

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

CANNABIS IMPACT PREVENTION COALITION, LLC;
CANNABIS INDUSTRY VICTIMS SEEKING JUSTICE, LLC;
RENNE BARCHITTA; EDWIN DE LA CRUZ; ERIC R. DE LA
CRUZ; PHIL ORENSTEIN; PHILIP MCMANUS; ROBERT
CAEMMERER; RICHARD P. MCARTHUR; and RONNIE
HICKEY,

Plaintiffs,

VERIFIED COMPLAINT

-against-

Index No.

NEW YORK STATE CANNABIS CONTROL BOARD; NEW
YORK STATE OFFICE OF CANNABIS MANAGEMENT;
TREMAINE WRIGHT, CHAIRWOMAN OF THE NEW YORK
STATE CANNABIS CONTROL BOARD, IN HER OFFICIAL
CAPACITY; FELICIA A. B. REID, EXECUTIVE DIRECTOR
& ACTING EXECUTIVE DIRECTOR OF THE NEW YORK
STATE OFFICE OF CANNABIS MANAGEMENT, IN HER
OFFICIAL CAPACITY; AMANDA HILLER, ACTING TAX
COMMISSIONER OF THE STATE DEPARTMENT OF
TAXATION AND FINANCE, IN HER OFFICIAL CAPACITY;
NEW YORK SOCIAL EQUITY CANNABIS
INVESTMENT FUND, LP; DORMITORY AUTHORITY
OF THE STATE OF NEW YORK; and SOCIAL EQUITY
SERVICING CORPORATION,

Defendants.

Plaintiffs, by and through their attorneys, Tabner, Ryan & Keniry, LLP, as and for a
complaint against Defendants NEW YORK STATE CANNABIS CONTROL BOARD; NEW
YORK STATE OFFICE OF CANNABIS MANAGEMENT; TREMAINE WRIGHT,
Chairwoman of the New York State Cannabis Control Board, in her official capacity; FELICIA
A. B. REID, Executive Director & Acting Executive Director of the New York State Office of
Cannabis Management, in her official capacity; AMANDA HILLER, Acting Commissioner of
the State Department of Taxation and Finance, in her official capacity; NEW YORK SOCIAL

EQUITY CANNABIS INVESTMENTMENT FUND, LP; DORMITORY AUTHORITY OF THE STATE OF NEW YORK; SOCIAL EQUITY SERVICING CORPORATION; and NEW YORK SOCIAL EQUITY CANNABIS EQUITY INVESTMENT FUND, LP (hereinafter collectively the “Defendants”) allege:

INTRODUCTION

1. Defendants, in connection with and as a result of the legalization of marihuana under the New York State Marihuana Regulation and Taxation Act and the promulgating regulations thereunder, in their capacities as officers, employees, and/or agents of the state, in the course of their duties, have caused, are now causing, or are about to cause wrongful expenditures, misappropriations, misapplications, or other unlawful, illegal or unconstitutional disbursements of state funds or state property.

PARTIES

PLAINTIFFS

2. Petitioner Cannabis Impact Prevention Coalition, LLC (hereinafter “CIPC”) is a domestic limited liability company organized under the laws of the State of New York.

3. The mission of CIPC is to prevent the negative social, health, public safety and environmental impacts of marihuana.

4. CIPC is comprised of members who are taxpayers and residents of the State of New York.

5. Cannabis Industry Victims Seeking Justice (hereinafter “CIVSJ”) is a domestic limited liability company organized under the laws of the State of New York.

6. The CIVSJ mission is to provide advocacy services to victims of the marihuana industry.

7. As marihuana industry victims advocacy organizations, CIVSJ and CIPC have a direct and particularized interest in the implementation of federal and state law regarding marihuana in all of its forms.

8. The victims of the marihuana industry that CIPC and CIVSJ represent include, but are not limited to: families who have lost loved ones due to marihuana related mental illness, addiction, physical illness and automobile crashes; children of marihuana users; marihuana related crime and domestic violence victims; Drug Dealer Liability Act victims; employers; victims of the environmental impact of marihuana; marihuana consumers; people addicted to marihuana; medical marihuana users; people who suffer mental and physical health problems due to marihuana use such as Cannabis Induced Psychosis (“CIP”), and Cannabinoid Hyperemesis Syndrome (“CHS”) and Cannabis Use Disorder (“CUD”); property owners; crime victims of marihuana users; students who use marihuana and schools; workers and farm employees in the marihuana industry; those threatened and harassed by marihuana users and marihuana advocates; and the tax paying public; among others.

9. The interests that the organizations seek to protect are germane to their purposes and representative of the group whose rights they are asserting.

10. The CIVSJ is comprised of members who are taxpayers and residents of the State of New York.

11. Plaintiff Phil Orenstein, is a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that he has paid and is paying state income and sales taxes.

12. Plaintiff Phil Orenstein is a member of CIPC who has had devastating personal experiences with marihuana and is a former teacher in a drug prevention and motivational program in NYC public schools.

13. Plaintiff Edwin De La Cruz, is a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that he has paid and is paying state income and sales taxes.

14. Plaintiff Edwin De La Cruz is a member of CIVSJ and CIPC, and is concerned about the damage caused by his son's consumption of marihuana and has been damaged as a result.

