

PASHMAN STEIN WALDER HAYDEN, P.C.

J. John Kim, Esq. (#044512004)

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Court Plaza South

21 Main Street, Suite 200

Hackensack, NJ 07601

Tel: (201) 270-4948

Attorneys for Plaintiff,

VDDAS, LLC (d/b/a Delta Don)

VDDAS, LLC (d/b/a Delta Don),

Plaintiff,

v.

TOWNSHIP OF UNION, TOWNSHIP OF
UNION BUILDING DEPARTMENT, and
ANTHONY MONGUSO in his official
capacity as the Construction Official and
Zoning Officer of the Township of Union

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
UNION COUNTY

DOCKET NO.: UNN-L-

**VERIFIED COMPLAINT IN SUPPORT OF
APPLICATION FOR ORDER TO CAUSE
SEEKING PRELIMINARY RESTRAINTS
PURSUANT TO R. 4:52**

Plaintiff VDDAS, LLC (d/b/a Delta Don), through its undersigned counsel Pashman
Stein Walder Hayden, P.C., avers as follows:

INTRODUCTION

1. Plaintiff is in the business of selling hemp-derived products including, but not
limited to, Delta 8, Delta 9, Delta 10, THC-A, TCH-P, and HHC, all containing less than 0.3%
THC (collectively “Hemp Products”). Hemp Products are legal under both New Jersey State and

Federal Law because they contain less than 0.3% THC.¹ This case arises out of Defendants' efforts to constructively criminalize Hemp Products within the Township of Union and put Plaintiff out of business for engaging in such lawful business. After delaying the issuing to Plaintiff a Certificate of Continued Occupancy (a "CO") for as long as possible, it appears as though local law enforcement has had Plaintiff under investigation for suspected distribution of Marijuana since before it even turned its lights on. This culminated on September 20, 2023, when various Detectives and police officers of the Union Township Police Department ("Union Police Department") raided Plaintiff's store, seizing hundreds of thousands of dollars' worth of Hemp Products, electronics, cash, and other property, and placed one of Plaintiff's owners under arrest for selling Marijuana. On September 22, 2023 – just *two days later* – the Township Construction Official sent a notice to Plaintiff, advising that its CO was summarily being revoked for violating the CO's terms, asserting that "well over 10lbs of marijuana was seized from [Plaintiff's store]."² As of the time of this filing, not a scintilla of evidence has been offered

¹ Although they originate from the same plant, as opposed to the controlled substance "Marijuana", "Hemp Products" refers to hemp-derived products that are legal under both New Jersey State and Federal law. *See e.g.* The New Jersey Hemp Program Rules, N.J.A.C. 2:25-1.2 (Defining "Hemp" to mean "the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a post decarboxylation delta-9 tetrahydrocannabinol concentration of ***not more than 0.3 percent***, or the current Federally acceptable hemp THC level, on a dry weight basis. ***Hemp and hemp-derived cannabinoids, including cannabidiol, shall be considered an agricultural commodity and not a controlled substance due to the presence of hemp or hemp-derived cannabinoids.***") (emphasis added).

² Plaintiff has filed a Tort Claims Act Notice with the Township of Union and intends to initiate a separate civil litigation for money damages for the seized property and resulting business losses once the 6 month grace period expires. Additionally, once the related criminal matter has concluded, Plaintiff also intends to initiate proceedings against the Union Police Department asserting claims, including but not limited to, for violation of its procedural and substantive due process rights, unlawful search and seizure, and conversion. Due to the threat of irreparable harm,

or provided showing that anything seized on September 20, 2023 was illegal. Likewise, nobody has been found guilty of, or pled guilty to, any crimes.

2. Plaintiff has never received any prior notice from Defendants that Plaintiff was believed to be in violation of the terms of the CO. The revocation of Plaintiff's CO was done without any due process, hearing, adjudication, the ability to challenge the accusations, or the like. Indeed, Plaintiff has been denied due process and the right to engage in lawful business based on nothing more than the unproven suspicion of a police officer. There have been no determinations made whatsoever that Plaintiff was selling an unlawful product. The corrective hand of this Court of urgently needed to prevent irreparable harm and reinstate Plaintiff's CO.

PARTIES

3. Plaintiff VDDAS, LLC (d/b/a Delta Don) ("Plaintiff") is a business formed under the laws of the State of New Jersey with a principal place of business at 2075 Springfield Avenue, Vauxhall, NJ 07088 (the "Store").

4. Defendant Township of Union ("Union") is a municipality incorporated under the laws of the State of New Jersey, and has a principal place of business at 1976 Morris Avenue, Union, NJ 07083.

5. Defendant Township of Union Building Department ("Union Building Department") is a subdivision of Union, and has a principal place of business at 1976 Morris Avenue, Union, NJ 07083.

Plaintiff cannot wait until these additional claims become ripe and cognizable to file a singular action.

6. Defendant Anthony Monguso, in his official capacity as the Construction Official and Zoning Officer of Union (“Monguso” and collectively with Union and Union Building Department, the “Defendants”), is the chief officer in charge of determinations to issue or revoke COs, and maintains an office at 1976 Morris Avenue, Union, NJ 07083.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter because the parties are residents of New Jersey, the business entities at issue do business in New Jersey, and the property at issue is located in New Jersey.

8. This case is properly venued in Union County because the parties are residents of Union County. R. 4:3-2.

FACTS COMMON TO ALL COUNTS

9. Plaintiff is in the business of selling Hemp Products.

10. None of the Hemp Products Plaintiff sells are illegal under New Jersey State or Federal Law.

11. None of the Hemp Products Plaintiff sells requires the issuance of a special type of license (*e.g.* an Adult Use Marijuana Dispensary).

12. Plaintiff has never sold Marijuana or any other controlled substance at the Store.

13. On or about October 17, 2022, Plaintiff submitted its Application for a Certificate of Continued Occupancy to engage in the business of “Retail of tobacco, vape, hemp, and CBD

products.” Attached hereto as **Exhibit A** is a true and accurate copy of Plaintiff’s CO application.³

14. Despite not being able to identify any substantive defects with Plaintiff’s Application, it took Defendants over six (6) months to finally issue a CO to Plaintiff so that it could open the Store and begin conducting business. Attached hereto as **Exhibit B** is a true and accurate copy of the CO.

15. While the Union Building Department transmitted Plaintiff its CO on April 18, 2023, it was not valid because Monguso neglected to sign it. Exhibit B.

16. This purported oversight further hampered Plaintiff’s ability to open the Store, because the CO was not valid without Monguso’s signature.

17. Despite Plaintiff promptly raising this issue with Monguso, it took him an additional seven (7) days to sign the CO, making it not effective until April 25, 2023. Exhibit B.

18. After receiving its CO, Plaintiff opened the Store and began selling tobacco, vape, hemp and CBD products, as represented in its CO application.

