e.g.* from processors to retailers). Distributors are not permitted to hold a retail dispensary license.

iv. Retail Dispensary License:

160. Entities that are licensed as retail dispensaries can only engage in selling cannabis products to consumers. Dispensary license holders are prohibited from also holding cultivation, processing, or distribution licenses. This restriction is aimed at keeping the retail sector separate from other parts of the cannabis supply chain, which helps prevent monopolistic practices and supports diversity in market participants.

v. Microbusiness License:

161. A microbusiness license allows an entity to cultivate, process, distribute, and sell their own cannabis products on a limited scale. However, microbusiness licensees cannot wholesale or distribute cannabis products that are not produced by their own operation. The microbusiness model is intended to create opportunities for smaller-scale operators to participate across multiple areas of the supply chain but is tightly limited in size and scope to prevent market dominance.

vi. Cooperative License:

162. Cooperative license holders can cultivate, process, and distribute cannabis but cannot hold retail dispensary licenses. The cooperative model is designed to support small farmers and promote collaborative business structures.

vii. Delivery License:

163. Entities holding a delivery license are limited to providing delivery services for retail cannabis, and they cannot be involved in cultivation or processing activities.

3. Ownership and Financial Interest Limitations.

a. True Party of Interest Restrictions:

164. The law defines and regulates the concept of “true party of interest” to prevent indirect control of multiple licenses. A true party of interest is any individual or entity that has a direct or indirect financial interest in a license.

165. For example, individuals who have ownership or financial interests in one type of license are generally prohibited from holding financial interests in another license that is restricted under cross-ownership rules.

b. Social and Economic Equity Provisions:

166. The Cannabis Laws include specific provisions aimed at promoting social and economic equity. Preference is given to applicants from communities disproportionately affected by prior cannabis criminalization. These provisions are further supported by ownership restrictions that ensure market opportunities for small businesses and underrepresented communities rather than allowing market control by larger, vertically integrated operators.

4. *Specific Regulatory Provisions.*

167. The foregoing licensing regulations are meant to address OCM’s statutory mandate to prevent anticompetitive behaviors, including through the enforcement of license limitations to promote a diverse industry.

168. ***These restrictions are a core part of the framework intended to foster a balanced and inclusive cannabis market in New York.***

169. The limitations were specifically included in the Cannabis Laws to prevent the type of consolidation and monopolization that have been seen in other states, where fewer, larger entities dominate the industry, effectively excluding smaller operators and equity-focused businesses.

170. In short, this prohibition on vertical integration as described above helps maintain clear separation between the production, processing, and retail sale of cannabis, thereby supporting equitable participation and ensuring compliance with the intent of the law.

171. Upon information and belief, OCM has allowed entities to engage in license stacking in contravention of the Cannabis Laws and Regulations and allowed unlawful vertical integration.

B. OCM's Unlawful Allowance of License Stacking to Avoid Canopy Restrictions.

172. Another concept of “license stacking” refers to the unlawful combination of licenses horizontally (*i.e.* a combination by entities with the same license type).

173. Upon information and belief, OCM has allowed certain entities with Cultivator licenses to unlawfully consolidate in order to increase their canopy allowances into a single, larger growing operation, thereby avoiding the strict limits imposed on each individual license.

174. These practices effectively exclude small business owners like CFA’s Members from accessing the benefits of the market on an equal basis.

175. Such conduct undermines the intent of the Cannabis Laws and Regulations, which aim to maintain an equitable distribution of resources and market opportunities among all license holders.

176. Specifically, the Regulations were enacted to limit the size of cultivation operations to foster fair competition and ensure small-scale operators have a chance to participate in the legal cannabis market.

177. However, by combining multiple cultivation licenses, these cultivators have been able to establish significantly larger growing facilities, giving them an undue competitive advantage over smaller operations like those run by the CFA's Members.

178. The stated intent of the Cannabis Laws is to foster diversity, equity, and fairness in the cannabis market, with an emphasis on supporting small businesses and social equity applicants.

179. OCM, by allowing license stacking and other anti-competitive behaviors, contradicts these goals, resulting in a violation of equal protection principles to the detriment of CFA's Members.

