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| SUPREME COURT OF THE STATE OF NEW YORK  COUNTY OF NEW YORK |  |
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| ACTUALIZE DISPENSARY INC., ASTRO MANAGEMENT, INC., L.O.R.D.S. LLC, and R&R REMEDIES LLC,  Petitioners,  For a Judgment pursuant to Article 78 of the  New York Civil Practice Law and Rules  -against-  NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT, NEW YORK STATE CANNABIS CONTROL BOARD, TREMAINE WRIGHT, in their official capacity as Chair of the New York State Cannabis Control Board, and FELICIA A.B. REID, in their official capacity as Acting Executive Director of the New York State Office of Cannabis Management,  Respondents. | **VERIFIED PETITION** |
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Petitioners Actualize Dispensary Inc. (“Actualize”), Astro Management, Inc. (“Astro”), L.O.R.D.S. LLC (“LORDS”), and R&R Remedies LLC (“R&R”) (collectively, “Petitioners”), by their attorneys, Santamarina & Associates, P.C., as and for their Verified Petition for a Judgment pursuant to Article 78 of the New York Civil Practice Law and Rules against Respondents New York State Office of Cannabis Management (“OCM”), New York State Cannabis Control Board (“CCB”), Tremaine Wright, in their official capacity as Chair of the New York State Cannabis Control Board (“Chairwoman Wright”), and Felicia A.B. Reid, in their official capacity as Acting Executive Director of the New York State Office of Cannabis Management (collectively, “Respondents”), allege and set forth as follows:

**INTRODUCTION**

1. Petitioners bring this proceeding under Article 78 of the CPLR to annul or vacate Respondents’ approval of four retail cannabis dispensary locations, each within 1,000 feet of Petitioners’ respective “proximity protected” dispensaries, on the grounds that such determinations were arbitrary, capricious, an abuse of discretion, and/or in violation of lawful procedure, and on the grounds that they were not supported by substantial evidence and were in excess of Respondents’ jurisdiction. Specifically, Petitioners challenge Respondents’ approval of (a) Resolution 2024-105, dated October 10, 2024, a copy of which is annexed hereto as **Exhibit A**, which granted an application by Taozen LLC (Application No. OCMCAURD-2022-000090) (“Taozen”) to operate a retail cannabis dispensary at 52 West 27th Street, New York, New York and (b) Resolution No. 2024-110, dated November 12, 2024, a copy of which is annexed hereto as **Exhibit B**, to the extent it (i) granted an application by Leafy NYC II LLC (Application No. OCMRETL-2023-000951) (“Leafy”) to operate a retail cannabis dispensary at 245 West 14th Street, New York, New York, (ii) granted an application by Buzzy NY, LLC (Application No. OCMRETL-2023-001459) (“Buzzy”) to operate a retail cannabis dispensary at 137 Court St, Brooklyn, New York,and (iii) granted an application by At the Factory, LLC (Application No. OCMRETL-2023-001225) (“ATF”) to operate a retail cannabis dispensary at 424 Troutman St, Brooklyn, New York.
2. Petitioners also seek to preserve the status quo by enjoining Respondents from, *inter alia*, issuing any further licenses or approvals to Taozen, Leafy, Buzzy, or ATF (collectively, “Applicants”) relating to their respective approved locations pending the resolution of this proceeding.
3. As will be demonstrated more fully below, through identical emails issued in January of 2024, the OCM notified all four Petitioners that their proposed dispensary locations had been approved because each met “all distance and proximity requirements”; none of the Petitioners’ proposed locations were situated within 1000 feet of any other licensed dispensary. Significantly, the OCM’s email notices to the Petitioners included the following promise:

Your proposed location is receiving proximity protection from other applicants or licensees now or hereafter proposing to locate their cannabis dispensaries closer to your CUARD than the minimum distance required between licensed… retail dispensaries [1000 feet] pursuant to Part 119 of Title 9 of New York Codes Rules, and Regulations (9 NYCRR).”

[underlining supplied]

Petitioners **relied** on **OCM’s promise not to approve applications for proposed locations within 1000 feet of their own approved ones.** Petitioners thereafter sacrificed months of their lives and exhausted more resources, in many cases, than they even possessed to develop their “proximity protected” shops in anticipation of receiving final approval from the OCM to open for business. Imagine their shock and dismay when, after ten or eleven months of such arduous and financially draining work they discovered that OCM’s promise was an empty one; Petitioners’ shops were not proximity protected at all from “other applicants …proposing to locate their cannabis dispensaries” within 1000 feet of Petitioners’ already OCM-approved and protected locations. The arbitrary, capricious and legally unfounded manner in which the new dispensaries were granted location approval by the OCM is the height of government overreach and unfairness to Petitioners and others similarly situated who suffered from the OCM’s callous disregard of its own statutory obligations.

**PARTIES**

1. Actualize is a domestic business corporation with its principal place of business address at 104 7th Avenue, New York, New York.
2. Astro is a domestic business corporation with its principal place of business address at 292 Atlantic Avenue, Brooklyn, New York.
3. LORDS is a domestic limited liability company with its principal place of business address at 846 6th Avenue, New York, New York.
4. R&R is a domestic limited liability company with its principal place of business address at 21 Gardner Ave, Brooklyn, New York.
5. Upon information and belief, the OCM is a New York administrative agency established pursuant to the Marijuana Regulation and Taxation Act (MRTA), with an office at 1220 Washington Avenue, Albany, New York.
6. Upon information and belief, the CCB is the approval and oversight body of the OCM and maintains an office at 1220 Washington Avenue, Albany, New York. Its responsibilities include, *inter alia*, issuing or refusing to issue licenses to adult-use cannabis businesses and promulgating rules and regulations governing New York’s cannabis industry.
7. Upon information and belief, Chairwoman Wright is the chairwoman of the CCB and is named herein in her official capacity.
8. Upon information and belief, Felicia A.B. Reid is the interim executive director of the OCM and is named herein in her official capacity.

