NEW YORK STATE SUPREME COURT
COUNTY OF ALBANY

NORTH FORK DISTRIBUTION, INC. d/b/a CYCLING FROG, SARENE CRAFT BEER DISTRIBUTORS LLC, HEMP BEVERAGE ALLIANCE, INC., and ONE STOP BREW SHOP, LLC, Petitioners, - against - NEW YORK STATE CANNABIS CONTROL BOARD, NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT, TREMAINE WRIGHT, in her official capacity as the Chairwoman of the New York State Cannabis Control Board, and CHRIS ALEXANDER, in his official capacity as Executive Director of the New York State Office of Cannabis Management, Respondents. For a Judgment Pursuant to Article 78 of the CPLR.	Index No: 907325-23 **Decision and Order**

Thomas Marcelle, J.

Petitioners are businesses who manufacture, distribute, or sell hemp-infused products in New York State.[1] They commenced a special proceeding to enjoin, preliminarily and permanently, respondents who are state entities that promulgate regulations for New York's

[1]Petitioner North Fork Distribution, Inc. d/b/a Cycling Frog is a Washington corporation. Cycling Frog is a hemp beverage brand that manufactures and sells hemp infused beverages in various jurisdictions, including in New York State. Petitioner Sarene Craft Beer Distributors LLC is a distributor of non-alcoholic hemp infused beverages in New York State. Petitioner Hemp Beverage Alliance, Inc. is a Colorado corporation with its principal place of business in Lakewood, Colorado and operates as a trade association and advocacy group for North American hemp derived beverage makers. Petitioner One Stop Brew Shop, LLC is a retailer that specializes in the sale of craft beers, and, more recently, hemp infused beverages.

cannabis industry (*see generally* Cannabis Law §§ 10-13). In particular, petitioners seek to prohibit respondents from implementing and/or enforcing emergency regulations that respondents adopted on July 19, 2023, which amended 9 NYCRR § 114 and pertained to the production and sale of cannabinoid hemp products (the "Emergency Regulations"). The Emergency Regulations addressed the processing and retail sale of cannabinoid hemp products, including those with intoxicating levels of delta-9 tetrahydrocannabinol ("THC").[2] These regulations provide for (1) a required ratio of CBD or other cannabinoids to THC equaling or exceeding 15:1 in hemp infused products; and (2) per serving and per container limits on the amount of THC such products may contain. Petitioners argue that the Emergency Regulations are illegal because (a) they were adopted in violation of both (i) Cannabis Law § 91 and (ii) the State Administrative Procedure Act ("SAPA"); and (b) they are arbitrary, capricious, without a rational basis, and an abuse of respondents' discretion.

Some foundational knowledge is required before plowing through the current regulations. In 2018, Congress passed the Agriculture Improvement Act ("Farm Bill"). The Farm Bill legalized hemp federally as defined in the statute. According to the federal law, hemp is cannabis with not more than 0.3% THC on a dry weight basis. Congress also regulates products containing hemp under the United States Food & Drug Administration ("FDA"). Although the cannabinoid hemp industry expanded dramatically in subsequent years, the FDA created no regulatory framework for cannabinoid products.

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[2] THC is a compound that, when ingested, binds to the CB1 receptors of the brain, causing the release of neurotransmitters like dopamine that may create a feeling of relaxation and euphoria and sometimes stimulates increased appetite—an effect commonly known as "the munchies" in popular culture (*see e.g.*, Harold & Kumar Go to White Castle [where the protagonists engage in a comical quest to satisfy their marijuana induced hunger by going to a favorite hamburger chain—White Castle]).

In 2021, New York, like other states, legalized cannabinoid. The Legislature enacted the Cannabis Law, finding that "it is in the best interest of the state to regulate medical cannabis, adult-use cannabis, cannabinoid hemp and hemp extracts under independent entities, known as the Cannabis Control Board ("the Board") and the Office of Cannabis Management ("the Office") (Cannabis Law § 2). The Board is charged with the duty:

> [t]o fix by rule and regulation the standards and requirements of cultivation, processing, packaging, marketing, and sale of medical cannabis, adult-use cannabis and cannabis product, and cannabinoid hemp and hemp extract, including but not limited to, the ability to regulate excipients, and the types, forms, and concentration of products which may be manufactured and/or processed, in order to ensure the health and safety of the public and the use of proper ingredients and methods in the manufacture of all medical, adult-use, cannabinoid hemp and hemp extract to be sold or consumed in the state and to ensure that products are not packaged, marketed, or otherwise sold in a way which targets minors or promotes increased use or cannabis use disorders.