180. The unlawful aggregation of multiple cultivation licenses not only creates an inequitable market but also directly harms CFA's Members by enabling certain entities to control a disproportionate share of the market.

181. This market dominance further exacerbates the financial pressures on smaller license holders and prevents them from thriving under the regulatory framework intended to protect small business opportunities and promote diversity within the industry.

182. OCM has knowingly allowed such license stacking practices resulting in abuse of the licensing system.

VIII. Summary of Impact of OCM's Unlawful Actions on CFA Members.

183. CFA's Members have been particularly harmed and suffer due to the foregoing unlawful actions by OCM.

A. OCM's Regulatory Mismanagement Has Caused Severe Mental and Physical Distress.

184. OCM's mismanagement of the adult-use cannabis program has caused severe mental and physical health consequences for CFA's Members.

185. Numerous Members have experienced elevated stress levels, anxiety, depression, severe health problems, and even suicidal ideation as a result of their inability to sell products, financial instability, and burdensome regulatory requirements.

B. Financial Devastation Due to Regulatory Failures.

186. CFA's Members have suffered extreme financial losses directly attributable to OCM's regulatory failures and missteps.

187. The slow roll-out of retail stores, the failure to provide a reliable market for cannabis products, and exorbitant regulatory compliance costs have pushed CFA's Members to the brink of financial ruin.

188. Specific examples of losses of CFA Members include: depletion of retirement funds, loss of farms, inability to pay property taxes, and total reliance on public assistance.

189. CFA Members are being forced to sell personal assets, take on loans, and in some cases have even needed to use food pantries to survive.

C. Discriminatory Impact on CFA Members.

190. OCM's oversight of the regulatory framework has systematically favored entities that are not complying with the cannabis laws, and even criminal enterprises, effectively discriminating against CFA's Members.

191. Despite legislative mandates prioritizing social equity and ensuring opportunities for small businesses, OCM has allowed license stacking, fostering market dominance and making it nearly impossible for small farmers like CFA's Members to compete.

192. OCM's unlawful actions and failures to implement and oversee the adult-use cannabis market in New York has driven CFA Members into insolvency.

D. Failure to Implement Effective Seed-to-sale Tracking, Leading to Market Manipulation.

193. OCM's failure to properly enforce Seed-to-sale tracking has led to significant market manipulation, diversion, and inversion of cannabis products.

194. OCM's allowance of illicit products into the market has resulted in devastation to legal market participants.

195. The lack of enforcement, combined with burdensome traceability requirements on small farmers that illicit competition is not subject to, has created an uneven playing field that directly harms CFA Members and undermines the legal market's viability in contravention of the Cannabis Laws.

E. Failure to Provide Sufficient Retail Outlets, Creating an Oversupply Crisis.

196. OCM's mismanagement and slow rollout of retail outlets has led to an oversupply crisis among small cultivators like CFA's Members.

197. CFA members have reported that they have harvested cannabis that they are unable to sell, with many having to destroy crops or invest in costly storage measures without any prospects for selling their products.

198. The inconsistent and delayed availability of retail stores has exacerbated financial losses, pushing many CFA Members further into debt and rendering their participation in the legal cannabis industry unsustainable.

F. Unlawful Changes to Testing Requirements and Lack of Regulatory Consistency.

199. OCM has repeatedly altered testing requirements in a manner that is not compliant with SAPA, directly harming CFA Members at the expense of other market participants who OCM has graced by failing to investigate or punish for violating Regulations.

200. Also, the constantly shifting standards, including changes to the threshold for allowable contaminants like mold and the addition of onerous *Aspergillus* testing requirements, have led to significant financial burdens for CFA Members.

201. Some CFA Members have reported losing partial or entire harvests due to inconsistent and unpredictable testing outcomes, undermining their ability to meet OCM's ever-changing regulatory requirements.

G. Failure to Address Reasonable Public Comments and Provide Transparency.

202. Despite numerous public comments from CFA Members highlighting specific regulatory flaws, OCM has failed to adequately respond to or incorporate these concerns into revised rules.

