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VIA NYSCEF AND ELECTRONIC MAIL

Honorable Kevin Bryant
Supreme Court Justice, State of New York
Third Judicial District Supreme Court Chambers
Ulster County Courthouse
285 Wall Street
Kingston, NY 12401

Re: *Coalition For Access to Regulated and Safe Cannabis v. New York Cannabis Control Board et. al.*, Index No. 902390-23

Dear Justice Bryant:

This firm represents the Plaintiff (or “the Coalition”) in the above-referenced action (“the Coalition Suit”).

Yesterday, we learned that Your Honor issued an order (“the Order”) in the case of *Fiore et al v. New York State Cannabis Control Board, et. al.*, Index No. 907282/23 (the “Fiore Suit”), a related action to the Coalition Suit. The Order temporarily restrains the OCM and CCB from “awarding or further processing any more conditional adult-use retail dispensary (“CAURD”) licenses until such time as this Court adjudicates the motion and the cross-motion for summary judgment” that the Coalition filed on July 24, 2023 in the Coalition Suit.

As Your Honor, no doubt, has recognized, plaintiffs in the Fiore Suit (the “Fiore Plaintiffs”) have adopted the Coalition’s legal theory—namely, that the CAURD license violates the separation of powers doctrine that New York’s Constitution erects between its executive and legislative branches. While we take no position on the scope of the temporary restraining order (“the TRO”) or the Fiore Plaintiffs’ request for a preliminary injunction, we write Your Honor to request that the Court either (i) maintain the TRO in place until the Court decides the competing motions for summary judgment in the Coalition Suit (so that the Court can consider the merits of the constitutional argument based upon a complete record), or (ii) permit this Firm to appear on behalf of the Coalition, and to be heard, at the hearing scheduled for August 11, 2023, on the

limited question of the CAURD program's constitutionality (or lack thereof)¹. By preserving the status quo for the next thirty (30) days or so, the Court will ensure that no party—whether the Fiore Plaintiffs, the Coalition or the CAURD licensees identified in the Attorney General's letter—will incur any further prejudice until the Court has had an opportunity to hear the parties' arguments based upon a full and complete record.

At this juncture, the parties in the Coalition Suit have nearly completed the briefing of their respective motions for summary judgment. In fact, Defendants' reply brief—the final brief in the competing motion sequences—is due on September 8, 2023 (one month from today). Upon submission of the Defendants' reply brief, the parties to the Coalition Suit will be prepared to argue the merits of the Coalition's constitutional challenge with the benefit of a full record before the Court.

At same time, we assume that any briefing on the Fiore Plaintiffs' motion for a preliminary injunction would take at least one month, if not longer, to complete. We also anticipate that Defendants' response in the Fiore Suit will mirror the arguments Defendants already advanced in the Coalition Suit and that the Coalition already has rebutted. Thus, as a matter of judicial efficiency—and to avoid any prejudice to the Coalition (which was the first party to challenge the constitutionality of the CAURD program under *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987))—we respectfully ask the Court to hear the Fiore Plaintiffs' motion for a preliminary injunction at the same time that it holds oral argument on the competing motions for summary judgment in the Coalition Suit.

Moreover, to the extent the Court is inclined to address the merits of the Fiore Plaintiffs' claims at the hearing on Friday, we respectfully request an opportunity to be heard on the constitutionality of the CAURD Program (if necessary) to avoid prejudice to the Coalition's case and/or delay in the outcome of the Coalition Suit.

Thank you in advance for considering the Coalition's request.

Respectfully Submitted,

Matthew S Schweber

Matthew S. Schweber

cc: all counsel of record

¹ Counsel for the Fiore Plaintiffs has communicated that they do not object to the Coalition's request to be heard in the Fiore Suit on August 11, 2023.