15. Plaintiff Eric R. De La Cruz, the son of Edwin De La Cruz, a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that he has paid and is paying state income and sales taxes.

16. Plaintiff Eric R. De La Cruz is a member of CIVSJ and CIPC and has been damaged from consumption of marihuana.

17. Plaintiff Renee' Barchitta is a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that she has paid and is paying state income and sales taxes.

18. Plaintiff Renee' Barchitta is a member of CIVSJ and CIPC and is a former Delaware County (NY) STOP-DWI Educator/Coordinator, Highway Safety Representative for the New York State Governor's Traffic Safety Committee.

19. Plaintiff Philip McManus, is a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that he has paid and is paying state income and sales taxes.

20. Plaintiff Philip McManus is a member of CIVSJ and CIPC.

21. Plaintiff Robert Caemmerer, is a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that he has paid and is paying state income and sales taxes.

22. Plaintiff Robert Caemmerer is a member of CIVSJ and CIPC.

23. Plaintiff Richard P. McArthur is a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that he has paid and is paying state income and sales taxes.

24. Plaintiff Richard P. McArther is a member of CIPC and has been damaged from marihuana smoke.

25. Plaintiff Ronnie Hickey is a New York taxpayer and resident within the meaning of State Finance Law 123-a(2), in that he has paid and is paying state income and sales taxes.

26. Plaintiff Ronnie Hickey is a member of CIPC and has been damaged from marihuana smoke in her apartment building.

DEFENDANTS

27. Defendant New York State Cannabis Control Board (hereinafter “CCB”) is a government-appointed board that the Marihuana Regulation and Taxation Act (hereinafter “MRTA”) established to promulgate rules and regulations for New York's cannabis industry.

28. CCB is vested with the powers and duties under the MRTA.

29. Defendant Tremaine Wright is, and was, at all times relevant to this action the Chairwoman of CCB. As such, Defendant Tremaine Wright is an officer or employee of New York State.

30. Defendant Tremaine Wright has the powers and duties granted to her in her official capacity.

31. Defendant New York State Office of Cannabis Management (hereinafter “OCM”) is an independent office that the MRTA established within the New York State Division of Alcoholic Beverage Control.

32. Defendant Felicia A. B. Reid is, and was, at all times relevant to this action the Executive Director and Acting Executive Director of OCM. As such, Felicia A. B. Reid is an officer or employee of New York State.

33. Defendant Felicia A. B. Reid has the powers and duties granted to her in her official capacity.

34. Until on or about June 10, 2024, Defendant Christopher Alexander was an officer or employee of New York State. As such, Defendant Christopher Alexander was an officer or employee of New York State.

35. Until on or about June 10, 2024, Christopher Alexander had the powers and duties granted to him in his official capacity.

36. Upon information and belief, Christopher Alexander resigned as Executor Director of OCM at the direction of New York State Governor Kathy Hochul and/or Governor Kathy Hochul's administration.

37. The principal office of the CCB and OCM is located in New York State, City of Albany.

38. Defendant New York State Department of Taxation and Finance (hereinafter the "Department") is a state agency organized and existing under the laws of the State of New York

39. Defendant Department has its principal office located at Building 9, W.A. Harriman Campus, Albany, New York 12227.

40. Defendant Amanda Hiller is the Acting Commissioner of the Department (hereinafter the "Commissioner"). As such, Defendant Commissioner is an officer or employee of New York State.

41. Defendant Commissioner's principal office is located at Building 9, Room 205, W.A. Harriman Campus, Albany, New York 12227.

42. Defendant New York Social Equity Cannabis Investment Fund, L.P. is a Domestic Limited Partnership organized under the laws of the State of New York.

43. Upon information and belief, New York Social Equity Cannabis Investment Fund, L.P. has its principal offices in Albany, New York.

44. Defendant Dormitory Authority of the State of New York (hereinafter "DASNY") is a New York State public benefit corporation.

45. Defendant DASNY has its principal offices at 515 Broadway, Albany, New York.

46. Defendant Social Equity Servicing Corporation (hereinafter "SESC") is a New York State public benefit corporation and subsidiary of DASNY.

47. Defendant SESC has its headquarters located at 515 Broadway, Albany, New York 12207.

STATEMENT OF FACTS

NEW YORK MARIHUANA REGULATION AND TAXATION ACT

48. The New York Legislature enacted MRTA on March 31, 2021.

49. MRTA legalized cannabis products for adult-use as a matter of New York State law.

50. Under MRTA, "cannabis product" or "adult-use cannabis product" means cannabis, concentrated cannabis, and cannabis-infused products for use by a cannabis consumer (hereinafter collectively "marihuana").

51. MRTA legalized the knowing and/or intentional manufacture and/or distribution of marihuana under New York State law.

52. MRTA legalized possession with intent to manufacture, distribute, and/or dispense marihuana under New York State law.

53. MRTA authorized, directed, and instructed OCM and CCB, among other things to engage in launching New York's adult-use cannabis program.

54. MRTA established OCM as an independent agency within the Division of Alcoholic Beverage Control to regulate the cannabis marketplace.