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this matter pursuant to CPLR Article 78 and Section 135 of the Cannabis Law.
2. Venue is proper in this Court pursuant to CPLR 506(b) and CPLR 7804(b).

**FACTS**

**Relevant Law and Regulations**

1. Pursuant to the MRTA, the CCB is authorized to adopt regulations governing the issuance of adult-use cannabis licenses, including adult-use retail dispensary licenses.
2. In accordance with the MRTA, the CCB promulgated Section 119.4 of Title 9 of the New York Codes, Rules and Regulations (9 NYCRR), which provides proximity restrictions for adult-use cannabis retail dispensaries.
3. For municipalities with populations of 20,000 or more, 9 NYCRR § 119.4(a) prohibits the issuance of a retail dispensary license for any premises that is located within a 1,000-foot radius of another premises for which a retail dispensary license has been already issued.
4. This 1,000-foot buffer surrounding a retail dispensary’s premises provides “proximity protection” against other applicants or licensees seeking proposed dispensary locations.
5. The OCM maintains a publicly accessible map, known as the “proximity protected locations map,” which identifies licensed cannabis retail dispensaries that are receiving proximity protection under 9 NYCRR § 119.4(a). Each and every licensee granted proximity protection by the OCM and CCB, appears on the interactive map, which is updated every two weeks.
6. Cannabis retail licensees like Petitioners rely on these proximity protections and the OCM’s proximity protected locations map in selecting locations for their dispensaries and committing to leases with exorbitant rents. These statutory protections provide assurances that nearby competition will be limited, justifying paying a premium for rent and taking on other significant financial obligations necessary to establish and operate their businesses.
7. The CCB may grant a waiver of the proximity restrictions of 9 NYCRR § 119.4(a) if the CCB determines that approving the proposed dispensary would promote “public convenience and advantage.”
8. In making such determination, the CCB must consider seven cumulative factors, which are enumerated in 9 NYCRR § 119.4(b). These factors include:
   1. The number, classes, and character of other licenses in proximity to the premises and in the particular municipality or subdivision thereof;
   2. Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies;
   3. Whether there is a demonstrated need for such license;
   4. Effect of the grant of the license on pedestrian or vehicular traffic, and parking, in proximity to the premises;
   5. The existing noise level at the premises and any increase in noise level that would be generated by the proposed premises;
   6. The history of cannabis violations and reported criminal activity at the proposed premises; and
   7. Any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage of the community.
9. The key consideration in applying these “public convenience and advantage standards” is whether approving the location would result in the oversaturation of adult-use cannabis licensees. Subsection 88 of 9 NYCRR § 118.1 specifically defines “public convenience and advantage standards” to mean “factors used to determine whether or not the Board will grant a license to a licensee which will not result in over saturation of adult-use cannabis licensees.”
10. The enumerated factors are subject to amendment by the CCB, which on September 10, 2024, pursuant to Resolution No. 2024-96, directed the OCM to file a new set of regulations that would provide more specific criteria and include the following:
    1. The distance from any other existing retail dispensary locations, approved by the Office, within
       1. 1,000 feet of the location in jurisdictions where the minimum distance between retail facilities is 1,000-feet; or
       2. 2,000 feet in jurisdictions where the minimum distance between retail facilities is 2,000-feet.
    2. Any geographic, structural, or topographic barriers that separate the proposed location from any such existing retail dispensary locations, e.g., waterways, major roadways or highways, and significant travel distance required to get between the two locations;
    3. The distance between the proposed location and any such existing retail dispensary locations when measured as a pedestrian or car would travel;
    4. Any factors that are unique to the proposed location, including any environmental or economic considerations that may justify its placement and/or a need for greater adult-use cannabis consumer access in the area, including, but not limited to:
       1. Economic justification that highlights high consumer demand for additional retail dispensaries or retail microbusinesses in the area;
       2. The number of illicit cannabis dispensaries or former illicit dispensaries in close proximity to both the existing and proposed locations; and
       3. Any other factors submitted by the requestor.
11. The CCB also stated explicitly that it would only review waiver applications under the existing criteria for applications received before it approved the publication of the new regulations on September 10, 2024.

**Respondents’ Approval of Resolution 2024-105 Affecting LORDS**

1. On or about February 2, 2024, LORDS, a conditional adult-use retail dispensary licensee, was granted “proximity protection” under 9 NYCRR § 119.4(a) for its dispensary location at 846 6th Avenue, New York, New York. A copy of LORDS’s proximity protection approval letter received by email from the OCM is annexed hereto as **Exhibit C**.
2. OCM’s correspondence expressly confirms that LORDS’s location “is receiving proximity protection from other applicants or licensees now or hereafter, proposing to locate their cannabis dispensaries closer to [its] CAURD than the minimum distance required between licensed adult-use retail dispensaries pursuant to Part 119 of [9 NYCRR].” (LORDS Proximity Protection Ltr. Ex. C at p. 1).
3. At a CCB meeting held on October 10, 2024, the CCB passed Resolution No. 2024-105, which granted Taozen’s application to operate a retail cannabis dispensary at 52 West 27th Street, New York, New York. (Res. 2024-105, Ex. A).
4. The approved location is 750 feet away from LORDS, within the 1,000-feet proximity protection provided for in 9 NYCRR § 119.4(a).
5. At the October 10, 2024 CCB meeting, Respondents engaged in the following discussion before granting Taozen’s application. First, at minute 34.19 of the meeting, Patrick McKeage, the Chief Operating Officer of the OCM (“McKeage”), introduced the proposed waiver for the CCB’s consideration, stating:

[T]he applicant before us, today’s location request has been reviewed under the existing factors for certain circumstances, um, and the analysis indicates that the proposed site would promote public convenience and advantage based on the criteria that is currently in place. Therefore, we are presenting this information to the Board for its consideration to approve this conditional retail’s dispensary location, um, which is outlined in the resolution.