Id. at § 10 (4).

This case deals with cannabinoid hemp products and falls within the Board's mandate. Cannabinoid hemp products include "any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol" (Cannabis Law §§ 3 & 90 [2]). The Board has extensive authority to regulate cannabinoid hemp products, including the hemp infused beverages that are produced and distributed by petitioners. The Board may make rules concerning the "[m]ethods and standards of processing, labeling, packaging and marketing of cannabinoid hemp, hemp extract and products derived therefrom" (*Id.* at § 91[5]). Moreover, the Board has the authority to "(a) regulate and prohibit specific ingredients, excipients or methods used in processing cannabinoid hemp, hemp extract and products derived therefrom; and (b) prohibit, or expressly

allow, certain products or product classes derived from cannabinoid hemp or hemp extract, to be processed" (*Id.* at § 104 [4]).

The hemp product offered by petitioners was first introduced into the New York market in 2021. Respondents, at least until the current emergency regulations at issue here, decided not to directly regulate THC levels of hemp infused products. Absent regulations in New York governing the THC content of cannabinoid hemp products, such products were, by default, controlled by the federal Farm Bill requirement that the products' THC content not exceed 0.3% by weight.

Now, here is the genesis of the case—a clever use of the federal law to introduce hemp infused product into states that legalize marijuana. The Farm Bill's THC levels primarily contemplated application to plants; according to respondents, the 0.3% THC weight limit in the Farm Bill equates to a miniscule amount of THC in dried plant matter. However, hemp infused edibles and beverages are more dense than dried plant matter, and as a result, contain significantly higher amounts of THC than does dried plant matter under the federal weight-based standard. In other words, the hemp infused products are potent intoxicants. Moreover, respondents have not explicitly approved these potent intoxicants for public consumption.

Although the cannabinoid hemp products were introduced to the New York market in 2021, the Office first felt the need for regulations to alert the public to the intoxicating nature of the products and ensure that the products did not exceed safe levels of THC in the spring of 2023. However, for reasons unexplained in the record, it was not until July 19, 2023 that the Board approved the Emergency Cannabinoid Hemp Regulations to be filed for public comment.[3]

[3] The regulations amend 9 N.Y.C.R.R. § 114 by: (1) adding a requirement that "[a]ll cannabinoid hemp products distributed or offered for retail sale in New York State shall . . . except for flower products or topical products, contain a ratio of CBD to THC that is 15:1 or higher, provided

The Board issued a brief one-and-a-half-page Emergency Justification to support the extraordinary action. The statement identifies at risk consumers who need the protection of respondents. The Emergency Justification reads in pertinent part:

> "Emergency action is necessary for the preservation of the public health, safety, and general welfare to ensure that the [CCB] can prevent the manufacturing and retail sale of intoxicating cannabinoid hemp products in New York State. … Intoxicating cannabinoid hemp products frequently mislead consumers to believe the product contains very little, or no THC, when in fact the finished product could contain intoxicating levels of THC. This ambiguous labeling puts consumers at risk of overconsumption and accidental ingestion of intoxicating levels of THC or other adverse events. In cases of young children accidently consuming such products, it can result in hospitalization and in very rare cases, death. Intoxicating cannabinoid hemp products pose an immediate risk to the health and safety of consumers, youth, and adolescents who have access to these products, and to young children who can accidently consume these products, mistaking them for other consumer goods like food. … These emergency regulations are necessary to … limit[] the THC content of these products and [to] ensure[] consumers are not misled by these products' marketing."

The comment period for the Emergency Cannabinoid Hemp Regulations began on August 9, 2023. Respondents represent that the Office will assess the public comments provided prior to November 24, 2023, the emergency expiration date.