203. For instance, CFA Members submitted comments on the impracticalities of the currently designed stringent testing requirements, traceability systems, and lack of retail access, which OCM ignored.

204. OCM's disregard for CFA Members' comments has perpetuated systemic inequities and demonstrated a lack of transparency in regulatory implementation, contrary to OCM's statutory obligations under the Cannabis Laws.

RELIEF SOUGHT

COUNT I

Declaratory Judgment and Mandatory Injunction: OCM's Failure to Administer the Cannabis Laws and Regulations to Protect Market Participants from Market Instability.

205. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

206. The Cannabis Laws require that OCM establish and monitor a stable, efficient, and safe cannabis market.

207. OCM woefully failed to properly implement regulations consistent with the Cannabis Laws.

208. Plaintiff and its Members, as well as other licensed cannabis operators, made substantial investments in reliance on explicit promises pursuant to the statute made by OCM.

209. These promises included managing the number of registrations, licenses and permits in a manner that prioritizes social and economic equity and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.

210. Plaintiff's Members' investment-backed expectations were objectively reasonable, as they were based on statutory mandates, standard industry practices in other states, and OCM's public commitments to oversee the adult-use cannabis market.

211. Plaintiff's Members have also incurred substantial operating costs, including lease payments, employee salaries, insurance premiums, and professional services, based on the expectation of a regulated, stable market.

212. OCM has failed to implement the Cannabis Laws by failing to manage the number of registrations, licenses and permits in a manner that prioritizes social and economic equity and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.

213. The OCM's failure to meet these obligations has directly caused market dysfunction, leading to harm suffered by Plaintiff's Members.

214. Due to the foregoing, Plaintiff is entitled to a declaration that OCM has failed to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace in New York.

215. Plaintiff also seeks injunctive relief requiring OCM to fulfill its statutory obligations by adhering to the Cannabis Laws to properly oversee the number of registrations, licenses and permits in a manner that prioritizes social and economic equity and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.

COUNT II

Declaratory Judgment and Mandatory Injunction: OCM's Failure to Administer the Cannabis Laws and Regulations in Implementing an Affordable Seed-to-sale System.

216. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

217. The Cannabis Laws required that OCM establish and monitor a stable, efficient, and safe cannabis market.

218. OCM woefully failed to properly implement regulations consistent with the Cannabis Laws.

219. Plaintiff's Members and other licensed cannabis operators made substantial investments in reliance on explicit statutory promises made by OCM.

220. These promises included the implementation of a functioning and affordable Seed-to-sale tracking system, market monitoring and stabilization, and a regulatory framework designed to protect licensed operators from unfair competition and market dysfunction.

221. Plaintiff's Members' investment-backed expectations were objectively reasonable, as they were based on statutory mandates, standard industry practices in other states, and OCM's public commitments to implementing these essential systems.

222. Plaintiff's Members have invested significant capital in property acquisition and modification, security systems, cultivation equipment, compliance technology, and staff hiring and training, all in reliance on OCM's promised regulatory framework.

223. Plaintiff's Members have also incurred substantial operating costs, including lease payments, employee salaries, insurance premiums, and professional services, based on the expectation of a regulated, stable market.

224. OCM has failed to implement a functioning Seed-to-sale tracking system, resulting in significant market instability, unfair competition from untracked products, and an inability to verify the origin and quality of cannabis products.

225. As a result of OCM's regulatory failures, Plaintiff's Members have experienced increased operational costs, decreased license value, and lost market opportunities.

226. OCM's failure to implement mandatory regulatory systems has caused Plaintiff's Members direct financial losses, including diminished license value, lost market share, increased operational costs, reduced revenue potential, and stranded capital investments.

227. OCM's unlawful actions have directly disrupted market conditions, allowed untracked products undermining licensed operators, and caused price instability, supply chain issues, reduced market confidence, and limited access to capital.

228. OCM's complete failure to implement mandatory and affordable Seed-to-sale systems has created dysfunctional market conditions, undermining the statutory scheme and disproportionately burdening licensed operators.

229. The burden of OCM's inaction has fallen most heavily on compliant businesses, while unlicensed operators have benefited from the lack of effective regulation, leading to market-wide disruption and systematic disadvantages for licensed operators like Plaintiff's Members.