1. No further statement, justification, analysis of any kind was provided to the CCB for its consideration.
2. Following McKeage’s conclusory remarks, the CCB then proceeded to consider the resolution to approve the waiver, with Chairwoman Wright inviting questions or discussion from the board members regarding the matter. No board member asked any questions, discussed any aspect of the application, or requested additional information. Instead, the CCB unanimously approved the resolution without any deliberation or discussion, rubber-stamping the waiver.
3. This discussion can be heard in the recording of the October 10, 2024 CCB meeting, which is accessible via the OCM’s website. A copy of the meeting minutes for the CCB meeting memorializing this discussion, with the appendix omitted, is annexed hereto as **Exhibit D**.
4. The approval of Taozen’s application was arbitrary, capricious, and inconsistent with the principles of fairness and reasoned decision-making required of government entities.
5. Respondents’ approval of Taozen’s application was allegedly based on the finding that the proposed location promotes “public convenience and advantage” under the factors set forth in 9 NYCRR § 119.4(b).
6. However, during the October 10, 2024 meeting where Taozen’s application was considered and granted, Respondents did not address any of the factors under 9 NYCRR § 119.4(b). Instead, the discussion of Taozen’s application consisted solely of McKeage’s conclusory statements, devoid of meaningful justification or explanation.
7. The resolution itself also fails to specifically address any of the statutory factors or otherwise indicate any basis for Respondents’ determination.
8. The OCM’s conclusory assertion that the proposed site would promote public convenience and advantage based on the statutory criteria, without any substantive discussion of how the factual circumstances align with the criteria, is inconsistent with Respondents’ statutory obligations and exemplifies conduct that is arbitrary and capricious and devoid of reasoned analysis.
9. The CCB’s uncritical approval of this conclusory assertion without any inquiry or debate among the board members further underscores the arbitrary and capricious nature of the determination.
10. Respondents’ actions in connection with Taozen’s waiver request also demonstrate a glaring lack of transparency in their decision-making process. Neither the resolution nor the record of the October CCB meeting provide any insight into the reasoning or evidence behind their approval of Taozen’s application, leaving LORDS in the dark as to the justification for the blatant violation of its statutory protections. This lack of disclosure deprives LORDS of the opportunity to understand and challenge the waiver and creates confusion and unpredictability for licensees. This not only prejudices the party most impacted by the decision but also erodes confidence in the integrity of the administrative process.
11. Additionally, LORDS was denied fundamental procedural safeguards and due process rights, such as adequate notice and an opportunity to be heard on the matter. The agenda for the meeting was published only 24 hours in advance and vaguely referred to the approval of “a proposed location of certain CAURD applicants,” without providing meaningful notice that a waiver affecting LORDS would be discussed. Copies of the October 10, 2024 meeting notice and agenda are annexed hereto as **Exhibit E**.
12. This lack of notice suggests an intentional effort to limit public participation and shield Respondents’ determination from scrutiny and objection. Consequently, LORDS was unable to rebut Taozen’s request for a waiver, rendering the public hearing requirement under the cannabis laws meaningless.
13. Respondents’ approval of Taozen’s dispensary location, as memorialized in Resolution 2024-105, flagrantly violates the proximity protections on which LORDS and all retail licensees rely in selecting and investing in cannabis dispensaries. This violation undermines the regulatory framework designed to promote fair competition and equitable market conditions and deprives licensees of due process.
14. LORDS’s dispensary cannot thrive and profit with a competitor in its immediate vicinity, especially in an already saturated market. As a result of Respondents’ determination, LORDS will face immediate, significant, and irreparable harm, including the loss of goodwill, diversion of customers, diminished market share, and damage to its competitive standing in an already saturated market. This harm cannot be fully remedied by money damages alone.
15. These consequences not only threaten LORDS’s business viability but also highlight the broader ramifications of Respondents’ arbitrary and unsupported decision-making.