19. Approximately 3 months later, on August 1, 2023, a written “warning” was issued by Detective Christopher Lensi (“Detective Lensi”) (the “Warning Letter”) to Plaintiff asserting that “marijuana products” had allegedly been purchased from the Store in violation of N.J.S.A. 2C:35-5, and that “further violations would result in the employee and owner(s) of the business being criminally charged.” Attached hereto as **Exhibit C** is a true and accurate copy of the Warning Letter.

³ The CO is issued to TGL Partners Corporation, an owner of Plaintiff. TGL set up Plaintiff to operate the Store.

20. The Warning Letter advised that an investigation had been conducted in the “last 90 days,” which is around the time Plaintiff was first issued the CO. In other words, Plaintiff had been under investigation since it first opened for business.

21. The Warning Letter makes no reference to Plaintiff’s CO, nor does it provide any notice that Defendants believe Plaintiff was in violation of the CO’s terms.

22. In response to the Warning Letter, Plaintiff’s criminal defense legal counsel, Robert M. Biagiotti, Esq., sent a letter to Detective Lensi on August 18, 2023 requesting basic information about the alleged purchase of Marijuana from the Store “in an effort to rectify what might have been a misunderstanding with regarding to the products you indicate were purchased from [Plaintiff’s Store.]” (the “August 18th Letter”). Attached hereto as **Exhibit D** is a true and accurate copy of the August 18th Letter. The August 18th Letter categorically denied the allegations set forth in the Warning Letter, and affirmed Plaintiff’s commitment to cooperating with the Union Police Department to resolve whatever the actual problem was, if any. Exhibit D.

23. Detective Lensi did not respond to the August 18th Letter.

24. Having not received any response from Detective Lensi, Mr. Biagiotti sent a follow up letter on September 18, 2023 (the “September 18th Letter”). Attached hereto as **Exhibit E** is a true and accurate copy of the September 18th Letter. The September 18th Letter reaffirmed Plaintiff’s willingness to cooperate with the Union Police Department to resolve whatever issues the police perceived to exist. Exhibit E.

25. Detective Lensi did not respond to the September 18th Letter.

26. Just two days later, on September 20, 2023, approximately six (6) police officers and detectives, led by Detective Lensi, conducted an unannounced raid of the Store (the “Raid”).

27. As of the date of this filing, any search warrants issued in connection with the Raid, if any, have not been disclosed to Plaintiff or Mr. Biagiotti.

28. After detaining and searching Juan Addison (one of Plaintiff's owners) and Gabriella Yi (one Plaintiff's employees), the detectives began searching the Store for evidence of criminal activity.

29. After not finding any Marijuana as they hoped – as depicted in Plaintiff's security camera footage – the demeanor of many detectives quickly changed. Previously enthusiastic and eager to find evidence of a crime, those same detectives began to pace around the Store aimlessly.

30. The security camera footage further demonstrates Mr. Addison's unfettered cooperation with the detectives, including voluntarily opening Plaintiff's safe so the detectives could search it.

31. At Detective Lensi's instruction, the detectives proceeded to seize hundreds of thousands of dollars worth of Hemp Products, cash, electronics, and other property belonging to Plaintiff.

32. One of the detectives (name unknown), who appeared to be a supervisor (the "Supervisor"), made multiple verbal comments conveying his belief that the items that were found and being seized were legal Hemp Products, and not Marijuana.

33. By limited example, the Supervisor asked Detective Lensi why they were seizing products which were clearly labeled as legal hemp.

34. Detective Lensi did not share the Supervisor's concerns and reiterated his order to the others to just "take it anyway!"

35. The Supervisor also commented that all the Hemp Products found were the same products sold at Speedy Gas Station, which the Union Police Department presumably took no issue with.

36. Mr. Addison was arrested at scene and charged with distribution of marijuana in alleged violation of N.J.S.A. 2C:35-5(B)(11)(A).

37. According to the issued Summons-Complaint, dated September 21, 2023, in Detective Lensi's certification, on September 20, 2023 (the previous day) Mr. Addison sold "Marijuana in a quantity of one ounce or more but less than 5 pounds, specifically by selling *confirmed marijuana* in excess of 1 ounce to an undercover police officer." Attached hereto as **Exhibit F** a true and accurate copy of the Summons-Complaint.

38. As of the time of this filing, despite multiple requests for discovery being made in connection with the criminal proceedings against Mr. Addison, the Union Police Department and the prosecutor have produced *no evidence* demonstrating that any Marijuana was found at the Store on September 20, 2023, or that Mr. Addison sold "confirmed marijuana" to an undercover police officer on the same date.

39. On September 22, 2023 – just *two days* after the Raid – Monguso sent Plaintiff a notice that its CO was now revoked based on what was found during the Raid, specifically stating that "well over 10lbs of marijuana was seized from [the Store], among other things" and therefore, Plaintiff's CO had been revoked for violating its terms (the "Revocation Notice"). Attached hereto as **Exhibit G** is a true and accurate copy of the Revocation Notice.

40. The Hemp Products seized are not marijuana; Plaintiff maintains lab results confirming all products have below 0.3% TCH and are therefore Hemp Products. Attached

hereto as **Exhibit H** are true and accurate copies of a selection of lab test data for seized Hemp Products.

41. As a result of its CO being revoked, Plaintiff's Store is unable to operate and conduct business.

42. Plaintiff's CO was revoked without any notice, nor any administrative or judicial process or hearing first taking place.

43. In deciding to revoke the CO, Defendants did not consider or have in their possession any documents or evidence conclusively demonstrating that Marijuana – as opposed to Hemp – was found at the Store on September 20, 2023, or at any other time.

44. In deciding to revoke the CO, Defendants did not consider or have in their possession any documents or evidence conclusively demonstrating that any illegal activities had taken place at the Store.

45. In deciding to revoke the CO, Defendants did not consider or have in their possession any documents or evidence conclusively demonstrating that Plaintiff was in violation of any of the CO's terms.

46. Defendants and the Union Police Department did not have any legitimate or good faith basis to believe that Marijuana (as opposed to Hemp) was being sold at the Store, that illegal activities were taking place at the Store, or that Plaintiff was in violation of the CO's terms.

47. Indeed, as demonstrated by Defendants' and the Union Police Department's rejections of Mr. Biagiotti's repeated offers to discuss the Warning Letter and cooperate with Defendants and the Union Police Department to allay their concerns about Plaintiff's business

operations (*i.e.* to demonstrate that only legal Hemp Products and not Marijuana were being sold at the Store), Defendants were not interested in learning the truth, but instead, had a predisposed agenda to shut the Store down.

48. Defendants' true objective is further evidenced by the Warning Letter's contents, confirming that the Union Police Department had the Store under investigation since the day it opened.

49. Neither Mr. Addison, nor any other of Plaintiff's employees, have been found guilty of, or pleaded guilty to, any crimes arising out of their activities at the Store, including but not limited to the sale of Marijuana.

50. In connection with the prosecution of Mr. Addison, the State has produced no discovery evidencing illegal activity taking place at the Store or on the part of Mr. Addison on September 20, 2023, or at any other time since the Store opened.