55. OCM has exclusive jurisdiction to exercise the powers and duties provided by MRTA.

56. OCM's authority is exercised by and through its Executive Director Defendant Christopher Alexander.

57. Under MRTA, OCM implemented a regulatory framework for adult-use cannabis including, but not limited to manufacture, distribution, production, licensing, packaging, marketing, and the sale of marihuana.

58. The OCM is governed by CCB to comprehensively regulate adult-use cannabis.

59. The CCB is responsible for creating and implementing a comprehensive regulatory framework for adult-use cannabis in the State of New York.

60. CCB's authority is exercised by and through its Chair, Defendant Tremaine Wright.

61. With the exception of promulgating rules and regulations, CCB has the power to delegate any functions, powers and duties as provided for under MRTA to the Executive Director of OCM.

62. At the full meeting of CCB on March 10, 2022, and by resolution, CCB directed that OCM file with the New York Secretary of State proposed adult-use cannabis retail dispensary regulations.

63. In considering these CAURD regulations, at the full meeting of CCB on March 10, 2022, CCB was not presented with studies or written reports or other documentation in support.

64. CCB exercises the powers and performs the duties in relation to the administration of the CCB and the OCM as are necessary but not specifically vested by MRTA, including but not limited to budgetary and fiscal matters.

65. In connection with MRTA, by amendment of the New York State Finance Law, there was established in the joint custody and control of the New York State Comptroller and the New York State Commissioner of Taxation and Finance a special fund to be known as the New York State Cannabis Revenue Fund (hereinafter "NYS Cannabis Revenue Fund").

66. The NYS Cannabis Revenue Fund is administered by Defendant Commissioner in her official capacity as the Acting Tax Commissioner of the New York State Department of Taxation and Finance.

67. The NYS Cannabis Revenue Fund possesses and controls all revenues received by the New York State Department of Taxation and Finance from taxes and fees imposed on adult-use cannabis products and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

68. CCB causes all such fees to be deposited in the NYS Cannabis Revenue Fund.

69. Upon information and belief, all such fees are deposited in the NYS Cannabis Revenue Fund through a financial institution.

70. Such taxes and fees are collected from the knowing and/or intentional manufacture and/or distribution of marihuana under New York State law.

71. Such taxes and fees are collected from possession with intent to manufacture, distribute, and/or dispense marihuana under New York State law.

72. Adult-use marihuana distributors must pay tax on sales of adult-use marihuana to adult-use marihuana retailers.

73. Adult-use marihuana retailers must pay a retail tax on the adult-use marihuana sold or transferred to retail customers.

74. For sales of adult-use marihuana on or after June 1, 2024, the tax imposed is 9% of the amount charged on the sale or transfer of adult-use marihuana from the distributor to the retailer.

75. For distributors that are licensed as a micro business or a registered organization and who sell adult-use marihuana at retail, the tax is 75% of the amount charged for the sale or transfer to the retail customer.

76. For registered organizations or microbusinesses who distribute adult-use marihuana products directly to retail customers, a 9% tax rate is imposed on 75% of the amount charged for the sale or transfer of products.

77. New York State imposes and collects both a 13% excise tax (9% state and 4% local) on marihuana sales, which are paid by consumers and remitted by retailers.

78. The NYS Cannabis Revenue Fund possesses and controls all revenues received in connection with CAURD license fees in connection with the knowing and/or intentional manufacture and/or distribution of marihuana under New York State law.

79. The revenue from such fees is paid to reimburse the New York State General Fund for any funds transferred to the NYS Cannabis Revenue Fund from the New York State General Fund for the purposes of supporting expenditures authorized in connection with the Social Equity Cannabis Investment Fund, LP, among other things.

80. Upon information and belief, any such reimbursement occurs through a financial institution.

81. The moneys in the NYS Cannabis Revenue Fund have been expended, are being expended, and are about to be expended to pay the reasonable costs incurred by the OCM and CCB for implementing, administering, and enforcing MRTA.

82. The moneys in the NYS Cannabis Revenue Fund have been expended, are being expended, and are about to be expended to pay the actual and necessary costs incurred by OCM and CCB, and the New York State Urban Development Corporation, related to the administration of incubators and other assistance to CAURD qualified social and economic equity applicants including the administration, capitalization, and provision of low and zero interest loans to such applicants (State Finance Law § 99-ii[a][c]).

83. Such actual and necessary costs are be paid out of revenues received, including, but not limited to, from fees paid by CAURD applicants under MRTA.

84. Accordingly, in connection with MRTA, the NYS Cannabis Revenue Fund receives income derived, directly or indirectly, from knowing and/or intentional manufacture and/or distribution of marihuana under New York State law.

85. The NYS Cannabis Revenue Fund, uses and/or invests, directly or indirectly, part of such income, and/or the proceeds of such income, in acquisition of an interest in, or the

establishment or operation of enterprises engaged in, or the activities of which affect interstate or foreign commerce.

86. Such enterprises include individuals, partnerships, corporations, associations, other legal entities, and/or groups of individuals associated in fact although not a legal entity, including but not limited to the OCM; CCB; New York Social Equity Cannabis Investment Fund, LP; DASNY; and SESC.

87. In or around the time of the establishment of the NYS Cannabis Revenue Fund, fifty-million dollars (\$50,000,000) in state funds (hereinafter "State Funds") were appropriated to specifically effectuate the purposes of MRTA and the CAURD program.

