

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- X
COALITION FOR ACCESS TO REGULATED :
& SAFE CANNABIS, :
:

Plaintiff-Petitioner, :

-against- :

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

Defendants-Respondents. :

----- X

Index No.

**STIPULATION AND ORDER
OF SETTLEMENT**

This Stipulation and Order of Settlement (the “Stipulation”) is made and entered by and between the Coalition For Access to Regulated & Safe Cannabis (“the Coalition” or “Plaintiff”) on the one hand, and the New York State Cannabis Control Board (“the CCB”), New York State Office of Cannabis Management (“OCM”), Tremaine Wright, (“Wright”) in her capacity as the Chairwoman of the New York State Cannabis Control Board, and Chris Alexander (“Alexander”) in his official capacity as Executive Director of the New York State Office of Cannabis Management on the other (collectively “the Defendants”). The Coalition, CCB, OCM, Alexander and Wright are collectively referred to herein as the “Parties” and individually as a “Party”.

WHEREAS, on March 31, 2021, New York enacted the Marijuana Regulation and Taxation Act (“MRTA”), established OCM as an independent office within the Division of Alcoholic Beverage Control and the CCB, and established the CCB granting it authority to promulgate regulations that it deemed necessary to effectuate the purposes of the MRTA;

WHEREAS, on or about March 16, 2023, the Coalition initiated the above-captioned hybrid Article 78 and declaratory judgment action against Defendants in the Supreme Court of the State of New York, Albany County (the “Lawsuit”);

WHEREAS, the Defendants answered and moved for summary judgment on the Coalition’s declaratory judgment claim on or about May 19, 2023, and the Coalition cross-moved for summary judgment on or about July 24, 2023;

WHEREAS, the Parties seek to resolve the Lawsuit and to settle all the claims and disputes within that litigation, and to implement the terms set forth below in good-faith, without the burden and expense of continuing to litigate in court and without any admission of liability or wrongdoing of any kind;

WHEREAS, Article 3 of the MRTA authorizes the Cannabis Control Board to “grant some or all of the Registered Organizations (R.O.s)¹ the ability to obtain adult-use cannabis licenses”;

WHEREAS, Article 4 of the MRTA specifies the adult-use licenses that the R.O.s are able to acquire specifically, MRTA § 68-a (the “ROD license”) or MRTA § 68-b (the “ROND license”);

WHEREAS, OCM effectuated the R.O.s’ ability to transition on October 4, 2023 and the R.O.s have submitted applications to transition to Article 4 ROD or ROND licenses (“the Transition Applications”);

WHEREAS, CCB approved all R.O.s’ medical renewal licenses at its meeting on November 17, 2023:

WHEREAS, in consideration for the Coalition dismissing its suit, Defendants agree to approve the R.O.s’ transition to the adult-use licenses specified in MRTA § 68-a and/or MRTA § 68-b, in accordance with the terms and schedule specified below, provided that the R.O.s satisfy OCM’s technical requirements for transitioning to the adult-use market;

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

WHEREAS, the Parties acknowledge that they are waiving legal claims by entering into this Settlement Stipulation. Each party has consulted with legal counsel, has a full and complete understanding of the terms and legal effect of the Stipulation, and intends to be bound thereby.

NOW, THEREFORE, in consideration of the foregoing mutual covenants and agreements set forth herein, which covenants and agreements constitute good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby stipulate, agree and order as follows:

1) Pursuant to CPLR 3217(c), the Coalition hereby dismisses this Action with prejudice and without damages, costs, interest, or attorneys’ fees.

2) On or before November 20, 2023, Defendants (a) shall schedule a CCB meeting December 8, 2023 (or on any convenient day prior to December 8, 2023) and shall issue a public notice for the same, and (b) shall release an agenda for that CCB Meeting, at least 48 hours in advance, consistent with all requirements for such notice, that includes CCB’s intention to consider a resolution approving the R.O.s’ application for transition to ROD licenses and/or ROND licenses.

¹ Although New York State has registered eleven (11) registered organizations, only five R.O.s joined the Coalition – Curaleaf NY LLC, PharmaCann of New York LLC, Fiorello Pharmaceuticals Inc, NYCANNA LLC, and Citiva Medical LLC. The terms of this Stipulation govern only these five R.O.s.

3) On or before November 22, 2023, Defendants shall identify all deficiencies in the R.O.s' Transition Applications that would preclude Article 4 licensure, to the extent any such deficiencies exist, and shall communicate those deficiencies to each R.O. in a separate written correspondence (hereinafter referred to as a "Deficiency Letter") so that any such deficiencies may be timely cured. For the avoidance of doubt, the R.O.s must receive each Deficiency Letter on or before November 22, 2023.

4) On or before November 29, 2023, Defendants shall meet with each R.O. to discuss the deficiencies set forth in the Deficiency Letter, if any, and shall delineate the precise steps each R.O. must undertake to cure the enumerated deficiencies in order to qualify for Article 4 licensure.