51. As a result of the Defendants' wrongful revocation of the CO, Plaintiff has suffered, and will continue to suffer, damages.

COUNT 1 (Declaratory Judgment)

52. Plaintiff repeats and incorporates by reference the allegations in the preceding paragraphs as if set forth at length herein.

53. Pursuant to New Jersey's Declaratory Judgment Act, under N.J.S.A. 2A:16-52:

All courts of record in this state shall, within their respective jurisdictions, have power to declare rights, status and other legal relations, whether or not further relief is or could be claimed; and no action or proceeding shall be open to objection on the ground that a declaratory judgment is demanded.

54. Moreover, pursuant to N.J.S.A. 2A:16-53:

A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

55. To remove the uncertainty created by Defendants' pretextual revocation of Plaintiff's CO, Plaintiff seeks the Court's determination as to whether the terms of the CO had been violated, and accordingly, whether Defendants had grounds to revoke the CO.

WHEREFORE, Plaintiff demands judgment as follows:

- a. Determining Defendants' revocation of Plaintiff's CO to be unlawful and invalid;
- b. Directing Defendants to reinstate Plaintiff's CO immediately;
- c. Compensatory damages in an amount to be determined at trial;
- d. Punitive damages;
- e. Awarding Plaintiff costs and counsel fees in connection with all efforts to protect its legal and equitable rights in connection with this action; and
- f. Any further relief the Court may deem equitable and just.

COUNT 2

(Violation of Procedural Due Process Rights)

56. Plaintiff repeats and incorporates by reference the allegations in the preceding paragraphs as if set forth at length herein.

57. Pursuant to N.J.A.C. 5:23-2.30:

(2) Whenever the construction official or the appropriate subcode official shall determine that there exists a violation of the provisions of the regulations or where there exists a violation of a permit or certificate issued under the regulations, ***the appropriate subcode official shall issue a notice of violation and orders to terminate directing the discontinuance of the illegal action or condition and the correction of the violation.***

(b) The notice and orders shall contain at least the following information:

2. The name and address of the owner; the address at which the violation occurred; the name and address of the person to whom the order is directed, and if it be other than the owner, a copy shall be delivered to the owner or his agent stating that the owner bears joint responsibility for bringing about compliance with the person named and that if a penalty is imposed, the enforcing agency will not issue a certificate of occupancy until such penalty has been paid; the permit number; a citation to the sections of the regulations violated; an order to terminate violations within a time specified in the order; the amount of penalty assessed, if any, and if cumulative, an explanation of the method of computation; and shall be signed by the appropriate subcode official or the construction official.

2. Unless an immediate hazard to health and safety is posed, ***the construction official or appropriate subcode official shall permit such time period for correction as is reasonable within the context of the situation.***

(emphasis added).

58. Defendants have never issued Plaintiff a notice or otherwise communicated that they believed Plaintiff's activities were in violation of its CO's terms.

59. Defendants have never issued Plaintiff a notice or otherwise communicated an intention to revoke Plaintiff's CO based on their belief Plaintiff was selling Marijuana at the Store.

60. Defendants never issued the “notice of violation” to Plaintiff as required by N.J.A.C. 5:23-2.30.

61. Defendants never afforded Plaintiff a “reasonable” time period to correct the perceived violation prior to revoking the CO, as required by N.J.A.C. 5:23-2.30.

62. Defendants never afforded Plaintiff any opportunity to demonstrate that its business operations were not in violation of the CO’s terms.

63. In deciding to revoke Plaintiff’s CO, Defendants did not consider any documents or other evidence actually demonstrating that Plaintiff was in violation of the CO’s terms.

64. In deciding to revoke Plaintiff’s CO, Defendants did not have in their possession any lab results or similar analysis demonstrating that “well over 10lbs of marijuana was seized from [the Store]” on September 20, 2023. *See* Exhibit G.

65. Accordingly, Defendants did not have a legitimate and good faith belief that Plaintiff was in violation of the CO’s terms when they decided to revoke the CO just two days later, on September 22, 2023.

66. Instead, at best, Defendants’ decision to revoke the CO was entirely based on the unsubstantiated and unproven accusation of a single police officer.

67. Defendants’ decision to revoke the CO was primarily motivated to curtail Plaintiff’s legal business operations and put Plaintiff out of business.

68. The foregoing acts and omissions by Defendants are shocking to the conscience.

69. The foregoing acts and omissions by Defendants are in contravention of Plaintiff’s rights under the 14th Amendment of the New Jersey State Constitution, 42 U.S.C. § 1983, and N.J.S.A. 10:6-2.

WHEREFORE, Plaintiff demands judgment as follows:

- a. Determining Defendants' revocation of Plaintiff's CO to be unlawful and invalid;
- b. Directing Defendants to reinstate Plaintiff's CO immediately;
- c. Compensatory damages in an amount to be determined at trial;
- d. Punitive damages;
- e. Awarding Plaintiff costs and counsel fees in connection with all efforts to protect its legal and equitable rights in connection with this action; and
- f. Any further relief the Court may deem equitable and just.

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff,

/s/ J. John Kim
J. JOHN KIM

Date: December 20, 2023

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to R. 4:5-1(b)(2), it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Plaintiff intends to bring further claims against these Defendants and others in the future, but those claims are not yet ripe due to the Tort Claims Act waiting period and because the pending prosecution of Mr. Addison (partial owner of Plaintiff) is not yet resolved. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff

/s/ J. John Kim

J. JOHN KIM

Date: December 20, 2023

DESIGNATION OF TRIAL COUNSEL

J. John Kim, Esq. is designated as trial counsel for Plaintiff.

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff

/s/ J. John Kim

J. JOHN KIM

Date: December 20, 2023

CERTIFICATION PURSUANT TO RULE 1:38

All confidential information pursuant to Rule 1:38-7 has been redacted.

PASHMAN STEIN WALDER HAYDEN, P.C.
Attorneys for Plaintiff

/s/ J. John Kim
J. JOHN KIM

Date: December 20, 2023

VERIFICATION

I, Tony Yi, of full age, deposes and say:

1. I am a citizen of the State of New Jersey, and an owner of VDDAS, LLC (d/b/a ~~La~~ Don), Plaintiff in the foregoing Verified Complaint.

2. The allegations of the Verified Complaint are true. The said Verified Complaint is made in truth and good faith and without collusion, for the causes set forth herein.