Petitioners are upset with the emergency regulation and the basis upon which the emergency was invoked. Petitioners contend that respondents have failed to justify the use of emergency procedures by lacking specific, factual support for the existence of a true emergency,

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however, if CBD is not the primary marketed cannabinoid, the sum of cannabinoids excluding THC must have a ratio of 15:1 THC" ("the ratio requirement"); (2) adding requirements that orally consumed cannabinoid hemp products shall not contain more than: (a) "10 milligrams total THC per package, with no more than 1 milligram total THC per serving"; and (b) "3,000 milligrams of total cannabinoids per package, with no more than 100 milligrams of total cannabinoids per individual serving, provided however, if the orally consumed product is in the form of a tincture it shall not contain more than 100 milligrams of total THC per package and 4,000 milligrams of cannabinoids per package ("the package and serving requirements"); and (3) adding packaging and labeling requirements to, among other things, ensure that cannabinoid hemp products are not "attractive to individuals under twenty-one (21) years of age."

in violation of SAPA § 202 (6). Moreover, petitioners argue that respondents do not point to any recent change in circumstances that require the immediate shutdown of the hemp infused product industry and further, that respondents do not attempt to explain why these rules had to be adopted immediately, rather than in 120 days after public notice and comment and all the other protections and benefits afforded by the usual rulemaking procedures.

Accordingly, petitioners seek an order vacating, voiding and/or annulling the Emergency Regulations because they were adopted in violation of both the Cannabis Law and the SAPA. Petitioners bring suit under the Cannabis Law and SAPA, arguing that respondents failed to establish either the existence of an actual emergency or a rational basis for the emergency regulations, and that regardless of whether the Board established a rational basis for the emergency regulations, respondents' Emergency Justification failed to comply with SAPA 202(6)(d). Petitioners have moved this court for a preliminary injunction (CPLR 6301).

A request to stop the government from governing is an exceptional request and demands that a court exercise caution and great discretion. Indeed, it is axiomatic that "[p]reliminary injunctive relief is a drastic remedy [that] is not routinely granted" (*Eastview Mall, LLC v Grace Holmes, Inc.*, 182 AD3d 1057, 1058 [4th Dept 2020] [brackets in original]). However, "[w]hile it is understood that recommendations of those in the public health field should be given considerable weight, this does not mean that *carte blanche* is generously given to governmental authorities without redress or review" (*Matter of Lasertron, Inc. v Empire State Dev. Corp.*, 70 Misc3d 1085, 1093 [Sup Ct, Erie County 2021]). Rather, "[t]he decision to grant or deny a request for a preliminary injunction is committed to the sound discretion of the trial court" (*Biles v Whisher*, 160 AD3d 1159, 1160 [3d Dept 2018]).

To guide the court in the exercise of its discretion, CPLR 6301 offers a familiar tripartite test: the party seeking a preliminary injunction must demonstrate (1) a probability of success on the merits (the merits prong), (2) a danger of irreparable injury in the absence of an injunction (the irreparable injury prong) and (3) a balance of equities in its favor (the equity prong) (*Camp Bearberry, LLC v Khanna*, 212 AD3d 897, 898 [3d Dept 2023]). The court will examine each cantle in turn.

The court begins with the merits prong. Petitioners assert that the Emergency Regulations are invalid; if true, petitioner will have established a likelihood of success. The crux of the argument rests upon the proposition that respondents have failed to comply with SAPA 206(6)(d). There is much to consider in deciphering this argument.

As always, the court starts with the basics. The Legislature makes the laws (NY Const, art II, § 1). Now, while the Legislature may not delegate its law-making function to an executive branch agency, it may permit an agency to promulgate "regulations [that] are consistent with [a statute's] language and underlying purpose (*Matter of Acevedo v New York State Dept. of Motor Vehs.*, 29 NY3d 202, 221 [2017]). Most certainly, "[t]he cornerstone of administrative law is ... the principle that the Legislature may declare its will, and after fixing a primary standard, endow administrative agencies with the power to fill in the interstices in the legislative product by prescribing rules and regulations consistent with the enabling legislation" (*Matter of Juarez v New York State Off. of Victim Servs.*, 36 NY3d 485, 492 [2021]).

Here, the question is not whether respondents have the power to adopt regulations governing hemp infused products—they do. Rather, the question is whether respondents followed the correct procedure for enacting the Emergency Regulations. The SAPA requires, at minimum, an agency seeking an emergency rule adoption "*to fully articulate in writing*" the

circumstances which give rise to the adoption on an emergency basis (*Matter of Korean Am. Nail Salon Assn. of New York, Inc v Cuomo*, 50 Misc 3d 731, 734 [Sup Ct, Albany County 2015] [emphasis added]). This mandate limits emergency rule making to genuine emergencies. In fact, "[t]he legislature was attempting to stop the practice of using emergency rule making to avoid the notice and comment period otherwise required by the SAPA" (*Law Enforcement Officers Union, Dist. Council 82, AFSCME, AFL-CIO v State of New York*, 168 Misc 2d 781, 784 [Sup Ct, Albany County 1995]).