88. Pursuant to law, such State Funds were caused to be paid, advanced, remitted, expended, appropriated, applied, and/or disbursed; are being paid, advanced, remitted, expended, appropriated, applied, and/or disbursed; and/or are about to be paid, advanced, remitted, expended, appropriated, applied, and/or disbursed for investment in the New York Social Equity Cannabis Investment Fund, LP, and its function and duties in connection with MRTA and the CAURD program.

89. Pursuant to law, such State Funds were paid, advanced, remitted, expended, appropriated, applied, and/or disbursed; are being paid, advanced, remitted, expended, appropriated, applied, and/or disbursed; and/or are about to be paid, advanced, remitted, expended, appropriated, applied, and/or disbursed to finance and assist the knowing and/or intentional manufacture and distribution of marihuana under New York State law.

90. Pursuant to law, such State Funds were paid, advanced, remitted, expended, appropriated, applied, and/or disbursed; are being paid, advanced, remitted, expended, appropriated, applied, and/or disbursed; and/or are about to be paid, advanced, remitted,

expended, appropriated, applied, and/or disbursed to finance and assist possession with intent to manufacture, distribute, and/or dispense marihuana under New York State law.

THE NY SOCIAL EQUITY CANNABIS INVESTMENT FUND

91. In or about 2022, Defendant New York Social Equity Cannabis Investment Fund, LP (hereinafter the “Fund”) was authorized by statute.

92. Prior to its authorization and thereafter, the CCB discussed this Fund and its purpose, among other things, at its board meetings.

93. In considering the justification for funding for these dispensaries, CCB was not presented with studies or written reports or other documentation concerning several issues and topics raised in these meetings.

94. Ultimately, Defendant Fund was established for the purpose of funding costs with establishing Adult-use Cannabis Retail Dispensaries under MRTA and allows the New York State to invest the State Funds to do so.

95. Accordingly, to accomplish its purpose, Defendant Fund, by and through its agents, identifies locations for retail dispensaries; negotiates and signs leases for those locations; designs, renovates, and furnishes (excluding merchandise) ready-to-operate facilities, and pays design/build teams to provide these services; subleases those facilities to social equity licensees; coordinates a suite of wraparound capacity-building services that will enhance the social equity licensees’ ability to successfully conduct business; leverages private capital so that the Fund can support all of the anticipated social equity licensees; and has licensees repay these costs over 10 years (i) at an interest rate equal to or less than the market rate of a similar loan, (ii) with terms that take into account the effects of decades of inequitable cannabis-related enforcement, and (iii) through financing that, with very few exceptions, is only conditional on receipt of a license.

96. DASNY is a limited partner of the Fund.

97. As such, Defendant DASNY is an agent of the Fund.

98. DASNY is New York State's public finance and construction authority, and operates as an independent corporate agency with governmental functions delegated to it by the State of New York, and is authorized to finance, design, construct or rehabilitate buildings for use by various public and private not-for-profit corporations.

99. As such, DASNY customarily and routinely finances, designs, and builds health and education infrastructure.

100. Defendant DASNY acts together with the Fund, OCM, and CCB to build New York's cannabis industry.

101. Defendant DASNY, in conjunction with OCM, was selected to determine the entity that would operate the Fund.

102. In June 2022, Social Equity Impact Ventures GP I, LLC was selected to operate the Fund.

103. Social Equity Impact Ventures GP I, LLC, is a Delaware limited liability company authorized to do business in the State of New York.

104. Social Equity Impact Ventures GP I, LLC is the general partner that sponsors and manages the Fund.

105. As the general partner that sponsors and manages the Fund, Social Equity Impact Ventures GP I, LLC transacts business in New York State.

106. Upon information and belief, Social Equity Impact Ventures GP I, LLC is compensated for its management of the Fund.

107. Defendant Fund possesses or will possess assets of approximately \$200,000,000.

108. Of this \$200,000,000, Defendant Fund is seeded and funded with the aforementioned \$50,000,000 in State Funds and/or State Property (hereinafter “State Funds”).

109. In June 2023, Governor Kathy Hochul stated and announced that Chicago Atlantic Admin, LLC would invest up to the remaining \$150,000,000 to the Fund.

110. Defendant Fund, by and through its agents, has paid, advanced, remitted, expended, appropriated, applied, and/or disbursed; is paying, advancing, remitting, expending, appropriating, applying, and/or disbursing; and/or is about to pay, advance, remit, expend, appropriate, apply, and/or disburse such State Funds to pay the expenses and costs of establishing Adult-use Cannabis Retail Dispensaries under MRTA.

111. The Social Equity Servicing (“SESC”) is a subsidiary of DASNY.

112. As such, Defendant SESC is an agent of DASNY.

113. SESC’s purpose is to act, on behalf of itself and/or as agent, in performing one or more duties of DASNY relating to and in providing services on behalf of the OCM, CCB, and/or the Fund.

114. SESC manages the day-to-day real estate and construction-related operations of the Fund.

115. SESC’s services, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, generally include, but are not limited to: entering into leases, subleases or other arrangements with regard to such property and acting in a manner consistent with the rights, obligations or responsibility of the owner, landlord or tenant of such property pursuant to such lease or sublease arrangements; furnishing construction and construction management services for qualified dispensaries; servicing non-recourse loan

payments; furnishing property management services; providing general operational services; and other related services.

