
In the Matter of the Claim of:

Jeffrey Jensen, Kenneth Gay,
Christian Kernkamp,
and Alex Cherney

NOTICE OF CLAIM

vs.

New York State Office of Cannabis
Management

TO: Office of the Chief Clerk
New York State Court of Claims
Justice Building, P.O. Box 7344
Albany, NY 12224

AND: Letitia James
Office of New York State Attorney General
The Capitol
Albany, NY 12224-0341

1. Name and post office address of claimants:

- a. Jeffrey Jensen, pro se
9903 Santa Monica Blvd. #890
Beverly Hills, CA 90212
jeff@jensen2.com
(310) 909-7043
- b. Kenneth Gay, pro se
20462 Chippewa Trail
Battle Creek, 49014
gusmisterman@gmail.com
- c. Christian Kernkamp, pro se
1801 Century Park East, 24th Floor
Los Angeles, CA 90067
ck@kernkamplaw.com
(213) 214-3030
- d. Alex Cherney, pro se
81 20th St. S, Suite A
Battle Creek, MI 49015
cherneyinc@gmail.com

2. Nature of Claim:

This is a breach of contract and torts case against the New York State Office of Cannabis Management (“OCM”). Variscite NY One, Inc. (“Variscite”) entered a settlement agreement with New York State Office of Cannabis Management and Chris Alexander in his official capacity as Executive on June 1, 2023.

Under the settlement agreement, OCM was to award Variscite “shall be awarded a general (not social equity/CAURD) adult use retail dispensary license in the first group of such licenses to be awarded (see Cannabis Law § 72).” See *Variscite NY One, Inc. v. State of New York, et. al*, 22-CV-1013 (N.D. N.Y.), docket #63.

Variscite’s owners, Jeffrey Jensen, Christian Kernkamp, Alex Cherney, and Kenneth Gay, reached an agreement to sell Variscite’s shares to a third-party purchaser (“Purchaser”) for \$1.025 million. The Purchaser intended to locate Variscite’s retail store at 403 E Sandford Blvd, Mount Vernon, New York 10550.

When OCM granted a provisional license to Variscite, OCM did not open the New York Business Express (“NYBE”) portal to allow Variscite to enter its proposed business location. OCM failed to open the NYBE portal in error, as the portal should have been open for Variscite by the time the provisional license was granted. Thus, Variscite had no choice but to email its proposed location to OCM. OCM later opened the NYBE portal and Variscite entered its proposed business location. Variscite submitted all required proof of control of the location and all other required documents.

OCM denied Variscite’s business location because another applicant submitted a proposed business location within the 2,000 foot buffer zone.

On information and belief, the other applicant submitted its proposed business location after Variscite submitted its proposed location to OCM by email. If OCM had opened the NYBE portal at the appropriate time, Variscite would have been first to reserve its location and the other applicant would have been buffered out.

Because OCM denied Purchaser’s proposed location, Purchaser would not complete the transaction for \$1.025 million. Variscite’s owners mitigated their damages by selling the shares of Variscite for \$650,000.

Thus, OCM harmed Variscite’s owners by causing them to sell the shares of Variscite for a reduced amount. As part of the sale, all existing causes of action of Variscite were assigned to Jeffrey Jensen, Kenneth Gay, Kernkamp Law, APC, and Cherney Realty Advisors, LLC. Kernkamp Law, APC further assigned its rights to Christian Kernkamp and Cherney Realty Advisors, LLC further assigned its rights to Alex Cherney.

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3. Time, Place and Manner Giving Rise to the Claim:

- On September 28, 2024, Variscite sent by certified mail to the City Clerk for Mount Vernon, New York a Notification to Municipality, Form OCM-06009 to identify the Sandford location.
- On October 1, 2024, Variscite emailed OCM to notify OCM that Variscite had not received a license and ask OCM to unlock the New York Business Express portal so Variscite could submit its location for proximity protection.
- On October 14, 2024, Variscite again emailed OCM to notify OCM that Variscite had not received a license and ask OCM to unlock the New York Business Express portal so Variscite could submit its location for proximity protection
- On October 21, 2024, OCM emailed Variscite notice that Variscite had been granted a provisional license. OCM did not, however, unlock the portal so that Variscite could enter the Sandford address for proximity protection.
- On November 13, 2024, Variscite again emailed OCM to notify it that the New York Business Express portal still was not unlocked. Variscite attached the lease for the Sandford address and again asked OCM for proximity protection.
- On November 21, 2024, OCM emailed Variscite that the Sandford location did not qualify because another applicant was within the proximity buffer zone.
- As of November 27, 2024, the New York Business Express portal still was not unlocked. Variscite has screenshots of the New York Business Express portal taken on November 27, 2024 that shows the portal was not unlocked.
- On November 27, 2024, Stephanie Schuman contacted OCM on behalf of the prospective purchaser of Variscite notifying OCM that OCM's delaying in permitting Variscite to apply for site protection violated the settlement agreement between Variscite and OCM.
- At some point after November 27, 2024, OCM opened the New York Business Express portal and Variscite entered the Sandford address.
- On December 1, 2024, OCM emailed Variscite notice that the Sandford address did not qualify because another applicant requested proximity protection within the buffer zone.
- For more than a month, Variscite and the Purchaser's counsel attempted to convince OCM to approve Variscite's proposed location.
- On December 30, 2024, Jeffrey Jensen wrote to Thomas Donahue, Acting General Counsel of OCM, to notify OCM that Variscite would lose the sale to Purchaser if OCM did not approve Variscite's proposed location.
- Mr. Donahue did not respond to Mr. Jensen's letter.
- On January 21, 2025, Mr. Jensen wrote to Chelsea Davis of the New York Governor's office explaining the breach of contract and notifying Ms. Davis that Variscite had

found an alternate purchaser, but the sale price would be \$375,000 lower and Variscite/its owners would seek to recover the loss from the State of New York/OCM.

- On January 24, 2025, Mr. Jensen; Kenneth Gay; Kernkamp Law, APC; and Cherney Realty Advisors, LLC sold their shares in Variscite for a collective \$650,000.

4. These Claims Accrued On:

The claims accrued no earlier than December 1, 2024 when OCM notified Variscite that it did not qualify for its proposed business location. The claims may have accrued later, as Variscite/its owners attempted to resolve the issue with OCM for the following month.

5. Items of Damage:

Jeffrey Jensen, Christian Kernkamp, Alex Cherney, and Kenneth Gay sold their shares for a collective \$650,000 rather than \$1.025 million. Thus, they were damaged \$375,000.

DEMAND IS HEREBY MADE for payment of the aforesaid claim.

PLEASE TAKE FURTHER NOTICE that if OCM fails to pay the claimed damages, Claimants intends to commence an action against OCM to recover the damages, with interest, costs and attorneys' fees.

THIS NOTICE IS VERIFIED on the attached form provided by New York State Court of Claims.

Dated: January 31, 2025


Jeffrey M. Jensen
9903 Santa Monica Blvd.
Ste. 890
Beverly Hills, CA
90212
Tel: (310) 909-7043
jeff@jensen2.com

5. Identify the items of damage or injuries claimed to have been sustained:

6. (Check appropriate box):

This Claim is served and filed within **90 days of accrual**.

OR



A Notice of Intention to File a Claim was served on _____, which was within 90 days of accrual.

OR

This is a claim by an incarcerated person to recover damages for injury to or loss of personal property and it is served and filed within **120 days of the exhaustion of claimant's administrative remedies**.

By reason of the foregoing, Claimant was damaged in the amount of \$ _____, and Claimant demands judgment against the Defendant(s) for said amount.


Claimant

VERIFICATION

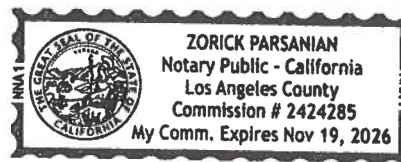
California
STATE OF NEW YORK) ss:
COUNTY OF Los Angeles)

JEFFREY M. JENSEN, being duly sworn, deposes and says that deponent is the Claimant in the within action; that deponent has read the foregoing Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.

Sworn to before me this 31st day
of JANUARY, 2025.


Notary Public, State of New York

California



SERVICE AND FILING INSTRUCTIONS

You must serve a copy of the claim in accordance with Court of Claims Act section 11(a) and you must file the original and two copies, with proof of service, and the filing fee of \$50.00 or an application for waiver or reduction of the filing fee, with the Clerk of the Court of Claims.

FAILURE TO EFFECT PROPER AND TIMELY SERVICE AND FILING MAY RESULT IN DISMISSAL OF YOUR CLAIM

New York State Court of Claims
Justice Building, P.O. Box 7344
Albany, New York 12224
(518) 432-3411