The Legislature circumscribed an executive agency's power to govern by emergency. This is evident from the text of SAPA 202 (6) (d) (iv):

> A notice of emergency adoption shall: ...include a statement fully describing the specific reasons for such findings and the facts and circumstances on which such findings are based. Such statement shall include, at a minimum, a description of the nature and, if applicable, location of the public health, safety or general welfare need requiring adoption of the rule on an emergency basis; a description of the cause, consequences, and expected duration of such need; an explanation of why compliance with the requirements of subdivision one of this section would be contrary to the public interest; and an explanation of why the current circumstance necessitates that the public and interested parties be given less than the minimum period for notice and comment provided for in subdivision one of this section.

Petitioners strongly press the proposition that respondents' Emergency Justification flunks SAPA 202 (6) (d) (iv)'s mandate and thus renders their Emergency Regulations void. To begin the analysis, the court must employ the proper standard of review of respondents' Emergency Justification. The standard of review for challenges to regulations under the SAPA is one of "substantial compliance" (SAPA 202 [8]). Determining compliance with the SAPA is not a matter where courts defer to agencies. Rather, the SAPA "outlines uniform administrative procedures that State agencies *must* follow in their rule making ... Thus, the legislative direction

to these agencies is compliance" (*Matter of Industrial Liaison Comm. of Niagara Falls Area Chamber of Commerce v Williams*, 72 NY2d 137, 143-44 [1988]). Therefore, the court will judge the justification via traditional de novo review.

To ensure respondents had the authority to implement their emergency regulations, a sincere scrutiny of the Emergency Justification is required. According to the Emergency Justification, the current way intoxicating cannabinoid hemp products are made and sold frequently misleads consumers to believe such products contain very little or no THC, when in fact the finished product could contain intoxicating levels of THC. The "ambiguous labeling" of such products, the justification explains, "puts consumers at risk of overconsumption and accidental ingestion of intoxicating levels of THC or other adverse events." The Emergency Justification further observes that these "[i]ntoxicating cannabinoid hemp products pose an immediate risk to the health and safety of consumers, youth, and adolescents who have access to these products, and to young children who can accidentally consume these products, mistaking them for other consumer goods like food." For these reasons, the Board concludes that the emergency regulations are necessary to "immediately allow [OCM] to address several challenges with the processing and retail sale of cannabinoid hemp products in New York State, protect public health and safety by, among other things, limiting the THC content of these products and ensuring consumers are not misled by these products' marketing."

Petitioners contend that the Emergency Justification fails to "fully describ[e] the specific reasons for [dispensing with normal rulemaking procedures] and the facts and circumstances on which such findings are based" (SAPA 206 [6]). According to petitioners, the Board did not articulate a factual basis for evading the SAPA's requirement or offer facts of changed circumstances between 2021 (when hemp infused products entered the marketplace) and July

2023 that would indicate the rise of a sudden emergency so dangerous as to justify dispensing with normal rulemaking procedures.

This argument is compelling. The Emergency Justification fails to cite evidence or studies to substantiate that New Yorkers have either been misled or harmed by hemp infused products. The Emergency Justification also fails to cite facts showing New Yorkers have either overconsumed or accidentally ingested intoxicating levels of THC. Likewise, the Emergency Justification's parade of horribles that await children from petitioners' products lack specific recital of any actual facts upon which such concerns are based.

In short, the Emergency Justification does not "fully [describe] the specific reasons for such findings and the facts and circumstances on which such findings are based" (SAPA [6] [D] [iv]). It sets forth harm in a conclusory fashion—and that is not good enough to shirk the burden the Legislature imposed upon respondents (*see Demetriou v New York State Dept. of Health*, 74 Misc 3d 792, 797–98 [Sup Ct, Nassau County 2022] [holding that where the only justification the agency offered for emergency adoption was entirely conclusory, emergency rule making procedures were not permitted]; *see also In re Dry Harbor Nursing Home v Zucker*, 2017 NY Slip Op 33146 [U], 2017 WL 11503658, at *6 [Sup Ct, Albany County 2017] [concluding that the agency's emergency statement was insufficient under SAPA 206 because it was "devoid of any facts upon which to base a finding that an emergency existed"]).