**Approval of Resolution 2024-110 as it Relates to Actualize**

1. On November 12, 2024, the CCB held a public meeting at which it considered several additional “public convenience and advantage license requests” under 9 NYCRR § 119.4(b). A copy of the minutes of the November 12, 2024 CCB meeting published by Respondents, with the appendix omitted, is annexed hereto as **Exhibit F**.
2. One such request was made by Leafy, a provisional adult-use retail dispensary licensee, which sought approval of a proposed retail dispensary location at 245 West 14th Street, New York, New York.
3. Leafy’s proposed location is 815 feet from Actualize’s existing dispensary located at 104 7th Avenue, New York, New York, for which Actualize was granted proximity protection on January 17, 2024. A copy of Actualize’s proximity protection approval letter received by email from the OCM is annexed hereto as **Exhibit G**. The letter expressly states that Actualize’s location “is receiving proximity protection from other applicants or licensees now or hereafter…” (Ex. G).
4. During the November meeting, the CCB expressly referenced the proximity protected locations map, which showed that Leafy’s proposed location was within 815 feet of Actualize’s dispensary.
5. Despite the infringement on Actualize’s proximity protection, the CCB passed Resolution 2024-110, approving Leafy’s proposed location on the grounds that it would allegedly promote public convenience and advantage under 9 NYCRR § 119.4(b). (Res. 2024-110, Ex. B).
6. As with Resolution 2024-105, Resolution 2024-110 does not explain the basis for the CCB’s determination that Leafy’s proposed location would promote public convenience and advantage under the factors of 9 NYCRR § 119.4(b). Rather, it merely contains a perfunctory recitation of the factors.
7. Additionally, the CCB did not engage in any substantive analysis of any of the specific factors at the November 12, 2024 meeting at which this resolution was passed.
8. Similar to the pattern observed with Taozen, Patrick McKeage once again provided only a generalized recitation of the regulatory criteria, offering no specific or substantive analysis of the factors that led to the recommendation.
9. This failure to engage in a thorough and transparent review is further underscored by the discussion of Leafy’s application at the CCB meeting on November 12, 2024, during which Chairwoman Wright responded to a question regarding the basis for granting the waiver of the proximity restrictions. Chairwoman Wright stated that one of the things that was important to her was that Leafy’s requested location was centered right in lower Manhattan, which is a “very densely populated area and it is a lot of things that they can consider in thinking about if it is a possibility once that store is open, if it is something that would impact their profitability and if they would still be able to thrive the way they hope and intended for them to.” She also described the street layout of the surrounding blocks, suggesting that these geographic considerations justified an additional dispensary. She further referenced Community Board approval and general interest in the location.
10. Chairwoman Wright’s comments touch on considerations not relevant to the current regulations, such as the street layout, the opinion of the Community Board, and general statements about profitability. These speculative considerations are not codified criteria under the existing regulatory framework and cannot support a finding that Leafy’s proposed location would promote public convenience and advantage under 9 NYCRR § 119.4(b).
11. The only one of these considerations that is even tangentially relevant to the analysis appears to be population density. However, Respondents failed to address how population density aligns with the established criteria under 9 NYCRR § 119.4(b) or justifies the granting of the waiver in this instance. Instead, Chairwoman Wright merely relied on vague and discretionary considerations, such as whether the location might “impact profitability” or allow a business to “thrive”—factors not grounded in the regulations.
12. In referencing the configuration of the streets surrounding Leafy’s proposed dispensary location, Chairwoman Wright appears to be applying factors under the revised version of the public convenience and advantage criteria, which have not been adopted. Specifically, these proposed criteria, currently subject to public comment, include considerations such as “any geographic, structural, or topographic barriers that separate the proposed location from any such existing retail dispensary locations, e.g., waterways, major roadways or highways, and significant travel distance required to get between the two locations,” and “the distance between the proposed location and any such existing retail dispensary locations when measured as a pedestrian or car would travel.” These proposed criteria are not part of the existing factors under 9 NYCRR § 119.4(b) and therefore have no legal bearing on the current evaluation of Leafy’s application. Any reliance on these unadopted and speculative factors is improper, as they remain subject to public comment and potential revision and cannot be retroactively applied to justify decisions made under the current regulations.
13. In fact, Respondents themselves stated that these revised factors would not be applied to the pending waiver applications.
14. Chairwoman Wright’s reliance on the alleged favorable Community Board opinion is also misplaced. Community board opinions are not based on the statutory factors that Respondents are required to analyze under 9 NYCRR § 119.4(b) but instead are based on subjective neighborhood preferences. The Community Board was not privy to critical information, such as which applicants would ultimately receive licenses, how many dispensaries might operate in the area, and other information needed to properly assess whether the proposed location would promote public convenience and advantage or contribute to market oversaturation. Additionally, during the relevant application period, Community Boards were inundated with requests from applicants seeking preferential review of proposed locations, forcing the Community Boards to conduct expedited and cursory evaluations. Given these deficiencies and limitations, the Community Board’s opinion should not be a deciding factor in determining whether to grant a public convenience and advantage waiver.
15. By basing its decision on vague references to extraneous considerations instead of a substantive evaluation of the required factors under 9 NYCRR § 119.4(b), the CCB undermined the integrity of the process and disregarded its obligations under the law.
16. Moreover, Respondents failed to provide Actualize with basic due process rights, including adequate notice and an opportunity to be heard, before granting Leafy’s application and waiving Actualize’s statutory protections. The agenda for the CCB meeting at which the application was approved was published only 24 hours in advance and vaguely referred to the “discussion of approval of a proposed location for certain adult-use dispensary applicants,” without indicating that a waiver affecting Actualize would be discussed. Copies of the November 12, 2024 meeting notice and agenda are annexed hereto as **Exhibit H**.
17. This lack of notice suggests an intentional effort to limit public participation and shield Respondents’ determination from scrutiny and objection. Consequently, Actualize was unable to rebut Leafy’s waiver request, rendering the public hearing requirement under the cannabis laws meaningless.
18. Respondents’ approval of Leafy’s dispensary location, as memorialized in Resolution 2024-110, flagrantly violates the proximity protections on which Actualize and all retail licensees rely in selecting and investing in cannabis dispensaries. This violation undermines the regulatory framework designed to promote fair competition and equitable market conditions and deprives licensees of due process.
19. Actualize’s dispensary cannot thrive and profit with a competitor in its immediate vicinity, especially in an already saturated market. As a result of Respondents’ determination, Actualize will face immediate and significant harm, including the loss of goodwill, diversion of customers, diminished market share, and damage to its competitive standing in an already saturated market. This harm cannot be fully remedied by money damages alone.
20. These consequences not only threaten Actualize’s business viability but also highlight the broader implications of such arbitrary decision-making on the fairness and transparency of the regulatory process.