3. All documents attached to the Verified Complaint are true copies and have not ~~be~~ redacted, changed, modified, adjusted or otherwise altered in any manner by me or my agents unless ~~so~~ stated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Tony Yi

Dated: December 18, 2023

EXHIBIT A

Application for Certificate of Continued Occupancy Commercial

1976 Morris Avenue
Union, NJ 07083
(908)851-8509

CH#888890

Block 5701 Lot 7***Print Clearly***Name of Business TGL Partners, d.b.a Delta DonBusiness Address 2075 Springfield Ave
Vauxhall, NJ 07088Business Phone No. 201-681-6224Tenant's Name Juan AddisonHome Address 1513 Hiawatha Ave
Hillside, NJ 07205Home Phone No. 862-291-5932Previous Use Retail Beaty Supplies Intended Use Smoke ShopType of business Retail of Tobacco, Vape, Hemp, and CBD products**Signature of Applicant & Date**

1. \$75.00 fee by credit card, check or money order ONLY!
2. Please make payable to **Township of Union**
3. See **Fire Department** for inspection
4. Food/Hair Salon/Nail Salon applicant see **Health Department**

Office Use OnlyUse Group B Description: _____Approved ✓ Denied _____Construction Official *Cathy J. Agnew* Date 10/17/2022

NO
Smoking
only
Re Fail

NO
~~MALE~~
SALES

EXHIBIT B

TOWNSHIP OF UNION
Code Enforcement Agency
1976 Morris Ave.
Union, New Jersey 07083
(908) 851-8509



CERTIFICATE

Permit #
Date Issued
-or-
Control #
Certificate Issued Date: April 18, 2023

IDENTIFICATION

Block 5701 Lot 7 Qualification Code _____
Work Site Location TGL Partners, d.b.a. Delta Don
2075 Springfield Ave.
Owner in Fee Juan Addison
Address 1513 Hiawatha Ave.
Hillside, NJ 07205
Tel. (862) 291-5932
Contractor _____
Address _____
Tel. (____) _____ FAX (____) _____
Lic. No. or Bldrs. Reg. No. _____
Federal Employer No. _____

☐ CERTIFICATE OF OCCUPANCY

This serves notice that said building or structure has been constructed in accordance with the New Jersey Uniform Construction Code and is approved for occupancy.

☐ CERTIFICATE OF APPROVAL

This serves notice that the work completed has been constructed or installed in accordance with the New Jersey Uniform Construction Code and is approved. If the permit was issued for minor work, this certificate was based upon what was visible at the time of the inspection.

☐ TEMPORARY CERTIFICATE OF OCCUPANCY/COMPLIANCE

If this is a temporary Certificate of Occupancy or Compliance, the following conditions must be met no later than _____ or will be subject to fine or order to vacate:

Home Warranty No. _____
Type of Warranty Plan: [] State [] Private
Use Group B
Maximum Live Load _____
Construction Classification _____
Maximum Occupancy Load _____
Description of Work/Use:

Retail of Tobacco, Vape, Hemp and CBD products

* NO SMOKING * * RETAIL ONLY *
* NO MARIJUANA SALES *

☐ CERTIFICATE OF CLEARANCE – LEAD ABATEMENT 5:17

This serves notice that based on written certification, lead abatement was performed as per NJAC 5:17, to the following extent:

[] Total removal of lead-based paint hazards in scope of work
[] Partial or limited time period (____ years); see file

☒ CERTIFICATE OF CONTINUED OCCUPANCY

This serves notice that based on a general inspection of the visible parts of the building there are no imminent hazards and the building is approved for continued occupancy.

☐ CERTIFICATE OF COMPLIANCE

This serves notice that said potentially hazardous equipment has been installed and/or maintained in accordance with the New Jersey Uniform Construction Code and is approved for use until _____.

CONSTRUCTION OFFICIAL
U.C.C. #260
(rev. 8/05)

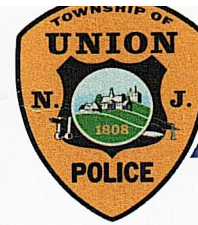
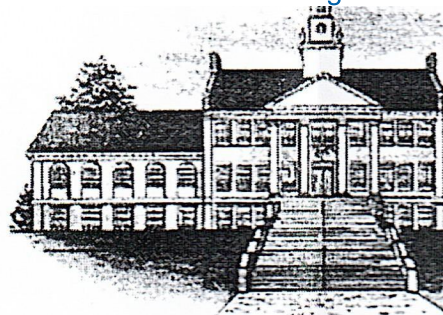
4/25/2023
DATE

Fee \$ PAID
Paid [X] Check No. _____
Collected by: GCJ

EXHIBIT C

**POLICE DIVISION**

CHRISTOPHER DONNELLY, DIRECTOR
 981 CALDWELL AVENUE
 UNION, UNION COUNTY, NJ 07083
 908-851-5000
 FAX 908-851-5445



CHRIS LENS
 DETECTIVE

981 Caldwell Avenue, Union, NJ 07083
 Phone: 908-851-5038
 Cell: 908-930-2188
 E-mail: clensi@uniontownship.com

THE TOWNSHIP OF UNION

DEPARTMENT OF PUBLIC SAFETY

1 BOND DRIVE
 UNION, UNION COUNTY, NJ 07083
 908-851-5420
 FAX 908-851-5423

August 1, 2023

Delta Don
 2075 Springfield Avenue
 Vauxhall, NJ 07088
 Attention: Owner(s) and all Employees

This notice serves as a written warning as required by law for the Distribution of Marijuana within this Township. In the last 90 days an investigation was conducted in which marijuana products were purchased from "Delta Don" located at 2075 Springfield Avenue, Vauxhall. The purchased marijuana products were then tested by the Union County Police Lab and confirmed to contain marijuana.

The State of New Jersey and Township of Union require by law that any business distributing/selling/gifting marijuana products obtains proper licensing through the State of New Jersey and Township of Union. If proper licensing is not obtained and marijuana is sold/distributed/gifted at the business the employee and owner(s) of such business will be in violation of NJ 2C: 35-5 Distribution of Marijuana.

This warning will be retained and any further violations will result in the employee and owner(s) of the business being criminally charged.

*Please note that the application for a State of New Jersey or Township of Union license to sell marijuana does not grant the business owner(s) or any employee the legal authority to distribute/sell/gift marijuana products.

For more information on obtaining a Recreational Cannabis Business License:
<https://www.nj.gov/cannabis/businesses/>

Township of Union Police Department
 Detective Christopher Lensi
 Phone: (908) 851-5038
 Email: CLensi@UnionTownship.com

EXHIBIT D

ROBERT M. BIAGIOTTI

Attorney at Law

Tel. (201) 343-6467
Fax. (201) 343-6460
Email: r.biagiottilaw@gmail.com

COURT PLAZA SOUTH/WEST WING
21 MAIN STREET - SUITE 154
HACKENSACK, N.J. 07601

WILLIAM J. GALDA
OF COUNSEL

August 18, 2023

VIA: EMAIL ONLY (CLensi@UnionTownship.com)

Detective Christopher Lensi
Township of Union Police Department
981 Caldwell Avenue
Union, NJ 07083

Re: VDDAS LLC dba Delta Don
2075 Springfield Avenue
Vauxhall, NJ 07088

Dear Detective Lensi:

Please be advised that this office has been retained to represent VDDAS LLC dba Delta Don with regard to your August 1, 2023 written warning.