5) Defendants hereby agree that they may rely only on those deficiencies identified in a Deficiency Letter to withhold a recommendation and/or approval of the R.O.s for Article 4 licensure to enter the adult use market.

6) On or before December 4, 2023, Defendants shall meet with each R.O. to review and discuss the corrective steps each R.O. has taken and/or submitted to address the enumerated deficiencies set forth in the Deficiency Letter (if any). At the meeting held between the R.O. and Defendants, Defendants shall (i) confirm that the deficiencies set forth in the Deficiency Letter have been corrected and there are no further technical deficiencies in the R.O.'s Transition Application, or (ii) identify any deficiencies that remain outstanding and shall provide sufficient detail so that the R.O. has the opportunity to cure those deficiencies on or before December 6, 2023.

7) At the CCB Meeting to be held on or before December 8, 2023 (or an earlier date) (the "December Meeting"), OCM agrees to recommend to CCB that any R.O. that satisfies the technical elements of its Transition Application and cured all outstanding deficiencies as identified in the Deficiency Letter should be approved for transition to Article 4 licensure.

8) CCB hereby agrees to approve all R.O.s Transitional Applications that are recommended by OCM at the December Meeting and shall authorize each approved R.O. to commence all permitted adult-use cannabis activity beginning on the date immediately after the December Meeting, in accordance with the Cannabis Law, and adult-use cannabis rules and regulations, but without the need for further agency authorization.

9) On or before December 29, 2023, Defendants shall authorize all ROD licensees to open their first co-located adult-use dispensary in accordance with 9 NYCRR § 123.18, and subject to OCM's location inspection and any other location requirements (which shall take place no later than December 22, 2023).

10) On June 29, 2024 or as soon thereafter as practicable, Defendants shall authorize all ROD licenses to open their second and third co-located adult-use dispensary in accordance with 9 NYCRR § 123.18, and subject to OCM's location inspection and any other location requirements which shall take place no later than June 22, 2024.

11) As part of the consideration for the Parties' entering into this Stipulation, within one (1) day of the execution of this Stipulation, the Coalition shall present the Stipulation to be so-ordered by the Supreme Court. In the event the Court fails to approve this Stipulation within ten (10) days of presentation of the Stipulation to the Court, then this Stipulation shall be canceled and

deemed null and void, and the Parties shall revert to their respective positions as of the date prior to their signing this Stipulation.

12) Further, the Parties acknowledge that upon the filing of the so-ordered Stipulation in the Supreme Court, Albany County, this Action, and all claims asserted in it, are hereby dismissed with prejudice pursuant to CPLR 3217(b). The Parties waive any entitlement to attorneys' fees and costs pursuant to any court order, statute or rule.

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

13) Defendants shall extend "site protection" to the three retail locations that each R.O. intends to co-locate as identified in their Transition Application that comply with OCM's rules and regulations.

14) R.O.s may engage in premarket activities, including engagement with other Article 4 licensees, so long as they operate in accordance with the adult-use cannabis rules and regulations which, among other things, permit licensed activities to be conducted only by licensees.

15) In consideration of the terms and conditions of this Stipulation, the Coalition and its members, affiliates, subsidiaries, successors, assigns, employees, representatives, agents, officers, directors, employees, personal representatives, directors, shareholders, attorneys, administrators, fiduciaries, and assigns (collectively, "Releasing Parties"), hereby release, waive, acquit and forever discharge OCM, the Board, Chris Alexander and Tremaine Wright, each in their individual and official capacity, and the State of New York, together with their present and former agencies, authorities, commissions, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity, or any of them, or all of them (collectively, "Released Parties") from any and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, promises, variances, damages, judgments, extents, executions, claims and demands whatsoever, in law or equity, whether known or unknown, foreseen or unforeseen, claimed or not claimed, accrued or not accrued, that the Releasing Parties ever had, now have, or shall or may have in the future against some, any, or all of the Released Parties, arising from the subject of the Lawsuit, up to and including the date of this Stipulation. Under no circumstance shall this paragraph apply to any claim or cause of action that may accrue as a consequence of a breach of this Stipulation and/or to enforce the terms of this Stipulation.

16) Defendants hereby acknowledge that the Coalition is agreeing to dismiss the Lawsuit with prejudice to release the Defendants from all claims arising from the subject of the Lawsuit because Defendants have pledged to act in good faith and to approve the R.O.'s transition to RODs and RONDs on or before December 8, 2023.

17) Other than this Lawsuit, the Coalition represents that it, and/or its members, affiliates, subsidiaries, representatives, successors and/or assigns have not commenced, maintained, or prosecuted any action, charge, complaint, grievance, or proceeding of any kind that

is still pending against the Released Parties that would be subject to the release contained in the previous paragraph, on their own behalf or on behalf of any other person and/or on behalf of or as a member of any alleged class of persons, that none of the foregoing is currently pending in any court or before any administrative or investigative body or agency, and acknowledge that this representation constitutes a material inducement for Defendants to enter into this Stipulation.