**Approval of Resolution 2024-110 as it Relates to Astro**

1. At the November CCB meeting, the CCB also unanimously approved a public convenience and advantage request under 9 NYCRR § 119.4 by Buzzy for its proposed location at 137 Court Street, Brooklyn, New York. The approval of Buzzy’s request is memorialized in Resolution 2024-110.
2. Buzzy’s approved location is situated 956 feet away from Astro’s dispensary location 292 Atlantic Avenue, Brooklyn, New York, for which Astro was granted proximity protection on January 17, 2024. A copy of Astro’s proximity protection approval letter received by email from the OCM is annexed hereto as **Exhibit I**. The letter expressly states that Astro’s location “is receiving proximity protection from other applicants or licensees now or hereafter.” (Ex. I).
3. During the CCB meeting, McKeage acknowledged multiple issues with Buzzy’s application. He admitted that Buzzy was still in the applicant stage, noting that there are additional application requirements that would need to be met and fulfilled before Buzzy could operate a dispensary at the proposed location.
4. As such, Buzzy’s application directly conflicts with one of the seven statutory factors under 9 NYCRR § 119.4(b), which explicitly requires that an applicant have “all necessary licenses and permits” before its waiver request will be approved.
5. Nevertheless, Respondents approved Buzzy’s waiver request without any explanation as to why Buzzy’s incomplete application status was disregarded.
6. Additionally, McKeage explicitly acknowledged that Buzzy’s proposed location conflicts with two existing licensees receiving proximity protection, including Astro’s CAURD license 956 feet away and another active license located 743 feet away.
7. After noting these deficiencies, McKeage provided the OCM’s only justification for approving Buzzy’s application: that the location has received a positive municipal opinion from the Community Board, which stated that it purportedly had “no issue” with the retail dispensary at the proposed location.
8. Following McKeage’s comments, the CCB, without any deliberation and without any further discussion regarding the application, approved Buzzy’s application on the grounds that the proposed location satisfied the public convenience and advantage factors under 9 NYCRR § 119.4(b).
9. The Community Board’s opinion is not one of the required considerations under 9 NYCRR § 119.4(b), and thus, reliance on such consideration is improper. Given the deficiencies and limitations in the Community Board’s review process addressed above, its opinion should not influence Respondents’ determination on whether to grant a public convenience and advantage waiver, let alone serve as the deciding factor.
10. Even if the Community Board’s opinion were relevant to the analysis under 9 NYCRR § 119.4(b), the fact that the Community Board had no opposition to the dispensary does not equate to an assertion that the location would promote public convenience and advantage. Nor is Community Board’s opinion a substitute for an independent analysis by the CCB of the factors as required under 9 NYCRR § 119.4(b).
11. Beyond the vague reference to the Community Board opinion, the CCB offered no justification for its determination, either during the meeting or in Resolution 2024-110.
12. The absence of any meaningful analysis of the statutory factors, coupled with Respondents’ improper deference to the Community Board’s opinion regarding the proposed location, demonstrates that the approval of Buzzy’s application was made without rational basis and without regard to the facts.
13. Moreover, the area surrounding Buzzy’s location is already home to multiple cannabis retail options, as McKeage himself mentioned during the meeting, rendering the addition of another dispensary unjustified. The approval of Buzzy’s location permits three dispensaries within four blocks on the same side of Atlantic Avenue. A screenshot of the proximity protection map showing the relevant area as of January 8, 2025 is annexed hereto as **Exhibit J**. No evidence was provided to suggest that the existing dispensaries are insufficient to meet local demand or that Buzzy’s proposed location would address an unmet community need.
14. By granting approval to a dispensary in conflict with two proximity-protected licenses, including Astro’s, without addressing the statutory factors or the effect the new location would have on the saturation of the market, Respondents acted arbitrarily and capriciously.
15. Respondents failed to provide Astro with basic due process rights, including adequate notice and an opportunity to be heard, before granting Buzzy’s application and waiving Astro’s statutory protections. The agenda for the CCB meeting at which the application was approved was published only 24 hours in advance and vaguely referred to the “discussion of approval of a proposed location for certain adult-use dispensary applicants,” without providing any indication that a waiver affecting Astro would be discussed.
16. This lack of notice suggests an intentional effort to limit public participation and shield Respondents’ determination from scrutiny and objection. Consequently, Astro was unable to rebut Buzzy’s waiver request, rendering the public hearing requirement under the cannabis laws meaningless.
17. Furthermore, Respondents’ failure to explain the rationale behind their determination undermines transparency and accountability, leaving Astro and other stakeholders unable to evaluate or challenge the determination effectively.
18. As a result of the approval of Buzzy’s location at the November CCB meeting and in Resolution 2024-110, Astro faces immediate and irreparable harm, including the diversion of customers, diminished market share, and damage to its competitive standing. These harms cannot be fully remedied by monetary damages alone.
19. These consequences not only threaten Astro’s business viability but also highlight the broader implications of such arbitrary decision-making on the fairness and transparency of the regulatory process.