Please be advised that my client categorically denies the allegations set forth in your August 1, 2023 warning that marijuana products were purchased from Delta Don during the 90 day period prior to August 1, 2023.

In an effort to rectify what might be a misunderstanding with regard to the products you indicate were purchased from Delta Don, I would appreciate it if you would provide this office with the following, to wit:

1. The dates of the sales referenced in your August 1, 2023 letter.
2. The products purchased from Delta Don as referenced in your August 1, 2023 letter.
3. The Union County Police Lab analysis reports with regard to the items purchased.

Please be advised that my client is fully conversant with the law as required by the State of New Jersey and the Township of Union and in an effort to rectify any misunderstanding with regard to the products involved, the above information would be conducive to addressing and rectifying any future problems or misunderstandings.

Detective Christopher Lensi
Page two
August 18, 2023

Please note that it is the intention of my client to cooperate fully with your offices in resolving whatever problems, if any, may exist.

I would like to take this opportunity to thank you for your anticipated courtesy and cooperation.

If there should be any questions, please do not hesitate to contact this office.

Very truly yours,

ROBERT M. BIAGIOTTI

RMB:sb
cc: Tony Yi (via email)

EXHIBIT E

ROBERT M. BIAGIOTTI

Attorney at Law

Tel.(201)343-6467
Fax. (201)343-6460
Email: r.biagiottilaw@gmail.com

COURT PLAZA SOUTH/WEST WING
21 MAIN STREET - SUITE 154
HACKENSACK, NJ. 07601

WILLIAM J. GALDA
OF COUNSEL

September 18, 2023

VIA: EMAIL (CLensi@UnionTownship.com)
& REGULAR MAIL

Detective Christopher Lensi
Township of Union Police Department
981 Caldwell Avenue
Union, NJ 07083

Re: VDDAS LLC dba Delta Don
2075 Springfield Avenue
Vauxhall, NJ 07088

Dear Detective Lensi:

Please be advised that as you are aware this office has been retained to represent VDDAS LLC dba Delta Don.

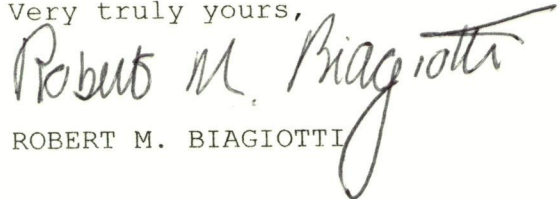
In accordance with your August 1, 2023 written warning and my correspondence of August 21, 2023, a copy of which is enclosed herein, please note that I have not heard from you with regard to this matter.

Please note that I would appreciate it if you would contact this office in order that we proceed accordingly in that as you will note it is the intention of my client to cooperate fully with your offices in resolving whatever problems issues, if any, may exist.

I would like to take this opportunity to thank you for your anticipated courtesy and cooperation.

If there should be any questions, please do not hesitate to contact this office.

Very truly yours,


ROBERT M. BIAGIOTTI

RMB:sb
cc: Tony Yi (via email)

ROBERT M. BIAGIOTTI

Attorney at Law

Tel. (201) 343-6467
Fax. (201) 343-6460
Email: r.biagiottilaw@gmail.com

COURT PLAZA SOUTH/WEST WING
21 MAIN STREET - SUITE 154
HACKENSACK, N.J. 07601

WILLIAM J. GALDA
OF COUNSEL

August 21, 2023

VIA: EMAIL ONLY (CLensi@UnionTownship.com)

Detective Christopher Lensi
Township of Union Police Department
981 Caldwell Avenue
Union, NJ 07083

Re: VDDAS LLC dba Delta Don
2075 Springfield Avenue
Vauxhall, NJ 07088

Dear Detective Lensi:

Please be advised that this office has been retained to represent VDDAS LLC dba Delta Don with regard to your August 1, 2023 written warning.

Please be advised that my client categorically denies the allegations set forth in your August 1, 2023 warning that marijuana products were purchased from Delta Don during the 90 day period prior to August 1, 2023.

In an effort to rectify what might be a misunderstanding with regard to the products you indicate were purchased from Delta Don, I would appreciate it if you would provide this office with the following, to wit:

1. The dates of the sales referenced in your August 1, 2023 letter.
2. The products purchased from Delta Don as referenced in your August 1, 2023 letter.
3. The Union County Police Lab analysis reports with regard to the items purchased.

Please be advised that my client is fully conversant with the law as required by the State of New Jersey and the Township of Union and in an effort to rectify any misunderstanding with regard to the products involved, the above information would be conducive to addressing and rectifying any future problems or misunderstandings.

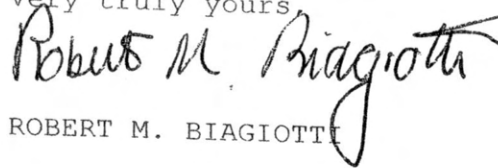
Detective Christopher Lensi
Page two
August 21, 2023

Please note that it is the intention of my client to cooperate fully with your offices in resolving whatever problems, if any, may exist.

I would like to take this opportunity to thank you for your anticipated courtesy and cooperation.

If there should be any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script that reads "Robert M. Biagiotti". The signature is written in dark ink and has a long, sweeping horizontal line extending from the end of the name.

ROBERT M. BIAGIOTTI

RMB:sb

cc: Tony Yi (via email)

EXHIBIT F

COMPLAINT - SUMMONS (DEFENDANT'S COPY)			
2019	S	2023	000875
COURT CODE	PREFIX	YEAR	SEQUENCE NO.
UNION TWP MUNICIPAL COURT 981 CALDWELL AVE UNION 908-851-5400			
COUNTY OF: UNION			
# of CHARGES	CO-DEFTS	POLICE CASE #:	
1	0	23-048972	
COMPLAINANT NAME: CHRISTOP A LENSI			
THE STATE OF NEW JERSEY VS. JUAN T ADDISON ADDRESS: 1513 HIAWATHA AVE HILLSIDE NJ 07205-0000			
DEFENDANT INFORMATION SEX: M EYE COLOR: BROWN DOB: 11/19/1971 DRIVER'S LIC. # A18114158311712 SOCIAL SECURITY #: xxx-xx-x813 SBI #: DL STATE: NJ TELEPHONE #: 862-291-5932 (C) LIVESCAN PCN #:			
By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about 09/20/2023 in UNION TWP UNION County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, KNOWINGLY OR PURPOSELY DISTRIBUTE MARIJUANA IN A QUANTITY OF ONE OUNCE OR MORE BUT LESS THAN 5 POUNDS, SPECIFICALLY BY SELLING CONFIRMED MARIJUANA IN EXCESS OF 1 OUNCE TO AN UNDERCOVER POLICE OFFICER IN VIOLATION OF N.J.S. 2C:35-5(B)11A A 3RD DEGREE CRIME.			
PROBABLE CAUSE: DB INVEST			
THE ABOVE CASE WAS PRESENTED TO UCPO AP SIANO WHO APPROVED THE ABOVE CHARGE.			
in violation of:			
Original Charge	1) 2C:35-5B(11) (A)	2)	3)
Amended Charge			
CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment Signed: CHRISTOP A LENSI Date: 09/21/2023			
The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.			
SUMMONS YOU ARE HEREBY SUMMONED to appear before the Superior Court in the county of: UNION at the following address: UNION COUNTY JAIL 15 ELIZABETHTOWN PLAZA ELIZABETH NJ 07201-0000 If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest. Date of Arrest: 09/20/2023 Appearance Date: 10/19/2023 Time: 08:30AM Phone: 908-787-1650 Signature of Person Issuing Summons: CHRISTOP A LENSI Date: 09/21/2023			
☐ Domestic Violence – Confidential			
☐ Related Traffic Tickets or Other Complaints			
☐ Serious Personal Injury/ Death Involved			
Special conditions of release: ☐ No phone, mail or other personal contact w/victim ☐ No possession firearms/weapons ☐ Other (specify):			
COMPLAINT - SUMMONS (DEFENDANT'S COPY)			
Page 3 of 7			
NJ/CDR1 1/1/2017			