230. OCM's failure to meet these obligations has directly caused market dysfunction.

231. Due to the foregoing, Plaintiff is entitled to a declaration that OCM has failed to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace in New York by way of an affordable Seed-to-sale system of monitoring.

232. Plaintiff also seeks injunctive relief requiring OCM to fulfill its statutory obligations by implementing the necessary and affordable tracking and regulatory system to restore market value and prevent further harm.

COUNT III

Declaratory Judgment and Mandatory Injunction: Violation of New York State Constitution, Article I, Section 7.

233. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

234. Plaintiff's Members are licensed cannabis cultivators within the New York adult-use cannabis market.

235. Plaintiff's Members have invested substantial capital and resources based on explicit statutory requirements and the OCM's obligation to manage the number of registrations, licenses and permits of licenses in a manner that prioritizes social and economic equity and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.

236. Plaintiff's Members have invested substantial capital and resources based on explicit statutory requirements and the OCM's obligation to establish a functioning Seed-to-sale tracking system,

237. Plaintiff's Members have invested substantial capital and resources based on explicit statutory mandates that OCM undertake market monitoring and stabilization measures, and a regulatory framework that protects licensed operators.

238. These investment-backed expectations were objectively reasonable, as market monitoring, protecting the regulatory framework through proper licensing, as well as the implementation of a Seed-to-sale tracking system were explicitly mandated by the statutes governing the cannabis industry in New York.

239. Moreover, such measures reflect standard industry practices in other states and were necessary to ensure the establishment of a regulated cannabis market, as the OCM publicly committed to implementing these systems.

240. Based on these statutory mandates and OCM's regulatory commitments, Plaintiff's Members made substantial capital investments, including but not limited to:

- a. Property acquisition and modification for cultivation and distribution purposes;
- b. Installation of security systems to comply with statutory requirements;
- c. Purchase of cultivation equipment and compliance technology; and
- d. Hiring and training of staff for regulatory compliance and business operations.

241. Plaintiff's Members have also incurred significant operating costs in reliance on these regulatory promises, including lease payments, employee salaries, insurance premiums, and professional services.

242. OCM has failed to manage the number of registrations, licenses and permits in a manner that prioritizes social and economic equity and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.

243. OCM's failure to properly implement an affordable Seed-to-sale tracking system, establish market stabilization measures, and provide adequate regulatory protections has severely disrupted Plaintiff's operations and interfered with Plaintiff's reasonable investment-backed expectations.

244. As a result of the OCM's failures, Plaintiff's Members have suffered from market instability, unfair competition from untracked products, increased operational costs, and lost market opportunities, significantly diminishing the value of Plaintiff's Members' licenses.

245. Plaintiff's Members have suffered direct financial losses, including:

- a. Diminished value of their cannabis licenses;

- b. Lost market share due to the inability to compete fairly with untracked products;
- c. Increased operational costs resulting from market instability;
- d. Reduced revenue potential and stranded capital investments.

246. OCM's failure to manage the number of registrations, licenses and permits in a manner that prioritizes social and economic equity and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state has resulted in an economically dysfunctional market.

247. OCM's failure to implement an affordable Seed-to-sale tracking system has disrupted the cannabis market, leading to price instability, supply chain issues, reduced market confidence, and limited access to capital for licensed operators such as Plaintiff.

248. These actions have disproportionately burdened licensed operators like Plaintiff's Members, while benefiting unlicensed and/or non-compliant operators who continue to operate without oversight or accountability, creating an unfair and economically harmful marketplace.

249. The actions and omissions by OCM have effectively resulted in a taking of Plaintiff's Members' property without just compensation.

250. Plaintiff's Members' economic interests have been sacrificed to benefit unlicensed and/or noncompliant operators and to manage the challenges of the broader market at the expense of compliant licensees like Plaintiff's Members.

251. Due to the foregoing, Plaintiff is entitled to a declaration that OCM's failure to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace, including oversight and management of the grant of

licenses pursuant to Section 10 and Section 64 of the Cannabis Laws has resulted in a violation of Article I Section 7 of the New York Constitution.