Apparently aware of the justification's facial deficiency, respondents submitted evidence to bolster the justification's unsupported conclusions. None of this evidence is either referenced or appears in the justification statement. There is a real question whether the court should consider materials created for litigation to support, post hoc, an emergency justification. Surely, respondents had ample time to develop a detailed justification statement between the spring of

2023, when the Office felt the need to alert the public about hemp infused products, and July, 2023, when the Board issued their Emergency Justification for dodging the regular SAPA rulemaking regime. However, in fairness to respondents, and more importantly, in fairness to the public who might need respondents' urgent intervention, the court will consider respondents' submission.

Turning to the respondents' submission, to support their premise that an emergency was precipitated by allowing hemp infused products to continue on the market, respondents cite a regulatory analysis of eight sister states which each imposed THC limits on cannabinoid hemp products. Moreover, respondents cite available peer reviewed literature, and task force recommendations from three states that convened task forces concerning issues with hemp products. Respondents assert that notwithstanding petitioners' quibbles with certain particularities in the data, the data demonstrates a sufficient basis for the agency's determination that an emergency exists.

Respondents' submissions cite to several anecdotes about harm caused by cannabinoid hemp products but offer no studies or statistics concerning present dangers of products like petitioners'. To be sure, respondents' evidence points to potential danger. In the end, though, respondents have at best only reasonably forecasted the potential for trouble; the potential that "bad things [might or could be] happening" is insufficient to justify an "immediate necessity [or] emergency" allowing respondents to deploy the SAPA's procedures for emergency rulemaking (*Staff v Reardon*, 2018 NY Slip Op 32391[U] at *8 [Sup Ct, NY County 2018]; *compare with Matter of Korean Am. Nail Salon Assn*, 50 Misc 3d at 735 [emergency procedure justified where "bad things are happening"]). Therefore, it is likely that respondents' Emergency Justification does not comply with SAPA 202 (6) (d) (iv) and consequently, invalidates respondents'

emergency regulation generated pursuant to SAPA 202 (6) (d) (iv). Thus, the court concludes that petitioners are likely to prevail on their claim and have clearly and convincingly satisfied the merits prong of the preliminary injunction test.

The court will turn to the second prong, the irreparable injury prong. An irreparable injury, as the name suggests, occurs when the harm to the movant cannot be simply repaired by money. Indeed, "irreparable injury generally cannot be established where any damages sustained are calculable, because the plaintiff in such a case would have an adequate remedy in the form of monetary damages" (*Destiny USA Holdings, LLC v Citigroup Glob. Markets Realty Corp.*, 69 AD3d 212, 220 [4th Dept 2009]).

Respondents argue that while the regulations inflict harm on petitioners' businesses, any injury suffered can be quantified by calculating diminished profits. That is, any losses can be measured in terms of dollars and cents. Therefore, since money can make petitioners whole, they have not sustained an irreparable injury. This argument enjoys a certain appeal, particularly in a general sense.

Petitioners, however, counter. They assert that the damages caused by shuttering the emerging hemp infusion market makes calculating economic loss too speculative. Petitioners, when their argument is dissected, claim three different variants of irreparable harm—(1) loss of good will; (2) loss of profits that are too speculative to quantify; and (3) loss of market share. The court will examine each strain of harm in turn.

First, petitioners say that closing the hemp infused product market will destroy the brand loyalty they have built by being first to market.[4] Petitioners are right about this much, "[l]oss of

[4] The impact of being first to market, known as the "first-mover advantage," can play a significant role in establishing brand loyalty. Companies that are first to market with a new product or service can achieve higher market share and more brand visibility. First-mover brands

goodwill associated with a business, which is difficult to quantify, can constitute irreparable injury ..." (*Battenkill Veterinary Equine P.C. v Cangelosi*, 1 AD3d 856, 859 [3d Dept 2003]). Thus, a loss of customer goodwill can constitute irreparable harm for preliminary injunction purposes (*Alside Div. Of Associated Materials Inc. v Leclair*, 295 AD2d 873, 874 [3d Dept 2002]). In this case, the court finds the regulatory pause allows late starting competitors to enter the hemp sector and thereby defeat the advantage in being first to market and the attendant goodwill and brand loyalty. Therefore, the court concludes that on this front, respondents' regulations have inflicted irreparable injury upon petitioners.