116. In particular, SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, identifies, acquires, designs, constructs, and outfits locations for cannabis dispensaries to be operated by individuals who have received a CAURD license issued by OCM under 9 NYCRR 116.

117. Defendant DASNY has also engaged CBRE, a global commercial real estate services and investment firm, to find and vet potential locations for leasing by Defendant Fund.

118. Once a location has been identified and vetted and confirmed to meet OCM's and local zoning requirements, SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, negotiates with each location's landlord.

119. While negotiations are ongoing, the Fund expends the State Funds to secure property insurance and to pay design-build teams to assess the space for build-out.

120. Such design-build teams consist of domestic and foreign business organizations.

121. After a successful evaluation by the design-build team, and once insurance is secured and lease negotiations have been finalized, the Fund and the landlord execute the lease for the RCD.

122. Upon lease signing, SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, causes construction to commence.

123. OCM then matches licensees with locations and provides information to the licensee regarding the location, including information about the location, information and/or

renderings of the design, the terms of the lease, and the estimated cost of the build out, which operates as an offer to sublease the location from the Fund.

124. If a licensee accepts the offer, the licensee executes a sublease agreement with the Fund and the licensee is required to sign a repayment agreement with the Fund.

125. The Fund leases each location from the location's landlord and then subleases it to each licensee. The Fund serves as sublandlord to the RCDs.

126. The licensee pays rent to the Fund and the Fund pays rent to the dispensary's ultimate landlord. The rent charged by the Fund is dollar-for-dollar the rent paid to the ultimate landlord.

127. In particular, SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, provides premises/locations for the Fund to knowingly open, lease, rent, maintain, and/or use property for the manufacture, storage, and/or distribution of marihuana.

128. In particular, SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, provides premises/locations for DASNY to knowingly open, lease, rent, maintain, and/or use property for the manufacture, storage, and/or distribution of marihuana.

129. In particular, SESC itself knowingly opens, leases, rents, maintains, and/or uses property for the manufacture, storage, and/or distribution of marihuana.

130. In particular, SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, provides premises/locations for CAURD licensees to knowingly and/or intentionally manufacture, distribute, store and/or dispense marihuana.

131. In particular, SESC on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, provides premises/locations for CAURD licensees to possess with intent to manufacture, distribute, and/or dispense marihuana.

132. Further, and in particular, SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, undertakes to provide non-recourse loans to social equity licensees operating Conditional Adult-Use Retail Dispensaries (hereinafter "RCDs") licensed by the OCM and CCB.

133. Such loans are disbursed by the Fund.

134. Such loans may be used for construction, renovations, and equipment purchasing associated with establishing or developing RCDs, among other things.

135. The Fund, by and through its agents, in identifying locations for retail dispensaries; negotiating and signing leases for those locations; designing, renovating, and furnishing (excluding merchandise) ready-to-operate facilities, paying design/build teams to provide these services; and subleasing those facilities to social equity licensees, among other things, has incurred, is incurring, and is about to incur costs. These are upfront capital costs associated with opening an RCD.

136. The Fund was billed, is billed, and is about to be billed directly for such upfront capital costs.

137. The Fund expends State Funds and the capital it has raised to pay these expenses.

138. The Fund identifies and pays for all of these major upfront capital costs associated with opening an RCD.

139. In connection with the actions and services undertaken by SESC, on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the

Fund, the Fund has caused, is now causing, or is about to cause expenditures the State Funds appropriated in connection with MRTA to pays its pro rata share of the reasonable and properly incurred costs and expenses of the Fund, including but not limited to: agency, loan servicing, construction and property management and other fees payable to DASNY; and fees, costs and expenses incurred by DASNY in connection with the implementation of the MRTA, including a servicing fee payable to DASNY.

140. In expending such State Funds, the Fund promotes and facilitates CAURD licensees to obtain, possess, and/or otherwise have access to the assets of the Fund, directly or indirectly, to acquire sufficient land, buildings and equipment to properly conduct the commercial activity for which they have been granted a license by the CCB.

141. Thus, SESC on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, does and will finance the establishment and development of premises/locations for the purpose of the knowing and/or intentional manufacture and distribution of marihuana.

142. Thus, SESC on behalf of itself and/or as agent to DASNY in providing services on behalf of the OCM, CCB, and/or the Fund, together with DASNY, does and will finance the establishment and development of premises/locations for the purpose of possessing with intent to manufacture, distribute, and/or dispense marihuana.

143. In using such State Funds, the Fund finances the capital costs, including closely related ancillary and administrative costs, associated with establishing and developing RCDs for operation by social equity licensees.

144. As a result of the expenditure of such State Funds, participating CAURD licensees receive a turn-key cannabis dispensary in a retail location, with the licensee obligated to repay the Fund's investment over time.

145. Upon information and belief, no other business or industry receives this kind of state funding.

146. As of December 30, 2023, the Fund has executed twenty-four (24) leases for cannabis dispensaries, sixteen (16) locations of which were matched to CAURD licensees and eight (8) locations of which are currently undergoing the OCM matching process.

147. As of the date December 30, 2023, the Fund has entered into loan and sublease agreements with eight (8) of the CAURD licensees in matched locations.