252. Due to the foregoing, Plaintiff is entitled to a declaration that OCM's failure to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace in New York by way of an affordable Seed-to-sale system of monitoring pursuant to Section 78 of the Cannabis Laws has resulted in a violation of Article I, Section 7 of the New York Constitution.

253. Due to the foregoing, Plaintiff is entitled to injunctive relief mandating that OCM implement measures to protect the economic interests of licensed operators like Plaintiff pursuant to the required regulatory framework, including proper oversight of the granting of licenses to protect the economic interests of licensed operators like Plaintiff's Members.

254. Due to the foregoing, Plaintiff is entitled to injunctive relief mandating that OCM implement measures to protect the economic interests of licensed operators like Plaintiff pursuant to the required regulatory framework, by implementing an affordable Seed-to-sale tracking system and measures to protect the economic interests of licensed operators like Plaintiff's Members.

COUNT IV

Declaratory Judgment and Mandatory Injunction: Violation of the State Administrative Procedures Act.

255. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

256. Under SAPA, state agencies are required to adopt rules and regulations in a manner that provides clarity, transparency, and predictability to stakeholders who are subject to such regulations.

257. SAPA obligates agencies to establish clear guidelines to carry out their statutory functions.

258. In this case, OCM was required to implement regulations that support the statutory mandate for economic monitoring of licenses and the establishment of a Seed-to sale tracking system.

259. OCM has failed to meet its obligations under SAPA by neglecting to follow the requirements of SAPA before adopting rules or provide any specific, published criteria for the establishment and implementation of a mandated Seed-to sale tracking system.

260. SAPA requires that all stakeholders, including Plaintiff's Members, be given adequate notice of proposed rules, the opportunity to comment on those proposals, and the benefit of transparency in the regulatory process.

261. OCM's actions, or lack thereof, have resulted in an unpredictable and unregulated marketplace, contrary to the statutory purpose of establishing a fair and efficient adult-use cannabis market.

262. By failing to properly issue these necessary regulations, OCM has left Plaintiff's Members and similarly situated licensees in a position of uncertainty, without the clear regulatory guidance essential to running their businesses in compliance with statutory and regulatory requirements.

263. Plaintiff seeks a declaration that OCM has failed to comply with SAPA requirements by not implementing a necessary and affordable Seed-to-sale tracking system or establishing the necessary regulatory framework mandated by New York State law.

264. Plaintiff also seeks injunctive relief requiring OCM to fulfill its statutory obligations by implementing necessary and affordable tracking and regulatory systems to restore market value and prevent further harm.

COUNT V

Declaratory Judgment and Mandatory Injunction: OCM's Failure to Follow the Cannabis Laws to Prevent License Stacking.

265. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

266. Under New York's Cannabis Laws and its implementing regulations, there are specific limitations on the types of licenses that an entity or individual may hold.

267. These limitations are intended to prevent vertical integration, ensure fair competition, and promote a diverse and equitable cannabis market.

268. New York law prohibits an individual or entity from holding multiple types of cannabis licenses that span different levels of the supply chain.

269. Cannabis Control Law Section 69 outlines the restrictions on license types that can be held by a single individual or entity, making it clear that vertical integration is generally not allowed.

270. OCM has a mandate to prevent anticompetitive behaviors, including through the enforcement of license limitations to promote a diverse industry.

271. These restrictions are a core part of the framework intended to foster a balanced and inclusive cannabis market in New York.

272. The limitations were specifically included to prevent the type of consolidation and monopolization that have been seen in other states, where fewer, larger entities dominate the industry, effectively excluding smaller operators and equity-focused businesses.

273. This prohibition on vertical integration helps maintain clear separation between the production, processing, and retail sale of cannabis, thereby supporting equitable participation and ensuring compliance with the intent of the law.

274. OCM has also allowed certain entities with Cultivator licenses to unlawfully consolidate in order to increase their canopy allowances into a single, larger growing operation, thereby avoiding the strict limits imposed on each individual license

275. OCM is allowing entities to stack licenses in violation of the Cannabis Laws and Regulations, and in a manner that contradicts the regulatory intent and framework designed to support small businesses and promote fairness in New York’s emerging cannabis industry.