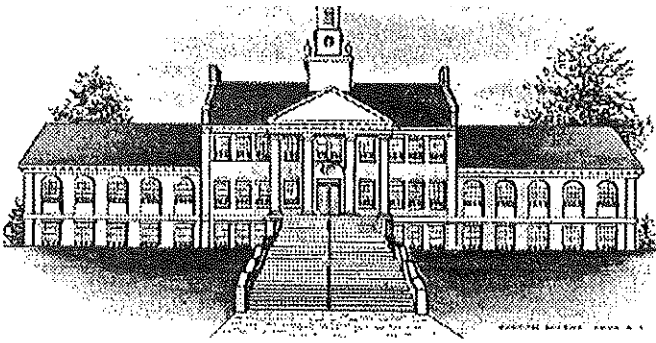
EXHIBIT G

TOWNSHIP OF UNION

IN THE COUNTY OF UNION

BUILDING DEPARTMENT
 1976 MORRIS AVENUE
 UNION, NEW JERSEY 07083
 908-851-8509
 908-851-4677 FAX
 Amonguso@UnionTownship.com

Anthony Monguso, Construction Official



September 22, 2023

Sent: Regular and certified mail

TGL Partners, d.b.a. Delta Don
 C/O Juan Addison
 2075 Springfield Ave
 Vauxhall, NJ 07088
 Block: 5701 Lot: 7

RE: Notice of Violation-Revocation of Certificate of Occupancy

Dear Mr. Addison:

I have been notified by the Union Police Department that you, either individually or as a part of the entity known as Delta Don were placed under arrest for Distribution of Marijuana at 2075 Springfield Ave Vauxhall NJ which is a direct violation of your certificate of occupancy. We understand additional testing will occur and well over 10lbs of marijuana was seized from this location among other things. Therefore I am revoking your certificate of occupancy pursuant to N.J.A.C 5:23 – 2.23 (n). I have attached a copy of the original certificate of occupancy along with a letter from your attorney stating that no marijuana will be sold at this location. Be advised without a certificate of occupancy you can no longer operate. If you have any questions feel free to contact me at amonguso@uniontownship.com or 908-851-8509.

Sincerely,

Anthony Monguso
 Construction Official/ Zoning Officer

Cc:

Christopher Donnelly, Police Director
 Donald Travisano, Administrator
 Daniel Antonelli, Township Attorney
 Thomas Izzard, Esq

TOWNSHIP OF UNION
Code Enforcement Agency
1976 Morris Ave.
Union, New Jersey 07083
(908) 851-8509



CERTIFICATE

Permit #
Date Issued
- or -
Control #
Certificate Issued Date: April 18, 2023

IDENTIFICATION

Block 5701 Lot 7 Qualification Code _____
Work Site Location TGL Partners, d.b.a. Delta Don
2075 Springfield Ave.
Owner in Fee Juan Addison
Address 1513 Hiawatha Ave.
Hillside, NJ 07205
Tel. (862) 291-5932
Contractor _____
Address _____
Tel. (____) _____ FAX (____) _____
Lic. No. or Bldrs. Reg. No. _____
Federal Employer No. _____

Home Warranty No. _____
Type of Warranty Plan: [] State [] Private
Use Group B
Maximum Live Load _____
Construction Classification _____
Maximum Occupancy Load _____
Description of Work/Use:

Retail of Tobacco, Vape, Hemp and CBD products

* NO SMOKING * * RETAIL ONLY *
* NO MARIJUANA SALES *

☐ CERTIFICATE OF OCCUPANCY

This serves notice that said building or structure has been constructed in accordance with the New Jersey Uniform Construction Code and is approved for occupancy.

☐ CERTIFICATE OF APPROVAL

This serves notice that the work completed has been constructed or installed in accordance with the New Jersey Uniform Construction Code and is approved. If the permit was issued for minor work, this certificate was based upon what was visible at the time of the inspection.

☐ TEMPORARY CERTIFICATE OF OCCUPANCY/COMPLIANCE

If this is a temporary Certificate of Occupancy or Compliance, the following conditions must be met no later than _____ or will be subject to fine or order to vacate:

☐ CERTIFICATE OF CLEARANCE – LEAD ABATEMENT 5:17

This serves notice that based on written certification, lead abatement was performed as per NJAC 5:17, to the following extent:

[] Total removal of lead-based paint hazards in scope of work
[] Partial or limited time period (____ years); see file

☒ CERTIFICATE OF CONTINUED OCCUPANCY

This serves notice that based on a general inspection of the visible parts of the building there are no imminent hazards and the building is approved for continued occupancy.

☐ CERTIFICATE OF COMPLIANCE

This serves notice that said potentially hazardous equipment has been installed and/or maintained in accordance with the New Jersey Uniform Construction Code and is approved for use until _____.

CONSTRUCTION OFFICIAL
U.C.C. #260
(rev. 3/05)
DATE 4/25/2023

Reorder at: ucc.allegramarmora.com • (609) 390-1400 • Allegra Marketing, Print & Mail - Marmora, NJ

Fee \$ PAID
Paid [X] Check No. _____
Collected by: GCJ

Application for Certificate of Continued Occupancy Commercial

1976 Morris Avenue
Union, NJ 07083
(908)851-8509

CH#888890

Block 5701 Lot 7***Print Clearly***Name of Business TGL Partners, d.b.a Delta DonBusiness Address 2075 Springfield Ave
Vauxhall, NJ 07088Business Phone No. 201-681-6224Tenant's Name Juan AddisonHome Address 1513 Hiawatha Ave
Hillside, NJ 07205Home Phone No. 862-291-5932Previous Use Retail Beaty Supplies Intended Use Smoke ShopType of business Retail of Tobacco, Vape, Hemp, and CBD products**Signature of Applicant & Date**

1. **\$75.00 fee by credit card, check or money order ONLY!**
2. Please make payable to **Township of Union**
3. See **Fire Department** for inspection
4. Food/Hair Salon/Nail Salon applicant see **Health Department**

Office Use OnlyUse Group B Description: _____Approved ✓ Denied _____Construction Official [Signature] Date 10/17/2022

NO
Smoking
only
Retail

NO
~~MAN~~
SALES

Monguso, Anthony

From: ffi7788@aol.com
Sent: Monday, January 23, 2023 6:25 PM
To: Monguso, Anthony; Tony Yi
Subject: Fw: TGL - 2075 Springfield Avenue

Dear Mr. Mounghuso,

Please be advised that this firm represents TGL Partners with regard to their zoning and real estate matters in the State of New Jersey.