Second, petitioners argue that the hemp products represent a new venture, and it is difficult for new businesses to prove losses. Correct—damages to compensate a new business's lost profits trend suppositionally. That is, "[g]iven the lack of a sales history and the difficulty in establishing the extent of damage to [petitioners' reputation (i.e., goodwill)] resulting from ... [the emergency regulation], any attempt to calculate damages could be considered too speculative" (*Lakedreams v Taylor*, 932 F2d 1103, 1109 [5th Cir 1991]). The regulations, in this context, consequently trigger damages incalculable and harm irreparable in nature.

Third, petitioners posit that respondents adopted the Emergency Regulations not for public health motives but to protect and advantage New York licensed cannabis vendors—which has the altogether pleasant externality of enhancing excise tax revenue. Respondents are less than bashful about this. They admit that petitioners' intoxicating cannabinoid hemp products

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can be perceived as innovators and leaders in their space, which can attract early adopters and brand advocates. Consumers tend to personalize their experiences with brands, and when a brand aligns with their personal identity or values, they are more likely to form a long-term, emotional connection (*see generally* Kotler, Philip, and Kevin Lane Keller "Marketing Management." 15th ed., Pearson Education Limited, 2016).

undermine the adult use cannabis market, which they license. Since the regulations have the effect (and purpose) of shifting consumers from petitioners' hemp products to respondents' preferred vendors of similar intoxicants, the regulations will result in petitioners losing market share. Given that a "loss of current or future market share … constitutes irreparable harm," (*Matter of Lasertron, Inc. v Empire State Dev. Corp.*, 70 Misc 3d 1085 [Sup Ct, Erie County 2021]), the court holds that petitioners have suffered or will suffer this variant of irreparable harm as well, absent injunctive relief.

The last injunctive prong reflects the demand of equity. Accordingly, this prong requires petitioners to demonstrate that the balance of the equities tip in their favor. But once the injunctive test has proceeded to this ultimate prong, the determination of equities does not occur in a vacuum. Rather, where the movant, as petitioners have done here, satisfies both the merits and irreparable injury prongs, the balance of the equities always tips in the movant's favor absent some greater hardship that the nonmovant would suffer should the injunction issue (*see e.g., New York State Off. of Victim Servs. on behalf of Sutton v Wade*, 79 Misc 3d 254, 261 [Sup Ct, Albany County 2023]).

Here, respondents do have strong countervailing considerations that mandate thoughtful examination and that make the balancing of equities a close call. Indeed, the tension in this case is perfectly captured in the balancing of the equities. The tension distills to this—on the one hand, this case involves the proliferation of a self-administered brain altering drug sold as a therapeutic to a vulnerable population. The court fully grasps the emergent threat such products pose and respondents' need to ensure that such products are safely consumed.

On the other hand, the regulations may be sufficient to drive petitioners out of business. The concomitant loss of employment will impose desperate economic straits on the workers who

have fed, sheltered and provided medical care to their families for the last two years. And in the current difficult market, new employment may not easily be found.

Now there is no easy answer. Both sides have merit. And different judges may weigh these two compelling interests differently. Equity does not operate with mathematical precision. Rather, equity, like beauty, rests in the eye of the beholder.

The court hoped respondents would have acted with deliberate speed in issuing permanent regulations. But they have not done so. Consequently, the court must exercise its discretion (*see* Siegel, NY Prac § 328 at 599 [6th ed 2018] [explaining that "the most instructive point about the preliminary injunction is that its granting is discretionary with the court"]). It seems wise to the court to take counsel from other judges faced with quite similar situations (*see Vapor Tech. Assn. v Cuomo*, 66 Misc 3d 800, 809 [Sup Ct, Albany County 2020] [concluding that the balancing of equities tips in favor of petitioners because a preliminary injunction would stave off the shuttering of their businesses]; *see also Uber Techs., Inc. v New York City Dept of Consumer & Worker Prot.*, 80 Misc 3d 1221[A], 2023 NY Slip Op [Sup Ct, NY County 2023] [finding the balancing of equities supported injunctive relief because without an injunction petitioners likely would go out of business and their delivery workers would be out of jobs]).

In light of the persuasive reasoning by these learned judges, the court finds that the balances of the equities tips in favor of petitioners. Since petitioners have established all necessary requirements to secure a preliminary injunction, it is therefore,

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

Office of Cannabis Management are restrained, prohibited and enjoined from enforcing the Emergency Regulations adopted on July 27, 2023, amending 9 NYCRR Part 114.

The foregoing constitutes the Decision and Order of the court.

DATED: November 9, 2023

Thomas Marcelle
Supreme Court Justice