276. Plaintiff seeks a declaration that OCM has failed to comply with Cannabis Laws and Regulations by allowing entities to stack licenses.

277. Plaintiff also seeks injunctive relief requiring the OCM to fulfill its statutory obligations by investigating and prosecuting entities in violation of the Cannabis Laws and Regulations that prohibit license stacking, and also to prevent further abuse and harm associated with license stacking.

COUNT VI

Declaratory Judgment and Mandatory Injunction: Violation of Article I, Section 11 of the New York State Constitution.

278. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

279. Article I, Section 11 of the New York State Constitution provides that no person shall be denied equal protection of the laws of New York.

280. Under the Cannabis Laws OCM has a duty to foster a fair and equitable cannabis marketplace, preventing anti-competitive behaviors, ensuring fair licensing, and prioritizing small business opportunities and concerns.

281. Despite these mandates, OCM has acted in a manner that has deprived Plaintiff's Members of equal protection under the law by unlawfully allowing license stacking and failing to enforce critical provisions of the Cannabis Laws.

282. This has created a two-tiered system that provides certain entities with unlawful competitive advantages while imposing undue burdens on CFA's Members, resulting in discriminatory treatment.

283. OCM has allowed entities to engage in unlawful license stacking, whereby certain licensees hold multiple license types in contravention of Cannabis Laws and Regulations.

284. This practice has granted those entities a significant advantage in vertically integrating their operations. Conversely, CFA's Members, many of whom are small-scale operators, have been explicitly prevented from holding multiple types of licenses. This disparate treatment has created an uneven playing field, directly contradicting the Legislature's intent to foster an equitable and diverse cannabis market in New York.

285. Moreover, OCM has allowed multiple cultivation licenses to be consolidated to increase canopy allowances, circumventing the statutory limits on cultivation size. This has further entrenched the dominance of unlawful players at the expense of small operators, many of whom are financially distressed and struggling to maintain viability. By failing to enforce these limitations, OCM has effectively sanctioned anti-competitive behavior, harming the economic interests of CFA's Members.

286. OCM's actions, including the failure to regulate license stacking and enforce proper market oversight, have disproportionately harmed operators like CFA's Members.

287. These Members have invested substantial capital and resources with the expectation that the cannabis marketplace would be equitably managed in accordance with statutory requirements.

288. Instead, the failure to adhere to these mandates has resulted in CFA's Members being excluded from opportunities that would otherwise be available to them under a fair application of the Cannabis Laws.

289. Due to OCM's failure to control license stacking and properly manage the marketplace, CFA's Members have faced significant financial losses, with many operating at unsustainable margins. Allowing competitors to unlawfully stack licenses has exacerbated price competition, pushing legally compliant businesses out of the market.

290. OCM's refusal to prevent unlawful vertical integration has led to instability in the cannabis market, with unlawful entities able to control both the supply and retail aspects of the market, thereby artificially manipulating pricing and excluding CFA's Members, who are unable to compete fairly under these conditions.

291. The explicit prohibition against license stacking for operators like CFA's Members, contrasted with OCM's allowance of unlawful license consolidation by unlawful entities, has effectively excluded CFA's Members from fully participating in the legal cannabis market.

292. This exclusion is not only contrary to the intent of the Cannabis Laws but also constitutes a violation of equal protection guarantees by allowing selective enforcement and discriminatory application of the law.

293. OCM has further failed to enforce its statutory mandates by not addressing the requirements under Section 10 of the Cannabis Laws, which require the agency to consider small business opportunities and avoid market dominance. OCM's failure to take corrective action against unlawful entities, while continuing to hold CFA's Members to stringent compliance standards, is evidence of discriminatory treatment.

294. The disparate treatment, wherein unlawful entities are given preferential opportunities, while CFA's Members are burdened by stricter enforcement, violates Article I, Section 11 of the New York State Constitution.

295. This unequal treatment has deprived CFA's Members of their rightful opportunities in the cannabis marketplace and has resulted in a financial and operational disadvantage.