148. To date, this process has continued and upon information and belief, more leases, subleases and loans will be executed and funded.

MARIHUANA REMAINS ILLEGAL UNDER FEDERAL LAW

149. The 1970 Controlled Substances Act, Title 21, United States Code, Section 801 *et seq.* (hereinafter the "CSA") prohibits the unauthorized production, distribution, and possession of controlled substances in the United States.

150. The main objectives of the CSA are to conquer drug abuse and control the legitimate and illegitimate commerce of controlled substances.

151. To effectuate these goals, the United States Congress created a closed regulatory system under which it remains unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.

152. Pursuant to the CSA, marihuana and tetrahydrocannabinols (hereinafter "THC") are Schedule I controlled substance (21 USC 812).

153. Pursuant to the CSA, except as authorized by Title 21 of the United States Code, it is unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance (21 USC 841[a]).

154. Pursuant to Title 18 of the United States Code, whoever aids, abets, counsels, commands, induces or procures offense against the United States, is punishable as a principal (18 USC 2[a]) and/or whoever willfully causes an act to be done, which if directly performed by him or her or another would be an offense against the United States, is punishable as a principal (18 USC 2[b]).

155. Pursuant to the CSA, any person who attempts or conspires to commit any offense defined in the CSA shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy (21 USC 846 [Attempt and conspiracy]).

156. In violation of 21 USC 841(a) and 18 USC 2(a) and (b), the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property to aid, abet, counsel, command, induce, and/or procure the knowing and/or intentional manufacture and distribution of marihuana.

157. In violation of 21 USC 841(a) and 18 USC 2(a) and (b), the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property to aid, abet, counsel, command, induce, and/or procure possession with intent to manufacture, distribute, or dispense, marihuana.

158. The actions of the Defendants to pay, advance, remit, expend, appropriate, apply, and/or disburse state funds to finance and assist and thereby aid, abet, counsel, command, induce, and/or procure in the knowing and/or intentional manufacture and/or distribution of marihuana, including derivatives, foods, drugs, cosmetics, and devices containing marihuana and/or THC is unlawful, illegal or unconstitutional and subject to injunctive and declaratory relief under New York State Finance Law 123.

159. The actions of the Defendants to pay, advance, remit, expend, appropriate, apply, and/or disburse state funds to finance and assist and thereby aid, abet, counsel, command, induce, and/or procure in the possession with intent to manufacture, distribute, and/or dispense marihuana under New York State law is unlawful, illegal, and/or unconstitutional and subject to injunctive and declaratory relief under New York State Finance Law 123.

160. Pursuant to the CSA, it is unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances (21 U.S.C. 856 [Maintaining drug-involved premises]).

161. In violation of 21 USC 856, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of marihuana.

162. Pursuant to the CSA, it is unlawful to manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or

without compensation, places for the purpose of unlawfully manufacturing, storing, distributing, or using marihuana (21 USC 856[a][2] [Maintaining drug-involved premises]).

163. In violation of 21 USC 856, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property to manage or control places, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and to knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, places for the purpose of unlawfully manufacturing, storing, distributing, or using marihuana.

164. Pursuant to the CSA, it is unlawful for any person who has received any income derived, directly or indirectly, from a violation of the CSA to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise (meaning any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity) which is engaged in, or the activities of which affect interstate or foreign commerce . . .” (21 USC 854[a]).

165. In violation of 21 USC 854, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property to receive income derived, directly or indirectly, from violations of the CSA and have to used or invested, are using or investing, and/or are about to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the

establishment or operation of, enterprises engaged in, or the activities of which affect interstate or foreign commerce.

166. In violation of 21 USC 846, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property and thereby have attempted and conspired to commit offenses as defined in the CSA.

167. Pursuant to Title 18 of the United States Code, whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both (18 USC 1956[a]).

168. In violation of 18 USC 1956, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property, knowing that the funds or property involved in financial transactions represents the proceeds of some form of unlawful activity, and have conducted or attempted, are conducting or attempting, and are about to conduct and attempt to conduct such financial transactions which in fact involve the proceeds of specified unlawful activity, including but not limited to violations of the CSA, with the intent to promote the carrying on of specified unlawful activity, including but not limited to violations of the CSA.

169. In violation of 18 USC 1956, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property, knowing that the funds or property involved in financial transactions represents the proceeds of some form of unlawful activity, and have conducted or attempted, are conducting or attempting, and are about to conduct and attempt to conduct such financial transactions, through financial institutions, and that affect interstate commerce, which in fact involve the proceeds of specified unlawful activity, including but not limited to violations of the CSA, with the intent to promote the carrying on of specified unlawful activity, including but not limited to violations of the CSA.

170. Pursuant to Title 18 of the United States Code, whoever, in the United States, knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished in the form of a fine under Title 18 of the United States Code, or imprisonment for not more than ten years or both. (18 USC 1957[a], [b]).

171. In violation of 18 USC 1957, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property, and thereby have knowingly engaged or attempted to engage, are engaged or attempting to engage, and/or are about to engage or attempt to engage in a monetary transactions in criminally derived property of a value greater than \$10,000 that is derived from specified unlawful activity, including but not limited to violations of the CSA.