As per your request, we hereby confirm that *TGL Partners, doing business as, Delta Don*, located at 2075 Springfield Avenue, Vauxhall, New Jersey will be using the subject premises **ONLY** for the purpose of the **retail sale of tobacco, vape, hemp and CBD products**.

None of the products offered for sale are derived from marijuana nor will any marijuana be sold from this location.

My client further acknowledges that there is to be no smoking, of any nature, whatsoever, allowed on the premises.

If you require any further information you may contact Mr. Tony Yi at 201-681-6224.

Thank you.

Very truly yours,

Thomas W. Izzard, Esq.
Fierro, Fierro & Izzard, PC
PO Box 405
Fort Lee, New Jersey 07024
201-944-7788 phone
201-944-7779 fax
twizz1374@hotmail.com

Confidentiality Note

The information contained in this facsimile or e-mail and the accompanying documents contain information from the law firm of **Fierro, Fierro & Izzard, P.C.** which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named in the transmittal sheet or e-mail. If you are not the intended recipient, or an agent or employee of the intended recipient, you are hereby notified that any disclosure, copying, distribution, dissemination, or other use of this information is strictly prohibited, and the document should be returned to

been completed in accordance with the permit applications;

5. A statement of the final cost of construction including the basic structure, all on-site improvements, built-in furnishings and fixtures and all integral components exclusive of process or manufacturing equipment;

6. A set of amended drawings, if required by the construction official and the appropriate subcode official(s), when the dimensions, lay out or appearance of the building or structure deviates substantially from the released plans and specifications filed with the construction permit application; and

7. A test and balance report for mechanically ventilated Class 1 and 2 buildings of Use Groups B and E submitted by a licensed professional engineer or by a test and balance professional certified by the Associated Air Balance Council, the National Environmental Balancing Bureau, or equivalent certification through a nationally recognized organization. The signed report shall include:

- i. Minimum quantity of outdoor air required by code;
- ii. Minimum quantity of outdoor air specified in the design;
- iii. Actual measured outdoor cubic feet/minute (CFM) or a derived quantity, if actual measurement is not possible; and
- iv. Actual measured total CFM.

(j) Contents of certificate: When a building or structure is entitled thereto, the construction official shall issue a certificate of occupancy within 10 business days after written application therefor.

1. The certificate shall certify the purpose for which the building or structure may be used in its several parts.

2. The certificate of occupancy shall specify: the use group(s), in accordance with the provisions of the building subcode; the maximum live load on all floors as prescribed in the building subcode; the occupancy load in the building and all parts thereof as defined in the building subcode; and any special stipulations and conditions of the construction permit.

3. The construction official shall affix his signature to the certificate and, by so doing, shall certify that the building or structure has been approved for occupancy by all applicable subcode officials in accordance with the provisions of N.J.A.C. 5:23-3.

(k) No temporary or final certificate of occupancy shall be granted until all required utilities, including but not limited to water, sewer, electric and gas are installed and in service.

(l) Equipment listed below, which has been determined by the Department to create a significant potential hazard to pub-

a certificate of compliance upon the findings of the enforcing agency for the certificate shall periodically be reviewed in accordance with the provisions of the

regulations prior to the expiration of a certificate of compliance and any violation shall be corrected before a new certificate may be issued. No device shall continue in operation unless a valid certificate of compliance has been reissued.

1. High pressure boilers: 12 months;

2. Refrigeration systems: 12 months;

3. Pressure vessels: 12 months;

4. Backflow preventers that are designed to be tested and used to isolate sources of contamination as defined in the plumbing subcode: 12 months.

i. Exception: Testable backflow preventers not used to isolate a high hazard source of contamination that are installed on water supplies in one- and two-family dwellings.

5. Swimming pools, spas and hot tubs: 12 months.

(m) Certificate of Approval: A certificate of approval shall be issued for all work that requires a construction permit but does not require a certificate of occupancy. No application shall be required for a certificate of approval.

(n) Revocation: The enforcing agency may revoke a certificate of occupancy whenever a condition of a certificate has been violated.

(o) Time limit: The provisions of the regulations do not preclude periodic certification pursuant to other applicable laws and ordinances.

(p) Lead Abatement Clearance Certificate: Following a lead hazard abatement job performed by a business firm or by an employee or employees of the owner of a property, a written application for a lead abatement clearance certificate shall be filed with the enforcing agency by the owner or the owner's agent. The application shall include a certification by the firm or person performing the work that all applicable provisions of N.J.A.C. 5:17 have been met, including the clearance requirements, and that the components or areas in the scope of work submitted in the permit application are lead safe.

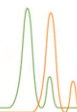
1. When the lead hazard abatement work includes encapsulation or enclosure, the certification by the firm or person performing the work shall include any recommendations for on-going maintenance or precautions to be taken to maintain the integrity of the encapsulation or enclosure.

2. When all lead hazards identified in an evaluation report prepared by a firm licensed by the Department pursuant to N.J.A.C. 5:17 have been totally and permanently abated, the certification shall so state.

EXHIBIT H



Marin Analytics
250 BEL MARIN KEYS BLVD #D4 - NOVATO, CA 94949 833.321.TEST



CERTIFICATE OF ANALYSIS

Sample 616-061223-094

Ala Mode (THCA Hemp Flower)

Batch/Lot # AL26251

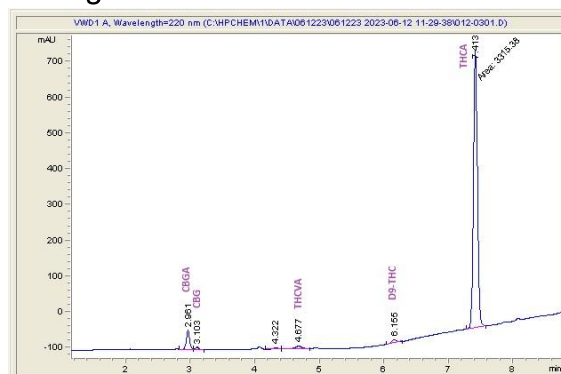
Sample Submitted: 06-12-2023; Report Date: 06-13-2023

Ala Mode (THCA Hemp Flower)