**Approval of Resolution 2024-110 as it Relates to R&R**

1. R&R operates a retail cannabis dispensary at 21 Gardner Ave, Brooklyn, New York, a location for which R&R was granted proximity protection under 9 NYCRR § 119.4(a) on January 19, 2024. A copy of R&R’s proximity protection approval letter received by email from the OCM is annexed hereto as **Exhibit K**.
2. The OCM’s proximity protection approval letter expressly assures R&R that its location “is receiving proximity protection from other applicants or licensees now or hereafter, proposing to locate their cannabis dispensaries closer to [its] CAURD than the minimum distance required between licensed adult-use retail dispensaries pursuant to Part 119 of [9 NYCRR].” (R&R Proximity Protection Ltr. Ex. K at p. 1).
3. At the November 12, 2024 CCB meeting, the CCB considered a public convenience and advantage request by ATF for the proposed retail dispensary location at 424 Troutman Street, Brooklyn, New York.
4. ATF’s proposed dispensary location is just 522.9 feet away from R&R’s existing location for which it receives proximity protection.
5. At the CCB meeting, McKeage acknowledged that ATF’s proposed location was surrounded by other active and pending locations within 1,000 feet, including R&R’s dispensary.
6. The only other discussion of ATF’s application at the CCB meeting consisted of McKeage’s references to ATF’s provisional license status and the existence of local community board support for the proposed location.
7. These vague comments are irrelevant to the analysis of the statutory criteria under 9 NYCRR § 119.4(b).
8. Without any deliberation or inquiry by its board members, the CCB unanimously approved ATF’s waiver request on the conclusory grounds that the proposed location, despite being less than 1,000 feet from R&R’s proximity protected location, would promote public convenience and advantage under 9 NYCRR § 119.4.
9. Respondents’ statements and actions in connection with ATF’s application reveal a total lack of substantive analysis or rational basis for the waiver. Indeed, the determination was made without consideration of the statutory factors under 9 NYCRR § 119.4 and without any evidence or reasoning to justify the waiver, underscoring the arbitrary and unsupported nature of the determination.
10. The only purported support for the approval of ATF’s waiver is McKeage’s vague reference to the alleged positive Community Board opinion for the proposed location. Yet, the mere fact that the Community Board expressed support for the proposed location is not sufficient to demonstrate that the location would promote public convenience and advantage. The Community Board’s opinion was not informed by the statutory factors that Respondents are required to consider under 9 NYCRR § 119.4(b) and therefore is irrelevant to the question of whether ATF’s proposed location would promote public convenience and advantage. Given the deficiencies and limitations in the Community Board’s review process addressed above, Respondents’ reliance on the Community Board’s opinion as the primary justification for approving ATF’s application is arbitrary and capricious.
11. Moreover, Respondents’ approval of ATF’s application is inconsistent with their approval of Leafy’s application at the same meeting, highlighting the arbitrariness of Respondents’ decision-making. Specifically, in approving Leafy’s proposed location, the CCB found dispositive the population density of lower Manhattan and the streets surrounding the dispensary, despite the fact that these considerations are not among the factors enumerated in 9 NYCRR § 119.4(b).
12. Yet, in considering ATF’s application during the same meeting, the CCB ignored these extraneous factors entirely. By the CCB’s reasoning, these factors, as applied to ATF, would weigh against approval of ATF’s public convenience and advantage waiver. Specifically, unlike Leafy’s dispensary, ATF’s dispensary is located in a one-story warehouse in an industrial area of Brooklyn, which is neither dense nor highly populated. Also, the locations are situated only two blocks away, with no geographic barriers separating them. The selective and inconsistent application of these non-statutory factors renders the determinations arbitrary and capricious and deprives R&R and other cannabis dispensary owners of due process.
13. Moreover, Bushwick, Brooklyn, where ATF’s proposed dispensary is located, already has a significant number of existing and pending dispensaries. In addition to R&R’s site, there are other licensed dispensaries that are a seven-minute walk away and less than a five-minute drive away. By approving ATF’s dispensary only two blocks away from R&R, in an area with ample cannabis retail options, Respondents disregarded the fundamental purpose of the public convenience and advantage standards, which is to prevent oversaturation of the cannabis market.
14. Respondents also failed to provide R&R with basic procedural safeguards, including adequate notice or an opportunity to be heard, before granting a waiver that stripped it of its statutory protections. The agenda for the CCB meeting at which the application was approved was published only 24 hours in advance and vaguely referred to the “discussion of approval of a proposed location for certain adult-use dispensary applicants,” without providing any notice that a waiver affecting R&R would be discussed.
15. This lack of notice suggests an intentional effort to limit public participation and shield Respondents’ determination from scrutiny and objection. Consequently, R&R was unable to rebut ATF’s waiver request, rendering the public hearing requirement under the cannabis laws meaningless.
16. Additionally, by failing to articulate the reasoning or logic behind the waiver at the CCB meeting or in the resolution, Respondents deprived R&R of the ability to meaningfully engage with or respond to the decision, further undermining R&R’s due process rights.
17. Respondents’ approval of ATF’s dispensary location, as memorialized in Resolution 2024-110, flagrantly violates the proximity protections on which R&R and all retail licensees rely in selecting and investing in cannabis dispensaries. This violation undermines the regulatory framework designed to promote fair competition and equitable market conditions and deprives R&R of due process.
18. R&R’s dispensary cannot thrive and profit with a competitor in its immediate vicinity, especially in an already saturated market. As a result of the approval of ATF’s location at the November CCB meeting and in Resolution 2024-110, R&R faces immediate and irreparable harm, including the diversion of customers, diminished market share, and damage to its competitive standing. These harms cannot be fully remedied by monetary damages alone.
19. These consequences not only threaten R&R’s business viability but also highlight the broader implications of such arbitrary decision-making on the fairness and transparency of the regulatory process.
20. At the November CCB meeting, the CCB also considered other applicants for a waiver under 9 NYCRR § 119.4(a). During these deliberations, the CCB approved a waiver for an applicant, Green Leaf Cannabis, whose proposed dispensary would be located a mere 302 feet from an existing dispensary. The OCM itself expressed concern over the proximity, stating that 302 feet “might be a little too close to accepting a waiver at this time.” Further discussion ensued regarding the geographic arrangement of the dispensaries, with one board member describing the locations as being in “somewhat of a ‘Z’ that crosses two streets.” The CCB also speculated on whether the dispensaries would carry the same products, ultimately concluding—without any evidentiary basis—that they would not. The discussion introduced additional irrelevant factors, such as whether the dispensaries were located on different streets, despite the fact that both were cannabis dispensaries operating within the same geographic proximity. This inconsistent and arbitrary application of vague and extraneous criteria—none of which are reflected in the current regulatory framework—underscores the confusion and lack of clarity surrounding the CCB's decision-making process in the instant matter.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Annulment of Determinations that Were Made in Violation of Lawful Procedure, Were Affected by Error of Law, and Were Arbitrary and Capricious and an Abuse of Discretion – CPLR 7803(3))**