172. In violation of 18 USC 1957, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property, and thereby have knowingly engaged or attempted to engage, are engaged or attempting to engage, and/or are about to engage or attempt to engage in a monetary transactions, through financial institutions, and that affect interstate commerce, in criminally derived property of a value greater than \$10,000 that is derived from specified unlawful activity, including but not limited to violations of the CSA.

173. The United States Constitution declares that the United States Constitution and all United States' laws "shall be the supreme Law of the Land" (U.S. Const. Art. VI, para. 2).

174. Where there is a positive conflict between federal and state law, the Supremacy Clause of the U.S. Constitution unambiguously provides that federal law shall prevail and control.

175. Under MRTA, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property, in violation of federal laws and as applied, directly conflicts with, violates, and otherwise stands as an obstacle to compliance with and the enforcement of federal laws, including Congress's mandate that production, possession, and distribution of marihuana, be prohibited.

176. As applied, under MRTA, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property, in violation of federal laws and as applied, directly conflicts with, violates, and

otherwise stands as an obstacle to compliance with and the enforcement of federal laws, including Congress's mandate that production, possession, and distribution of marihuana, be prohibited.

177. The 1961 Single Convention on Narcotic Drugs (hereinafter the "Single Convention") requires signatories to prohibit the use of cannabis other than for medical and scientific purposes within their territories.

178. The Single Convention requires signatories to prohibit the manufacture and trade of cannabis within their territories.

179. Such treaties, when ratified by the United States Senate, are the supreme law of the United States.

180. The United States is a signatory to the Single Convention, which was ratified by the United States Senate and entered into force on June 24, 1967.

181. In violation of the Single Convention, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property to promote the recreational use of marihuana in New York State.

182. As applied, in violation of the Single Convention, the Defendants, in the course of their duties, have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property to promote the recreational use of marihuana in New York State.

183. New York Finance Law 123-b(1), provides and states that Plaintiffs, as citizen taxpayers, whether or not they may be affected or specially aggrieved by the actions of the Defendants have standing and may maintain an action for equitable or declaratory relief, or both,

against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a "wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property."

184. The actions of the Defendants to pay and spend state funds to finance marihuana manufacture and distribution in violation of the CSA and to open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of marihuana in further violation of the CSA are unlawful, wrongful expenditures and illegal under federal law and thus are illegal under the State Finance Law 123 and subject to equitable and declaratory relief.

185. As applied, the actions of the Defendants to pay and spend state funds to finance marihuana manufacture and distribution in violation of the CSA and to open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of marihuana in further violation of the CSA are unlawful, wrongful expenditures and illegal under federal law and thus are illegal under the State Finance Law 123 and subject to equitable and declaratory relief.

186. As a result of the foregoing, the Defendants in the course of their duties have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, or and other illegal or unconstitutional disbursements of state funds (State Finance Law 123-b[1]) to cover capital costs associated with establishing Conditional Adult-use Cannabis Retail Dispensaries for operation by social equity licensees duly licensed pursuant to article two of the cannabis law, which includes all costs, including closely related ancillary costs, related to the leasing, planning, design, construction, reconstruction, rehabilitation, improvement, furnishing, and equipping of such adult-use cannabis retail dispensaries, to the extent such work has been and will continue to be undertaken or costs for such work incurred and continue to be incurred by: (i) the OCM and the CCB (ii) the DASNY, or any subsidiary thereof, under

agreement with the OCM and the CCB, or with the private debt or equity fund formed pursuant to subdivision thirty-two of section one thousand six hundred seventy-eight of the Public Authorities Law, or (iii) the private debt or equity fund formed pursuant to subdivision thirty-two of section one thousand six hundred seventy-eight of the Public Authorities Law (State Finance Law99-ii[3][d]).

187. Plaintiffs having established their taxpayer status, are harmed and damaged and claim that by money laundering, financing and other actions by Defendants and their agents of an illegal activity imperil public interests by conflicting with and violating federal law and are a usurpation of powers not granted under the United States Constitution.

188. Plaintiffs have specifically identified wrongful expenditures and continuing wrongful expenditures of State funds by Defendants to bring them within the Finance Law 123-b and there is a sufficient nexus to New York State fiscal activities for a lawsuit under section Finance Law 123-b. The challenged expenditures are identifiable State funds.

**AS AND FOR A FIRST CAUSE OF ACTION FOR A PERMANENT INJUNCTION
PURSUANT TO NEW YORK STATE FINANCE LAW 123-B**

189. Plaintiffs repeat and reallege each and every allegation contained in paragraphs “1” through “188” herein with the same force and effect as if set forth herein at length.

190. State Finance Law § 123-b provides, notwithstanding any inconsistent provision of law, the plaintiffs, as citizen taxpayers, whether or not they are or may be affected or specially aggrieved by the activities herein referred to, may maintain an action for equitable relief.

191. A permanent injunction is equitable relief.

192. As set forth herein, the Defendants are officers or employees of New York State who in the course of their duties have caused, are now causing, and/or are about to cause

wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property.

193. A valid claim for a permanent injunction may exist where there is both irreparable harm and no adequate legal remedy.

194. Plaintiffs are suffering irreparable harms as a result of Defendants, who are officers or employees of New York State, who in the course of their duties have caused, are now causing, and/or are about to cause wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property.