18) The Parties hereby agree and acknowledge that neither the execution of this Stipulation, nor the agreement to, or statement of any terms embodied herein, shall constitute an admission or finding of liability, wrongdoing, statutory or regulatory violation or noncompliance, or misconduct of any kind by any Party, and that such execution and agreement may not be used in evidence against any Party, nor will it be cited or referred to by any Party in any action or proceeding except an action to enforce this Stipulation. In addition, notwithstanding the provisions of any paragraph herein, this Stipulation shall not bind or collaterally estop the individual Defendants, OCM, the Board, the State of New York, or their present and former agencies, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, whether in an individual or official capacity, or any of them, or all of them, in pending or future actions or proceedings in which the same or similar issues are raised, from defending any and all issues raised in said actions or proceedings, or from advancing any defenses. In any action to enforce this Stipulation in which this Stipulation is admitted into evidence or otherwise considered, this Stipulation will not constitute an admission or finding of liability, wrongdoing, statutory or regulatory violation or noncompliance, or misconduct of any kind by any Party, or a waiver of any claims or defenses any Party may assert.

19) The Whereas Clauses set forth above are incorporated herein by reference and shall be made part of this Stipulation.

20) All notices, demands, and other communications under this Stipulation shall be in writing and shall be sent via overnight carrier service or email directed as follows (or to such changed address as such Party may have fixed by notice in accordance herewith), and such notice shall be deemed given upon confirmation of delivery by overnight carrier:

<p>To the Coalition:</p> <p>Coalition For Access To Regulated & Safe Cannabis c/o Feuerstein Kulick LLP 420 Lexington Avenue, Suite 2024 New York, New York 10170 Attn: David Feuerstein, Esq. (david@dfmklaw.com) Matthew Schweber Esq. (matt@dfmklaw.com)</p>	<p>If to Defendants/Respondents:</p> <p>Office of Cannabis Management Linda Baldwin, General Counsel W. Averell Harriman State Office Building Campus, Building 9 Albany, New York 12226 Linda.Baldwin@ocm.ny.gov</p>
--	---

21) This Stipulation is made and entered into in the State of New York, and shall in all respects be interpreted, enforced, and governed by and under the laws of New York, without regard to the conflict of law rules thereof.

22) This Stipulation may be executed by facsimile or email signatures in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same valid and binding agreement of the Parties.

23) Each Party hereto shall bear its own costs, expenses and attorneys' fees in connection with the Lawsuit, and the preparation and negotiation of this Stipulation.

24) This Stipulation constitutes the entire, complete, and only agreement and understanding by and between the Parties with respect to the subject matter hereof. There are no promises, representations, undertakings or agreements, oral or written, express or implied, other than as specifically set forth herein. The Parties expressly acknowledge that they had an equal opportunity to participate in the negotiation of this Stipulation and that they have been represented by counsel of their own selection. The language in all parts of this Stipulation shall be construed according to its fair meaning and not strictly for or against any party.

25) This Stipulation may not be modified orally, but may be modified only by a writing signed by the Parties hereto.

26) This Stipulation shall be submitted, without further notice, to the Court to be "So Ordered."

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

28) With respect to Defendants only, the undersigned attorneys for the Coalition do hereby release and waive any attorneys' lien they may have on the claims asserted in the Action pursuant to any state law, statute, contract, or otherwise.

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

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

31) The R.O.s represent and warrant that they have not assigned or otherwise transferred, either in whole or in part, any interest in any claim that was or could have been asserted in this Lawsuit.

32) If the Court disapproves the Stipulation or any material part thereof, or if the Stipulation is modified or reversed in any material respect by an order or decision that is final and unappealable, then this Stipulation shall be canceled and deemed null and void, and the Parties shall revert to their respective positions as of the date prior to their signing this Stipulation.

33) Defendants agree that they shall not treat any of the members of the Coalition differently than any other registered organizations seeking to transition to Article 4 licensure on the basis of their involvement in the Lawsuit.

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Dated: November 22, 2023



FEURSTEIN KULICK, LLP
Attorneys for Plaintiffs
David Feuerstein, Esq.
Matthew Schweber, Esq.
420 Lexington Avenue, Suite 2024
New York, New York 10170

Dated: November 22, 2023



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

Dated: November 22, 2023



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

Dated: November __, 2023

LETITIA JAMES
Attorney General
State of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

By: Kelly L. Munkwitz Digitally signed by Kelly L. Munkwitz
Date: 2023.11.24 16:24:49 -05'00'
Kelly L. Munkwitz
Assistant Attorney General, of Counsel
Telephone: (518) 776-2626
Fax: (518) 915-7740 (Not for service of papers.)
Email: Kelly.Munkwitz@ag.ny.gov

Dated: Kingston, New York
November __, 2023

SO ORDERED:

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