1. Petitioners repeat and reiterate each and every allegation set forth above as though fully set forth herein.
2. Under 9 NYCRR § 119.4(a), in municipalities with a population 20,000 or more, no retail dispensary license may be granted for any premises that is located within 1,000 feet of a premises for which a license has already been issued.
3. Respondents have discretion to grant a waiver of this 1,000-foot rule but only if it determines that doing so would promote “public convenience and advantage” based on consideration of seven specific factors enumerated in 9 NYCRR § 119.4(b).
4. In approving Applicants’ waiver requests in Resolutions 2024-105 and 2024-110, Respondents failed to meaningfully consider or apply any of the required statutory factors under 9 NYCRR § 119.4(b).
5. Instead of conducting the required statutory analysis under 9 NYCRR § 119.4(b), Respondents relied on vague, conclusory assertions and irrelevant considerations, including references to local community board support, which are not among the enumerated public convenience and advantage factors.
6. Respondents’ failure to engage in a meaningful analysis of the statutory factors violates the CCB’s own regulations and lawful procedure and renders the resulting waivers arbitrary and capricious and an abuse of discretion.
7. Moreover, by failing to articulate the reasoning or logic behind their determinations in the resolutions or at the CCB meetings at which they were passed, Respondents deprived Petitioners and other licensees of the opportunity to understand and challenge the determinations. This lack of transparency violates fundamental principles of fairness and due process, further demonstrating the arbitrary and capricious nature of the determinations and the violations of lawful procedure.In approving the Applicants’ requests, Respondents also ignored the fundamental purpose of the 1,000-foot rule: to prevent oversaturation of the cannabis market. The addition of the Applicants’ new dispensaries within such close proximity to Petitioners’ locations will contribute to the further saturation of the market, threatening the viability of businesses like Petitioners that relied on proximity protections in making significant investments in their dispensaries.
8. Petitioners went to great lengths and incurred significant expenses to identify and secure locations for their dispensaries. In doing so, Petitioners relied on Respondents’ assurances regarding the availability of proximity protected areas and avoided areas represented as “blocked out.” Petitioners assumed substantial financial obligations, including high-rent leases, based on Respondents’ assurances that proximity protections provided to them under 9 NYCRR § 119.4(a) would generally restrict competition in their immediate vicinities and enable them to generate revenue to sustain these financial obligations.
9. The approval of Applicants’ dispensaries within Petitioners’ proximity-protected areas will divert customers and diminish sales, jeopardizing Petitioners’ ability to pay exorbitant rent and other financial obligations.
10. Notwithstanding the effect of these determinations on Petitioners, Petitioners were denied notice and an opportunity to be heard on the Applicants’ public convenience and advantage waiver requests. Meeting agendas for the October and November 2024 CCB meetings at which these requests were approved provided minimal detail and were provided only 24 hours in advance. Petitioners had no way of knowing that the Applicants’ waiver requests would be considered. This lack of notice deprived Petitioners of the opportunity to challenge the waiver requests, effectively excluding them from a process that directly affects their statutory rights and financial interests.
11. CPLR 7803(3) authorizes the Court to annul a determination of a government agency if it was made in violation of lawful procedure, was affected by error of law, or was arbitrary and capricious or an abuse of discretion.
12. For the reasons set forth above, Respondents’ decisions to approve Applicants’ dispensary locations, as memorialized in Resolution 2024-105 and Resolution 2024-110, are arbitrary and capricious and an abuse and discretion under CPLR 7803(3); therefore, the decisions should be annulled.
13. Additionally, Respondents’ failure to provide adequate notice, perform a thorough analysis of the statutory factors, or provide transparent findings and reasoning to support their determinations, constitutes a violation of lawful procedure under CPLR 7803(3), further requiring annulment of the resolutions.
14. Respondents’ determinations were also affected by error of law under CPLR 7803(3), as they were based on Respondents’ improper application of the statutory factors under 9 NYCRR § 119.4 and violated provisions of the Cannabis Law and principles of due process under the Constitution.
15. Petitioners are not the only cannabis dispensary licensees that have been harmed by Respondents’ arbitrary, capricious, and erroneous decision-making and violations of lawful procedure. Annexed hereto as **Exhibit L** are affidavits in support of this Petition executed by more than 20 other cannabis retailers in New York, attesting to the problems caused by the oversaturation of cannabis licenses and Respondents’ unilateral disregard of proximity protections.
16. Accordingly, Petitioners are entitled to an order pursuant to CPLR 7803(3) annulling or vacating (i) Respondents’ approval of Resolution 2024-105, approving Taozen’s proposed dispensary location at 52 West 27th Street, New York, New York, and (ii) Respondents’ approval of Resolution 2024-110, approving Leafy’s dispensary location at 245 West 14th Street, New York; ATF’s 424 dispensary location at Troutman St, Brooklyn, New York; and Buzzy’s proposed dispensary location at 137 Court St, Brooklyn, New York.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Annulment of Determinations for Lack of Substantial Evidence – CPLR 7803(4))**