296. Plaintiff seeks a declaration that OCM's failure to enforce the Cannabis Laws equitably, including the allowance of unlawful license stacking and failure to ensure a level playing field, constitutes a violation of Article I, Section 11 of the New York State Constitution.

297. Plaintiff also seeks injunctive relief requiring OCM to fulfill its statutory obligations by investigating and prosecuting entities in violation of the Cannabis Laws and Regulations and implementing measures to prevent further discriminatory practices. Such relief is necessary to restore market integrity and protect the economic interests of small operators like CFA's Members.

WHEREFORE, by reason of the foregoing, Plaintiff hereby requests that this Court Order the following:

- (A) A declaration that OCM has failed to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace in New York;

- (B) An injunction requiring OCM to fulfill its statutory obligations by adhering to the Cannabis Laws to properly oversee the number of registrations, licenses and permits in a manner that prioritizes social and economic equity and considers small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state;
- (C) A declaration that OCM has failed to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace in New York by way of an affordable Seed-to-sale system of monitoring;
- (D) An injunction requiring the OCM to fulfill its statutory obligations by implementing a necessary and affordable tracking and regulatory system to restore market value and prevent further harm;
- (E) A declaration that OCM's failure to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace, including oversight and management of the grant of licenses pursuant to Section 10 and Section 64 of the Cannabis Laws has resulted in a violation of Article I Section 7 of the New York Constitution.
- (F) A declaration that OCM's failure to adhere to the statutory mandates of the Cannabis Laws concerning the establishment and monitoring of the cannabis marketplace in New York by way of an affordable Seed-to-sale system of monitoring pursuant to Section 78 of the Cannabis Laws has resulted in a violation of Article I, Section 7 of the New York Constitution.
- (G) An injunction mandating that OCM implement measures to protect the economic interests of licensed operators like Plaintiff pursuant to the required regulatory framework, including proper oversight of the grant of licenses to protect the economic interests of licensed operators like Plaintiff's Members;
- (H) An injunction mandating that OCM implement measures to protect the economic interests of licensed operators like Plaintiff pursuant to the required regulatory framework, by implementing an affordable Seed-to-sale tracking system and measures to protect the economic interests of licensed operators like Plaintiff's Members;
- (I) A declaration that OCM has failed to comply with SAPA requirements by not implementing a necessary and affordable Seed-to-sale tracking system or establishing the necessary regulatory framework mandated by New York State law;
- (J) A declaration that OCM has failed to comply with SAPA, including by not conducting a proper Regulatory Impact Statement, resulting in regulations that are overly burdensome and inequitable;

- (K) An injunction requiring OCM to fulfill its statutory obligations by implementing necessary and affordable tracking and regulatory systems to restore market value and prevent further harm;
- (L) An injunction requiring OCM to fulfill its statutory obligations under SAPA requiring OCM to conduct a proper Regulatory Impact Statement that includes a thorough cost analysis, consideration of alternatives, an evaluation of the impact on small businesses, meaningful public consultation, and an analysis of the impact on competition;
- (M) A declaration that OCM has failed to comply with Cannabis Laws and Regulations by allowing entities to stack licenses;
- (N) An injunction requiring the OCM to fulfill its statutory obligations by investigating and prosecuting entities in violation of the Cannabis Laws and Regulations that prohibit license stacking, and also to prevent further abuse and harm associated with license stacking;
- (O) A declaration that OCM has violated Article I, Section 11 of the New York State Constitution by allowing entities to stack licenses while the CFA Members are prevented from doing so;
- (P) An injunction requiring OCM to fulfill its statutory obligations by investigating and prosecuting entities in violation of the laws prohibiting license stacking, and also to prevent further abuse and harm associated with license stacking; and
- (Q) A declaration that OCM has violated Article I, Section 11 of the New York State Constitution by failing to enforce its regulatory mandates to consider small businesses and avoid market dominance;
- (R) An injunction requiring OCM to fulfill its statutory obligations by investigating and prosecuting entities in violation of the Cannabis Laws and Regulations and implementing measures to prevent further discriminatory practices in violation of Article I, Section 11 of the New York State Constitution; and
- (S) Granting such other and further relief as the Court deems just and proper.

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