195. Plaintiffs' irreparable harms are not compensable by money damages as such damages are not available personally to Plaintiffs (State Finance Law § 123-e).

196. Plaintiffs have no adequate legal remedy to enjoin such wrongful expenditures misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property the Defendants have caused, are now causing, and/or are about to cause.

**AS AND FOR A SECOND CAUSE OF ACTION FOR A DECLARATORY JUDGMENT
PURSUANT TO NEW YORK STATE FINANCE LAW 123-b**

197. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "196" herein with the same force and effect as if set forth herein at length.

198. State Finance Law § 123-b provides, notwithstanding any inconsistent provision of law, the plaintiffs, as citizen taxpayers, whether or not they are or may be affected or specially aggrieved by the activities herein referred to, may maintain an action for declaratory relief.

199. There exists a bona fide justiciable controversy between the parties in that the Defendants' wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property are imminent and ongoing in

violation of federal law and as such constitute a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have practical effect.

200. This court must declare the rights and other legal relations of the parties to clarify and stabilize the present and prospective obligations of Defendants in their expenditures of state funds and state property and will have immediate and practical effect on such conduct.

201. If this court does not declare the rights and other legal relations of the parties, the rights of the plaintiffs shall be affected and further wrongful expenditures, misappropriations, misapplications, and/or other illegal or unconstitutional disbursements of state funds or state property shall occur.

202. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs demand judgment:

(a) Enjoining the expenditure of State Funds to cover capital costs associated with establishing Conditional Adult-use Cannabis Retail Dispensaries (CAURD) for operation by social equity licensees duly licensed pursuant to article two of the New York State Cannabis Law, including all costs, including closely related ancillary costs, related to the leasing, planning, design, construction, reconstruction, rehabilitation, improvement, furnishing, and equipping of such adult-use cannabis retail dispensaries (RCDs), to the extent such work has been undertaken or costs for such work incurred by: (i) the Office of Cannabis Management and the Cannabis Control Board, (ii) the Dormitory Authority of the State of New York, or any subsidiary thereof, under agreement with the Office of Cannabis Management and the Cannabis Control Board, or with the private debt or equity fund formed pursuant to subdivision thirty-two of section one thousand six hundred seventy-eight of the public authorities law, or (iii) the private debt or equity fund formed pursuant to subdivision thirty-two of section one thousand six hundred

seventy-eight of the public authorities law (State Finance Law 99-ii[3][d]) as unlawful, wrongful expenditures, misappropriations, misapplications, or any other illegal or unconstitutional disbursements of state funds and/or state property in violation federal laws, including the federal Controlled Substances Act; Title 18 of the United State Code; the United State Constitution; and the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961; together with the costs and disbursements of the action, including a reasonable sum to reimburse Plaintiffs for costs and expenses, including attorney fees (State Finance Law § 123-g);

(b) Declaring that the expenditure of State Funds to cover capital costs associated with establishing Conditional Adult-use Cannabis Retail Dispensaries (CAURD) for operation by social equity licensees duly licensed pursuant to article two of the New York State Cannabis Law, including all costs, including closely related ancillary costs, related to the leasing, planning, design, construction, reconstruction, rehabilitation, improvement, furnishing, and equipping of such adult-use cannabis retail dispensaries (RCDs), to the extent such work has been undertaken or costs for such work incurred by: (i) the Office of Cannabis Management and the Cannabis Control Board, (ii) the Dormitory Authority of the State of New York, and/or any subsidiary thereof, under agreement with the office of cannabis management and the cannabis control board, or with the private debt or equity fund formed pursuant to subdivision thirty-two of section one thousand six hundred seventy-eight of the public authorities law, or (iii) the private debt or equity fund formed pursuant to subdivision thirty-two of section one thousand six hundred seventy-eight of the public authorities law (State Finance Law 99-ii[3][d]) as unlawful, wrongful expenditures, misappropriations, misapplications, and/or illegal or unconstitutional disbursements of state funds and/or state property in violation of federal laws, including the

federal Controlled Substances Act; Title 18 of the United State Code; the United State Constitution; and the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961; together with the costs and disbursements of the action, including a reasonable sum to reimburse Plaintiffs for costs and expenses, including attorney fees (State Finance Law § 123-g); and

(c) For any such other and further relief as the Court deems just and proper.

Dated: July 29, 2024
Albany, New York.

Yours, etc.,



William J. Keniry, Esq.

TABNER, RYAN & KENIRY, LLP

Attorneys for Plaintiffs

18 Corporate Woods Boulevard, Suite 8

Albany, New York 12211


Telephone: (518) 465-9500

VERIFICATION

William J. Keniry, Esq., being duly sworn, deposes and states that deponent is a member of the law firm of Tabner, Ryan & Keniry, LLP, the attorneys of record for the Plaintiffs, in the within action; that deponent has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to deponents own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by the Plaintiffs, inasmuch as the Plaintiffs, are not presently located within the County in which your deponent maintains an office, and such verification is based upon investigations, review of documents, conversations with the Plaintiffs, and a review of the law office file, among other things.


William J. Keniry, Esq.

Sworn before me this 29th day
of July 2024.


Notary Public

MICHELE MARIE WICKS
Notary Public, State of New York
Qualified in Schenectady Co., No. 01W16319119
Commission Expires: 02-09-2027