1. Petitioners repeat and reiterate each and every allegation set forth above as though fully set forth herein.
2. Pursuant to CPLR 7803(4), a determination made by a government agency should be annulled if it is not supported by substantial evidence in the record.
3. Respondents held open meetings on Applicants’ public convenience and advantage requests, at which Respondents were required to consider evidence regarding the statutory factors under 9 NYCRR § 119.4(b) and render determinations based on substantial evidence.
4. At these meetings, McKeage purported to present evidence and analysis to support approval of Applicants’ requests, but these presentations consisted solely of conclusive statements without any factual or evidentiary basis.
5. After hearing these conclusory statements, Respondents unanimously voted to approve Applicants’ requests, finding the evidence sufficient to demonstrate that Applicants’ proposed locations would promote public convenience and advantage under 9 NYCRR § 119.4.
6. There is no evidence in the record supporting Respondents’ determinations that Applicants’ proposed locations satisfied the statutory public convenience and advantage factors under 9 NYCRR § 119.4(b).
7. Respondents also failed to provide Petitioners and other affected licensees with an opportunity to present evidence to rebut McKeage’s statements at the meetings.
8. Given the lack of substantial evidence in the record to support Respondents’ determinations, Respondents’ approval of Applicants’ waiver requests, as memorialized in Resolutions 2024-105 and 2024-110, must be annulled.
9. Accordingly, Petitioners are entitled to an order pursuant to CPLR 7803(4) annulling or vacating (i) Respondents’ approval of Resolution 2024-105, approving Taozen’s proposed dispensary location at 52 West 27th Street, New York, New York, and (ii) Respondents’ approval of Resolution 2024-110, approving Leafy’s dispensary location at 245 West 14th Street, New York; ATF’s 424 dispensary location at Troutman St, Brooklyn, New York; and Buzzy’s proposed dispensary location at 137 Court St, Brooklyn, New York.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(Annulment of Determinations in Excess of Jurisdiction – CPLR 7803(2)**

1. Petitioners repeat and reiterate each and every allegation set forth above as though fully set forth herein.
2. Respondents’ authority to grant waivers of proximity protections is limited by 9 NYCRR § 119.4(b), which requires that such waivers be based solely on seven specific statutory factors.
3. Respondents acted beyond the scope of this authority by relying on extraneous and irrelevant considerations that are not enumerated in 9 NYCRR § 119.4(b) in granting Applicants’ waiver requests.
4. By failing to limit their review to these statutory factors, Respondents exceeded the jurisdiction granted to them under the Cannabis Law and associated regulations.
5. Given the foregoing, Respondents’ decisions to approve Applicants’ waiver requests, as memorialized in Resolutions 2024-105 and 2024-110, were made in excess of jurisdiction under CPLR 7803(2), and as such, must be annulled.
6. Accordingly, Petitioners are entitled to an order pursuant to CPLR 7803(2) annulling or vacating (i) Respondents’ approval of Resolution 2024-105, approving Taozen’s proposed dispensary location at 52 West 27th Street, New York, New York, and (ii) Respondents’ approval of Resolution 2024-110, approving Leafy’s dispensary location at 245 West 14th Street, New York; ATF’s 424 dispensary location at Troutman St, Brooklyn, New York; and Buzzy’s proposed dispensary location at 137 Court St, Brooklyn, New York.
7. Petitioners are also entitled to legal fees incurred in connection with this proceeding.
8. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, Petitioners respectfully requests an order be issued against Respondents as follows:

1. Annulling or vacating Respondents’ approval of Resolution No. 2024-105, which granted Taozen’s application to operate a retail cannabis dispensary at 52 West 27th Street, New York, New York, within 1,000 feet of LORDS’s “proximity protected” retail cannabis dispensary located at 846 6th Avenue, New York, New York, pursuant to CPLR 7803(3) on the grounds that such determination was arbitrary, capricious, an abuse of discretion, affected by error of law, and/or made in violation of lawful procedure, and/or pursuant to CPLR 7803(4) on the grounds that it lacked substantial evidence, and/or pursuant to CPLR 7803(2) on the grounds that it was made in excess of Respondents’ jurisdiction;
2. Annulling or vacating Respondents’ approval of Resolution No. 2024-110 to the extent that it (i) granted Leafy’s application to operate a retail cannabis dispensary at 245 West 14th Street, New York, New York, within 1,000 feet of Actualize’s “proximity protected” retail cannabis dispensary located at 104 7th Avenue, New York, New York, (ii) granted Buzzy’s application to operate a retail cannabis dispensary at 137 Court St, Brooklyn, New York,within 1,000 feet of Astro’s “proximity protected” retail cannabis dispensary located at 292 Atlantic Avenue, Brooklyn, New York, and (iii) granted ATF’S application to operate a retail cannabis dispensary at 424 Troutman St, Brooklyn, New York, within 1,000 feet of R&R’s “proximity protected” retail cannabis dispensary located at 21 Gardner Avenue, Brooklyn, New York, pursuant to CPLR 7803(3) on the grounds that each such determination was arbitrary, capricious, an abuse of discretion, affected by error of law, and/or made in violation of lawful procedure, and/or pursuant to CPLR 7803(4) on the grounds that each such determination lacked substantial evidence, and/or pursuant to CPLR 7803(2) on the grounds that each such determination was made in excess of Respondents’ jurisdiction;
3. Restoring the proximity protection previously afforded to Petitioners for their respective locations listed above; and
4. Awarding Petitioners attorneys’ fees, costs, and disbursements; and in the interim
5. Temporarily and/or preliminarily enjoining and restraining Respondents during the pendency of this proceeding, from issuing any further licenses or approvals to Applicants for their proposed cannabis dispensary locations listed above and/or approving any other proposed retail cannabis dispensary locations situated within a 1,000-foot radius of Petitioners’ respective locations; and
6. Granting Petitioners such other, further, and different relief as the Court may deem just and proper.

Dated: New York, New York

January 8, 2024

SANTAMARINA & ASSOCIATES, P.C.

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