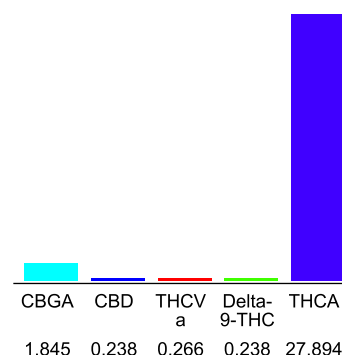
Plant Material: Flower

Batch/Lot # AL26251

Chromatogram



Cannabinoid Profile



Cannabinoid Profile by HPLC

0.24%

Delta-9-THC

0.24%

CBD

30.48%

Total Cannabinoids

Cannabinoid	% wt	mg/g
CBGA	1.845	18.45
CBD	0.238	2.38
THCVa	0.266	2.66
Delta-9-THC	0.238	2.38
THCA	27.89	278.94
Total Cannabinoids	30.48	304.8
Calculated Total THC	24.70	247.01
Calculated CBD Yield	0.24	2.38
Calculated Total THC = Delta-9-THC + 0.877 * THCA		
Calculated Maximum CBD Yield = CBD + 0.877 * CBDA		

Marin Analytics, LLC

250 Bel Marin Keys Blvd, Suite D4
Novato, CA 94949

833-321-TEST / info@marinanalytics.com

Sara Biancalana
Sara Biancalana
Chief Scientist

This sample has been tested by Marin Analytics, LLC using valid testing methodologies and a quality system. Values reported relate only to the sample tested. Marin Analytics, LLC makes no claims as to the efficacy, safety, or other risks associated with any detected or non-detected levels of any compounds reported herein. This Certificate shall not be reproduced except in full without the written approval of Marin Analytics, LLC. Copyright 2023 Marin Analytics, LLC All Rights Reserved.

Sample 616-041123-059

Gelato

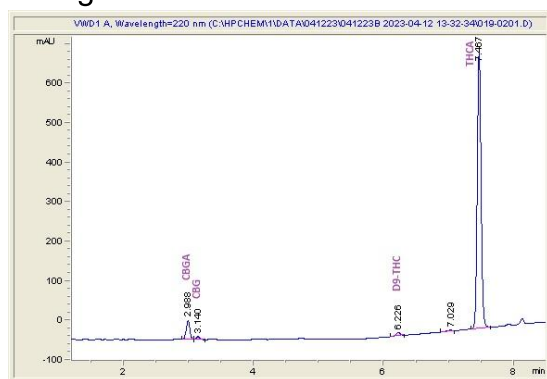
Batch/Lot # GL17292

Sample Submitted: 04-11-2023; Report Date: 04-13-2023

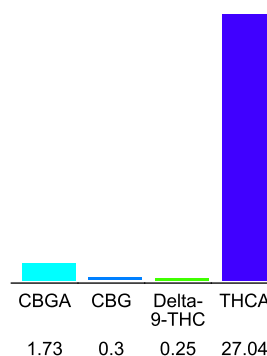
Gelato 33

Batch/Lot # GL17292

Chromatogram



Cannabinoid Profile



Cannabinoid Profile by HPLC

0.25%

Delta-9-THC

0.00%

CBD

29.32%

Total Cannabinoids

Cannabinoid	% wt	mg/g
CBGA	1.73	17.3
CBG	0.3	3.0
Delta-9-THC	0.25	2.5
THCA	27.04	270.4
Total Cannabinoids	29.32	293.2
Calculated Delta-9-THC Yield	23.96	239.64
Calculated CBD Yield	0.00	0.00

Calculated Maximum Delta-9-THC Yield = Delta-9-THC + 0.877 * THCA

Calculated Maximum CBD Yield = CBD + 0.877 * CBDA

Marin Analytics, LLC

250 Bel Marin Keys Blvd, Suite D4
Novato, CA 94949

415-936-6477 / sarabiancalana1@gmail.com

Sara Biancalana
Chief Scientist

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Sample LHF-614-010422-030

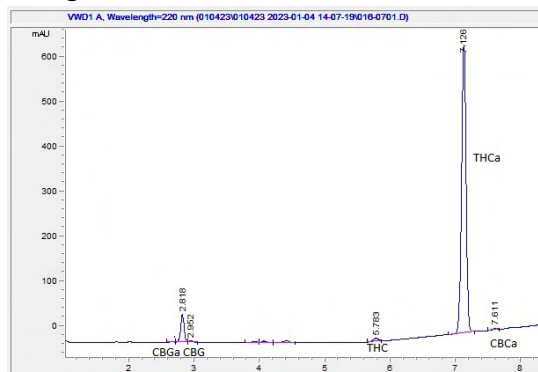
Runtz THCa Flower

Sample Submitted: 01-22-2023; Report Date: 01-22-2023

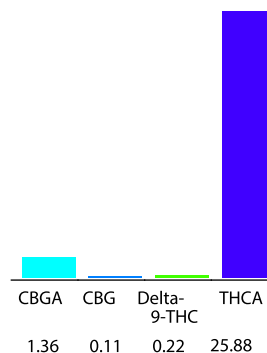
Runtz THCa Flower

Plant Material: Flower

Chromatogram



Cannabinoid Profile



Cannabinoid Profile by HPLC

0.22%

Delta-9-THC

0.00%

CBD

27.57%

Total Cannabinoids

Cannabinoid	% wt	mg/g
CBGA	1.36	13.6
CBG	0.11	1.1
Delta-9-THC	0.22	2.2
THCA	25.88	258.8
Total Cannabinoids	27.57	275.7
Calculated CBD Yield	0.00	0.00

C Calculated Maximum CBD Yield = CBD + 0.877 * CBDA

Marin Analytics, LLC

250 Bel Marin Keys Blvd, Suite D4
Novato, CA 94949

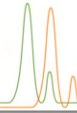
415-936-6477 / sarabiancalana1@gmail.com

Sara Biancalana
Chief Scientist

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Marin Analytics
250 BEL MARIN KEYS BLVD #D4 - NOVATO, CA 94949 833.321.TEST



CERTIFICATE OF ANALYSIS

HSP

Sample 627-071423-007

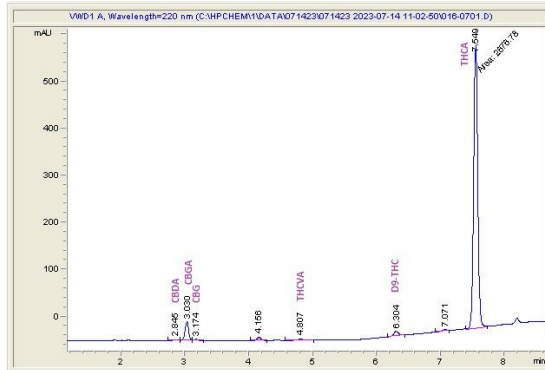
Ice Cream Cake

Sample Submitted: 07-14-2023; Report Date: 07-18-2023

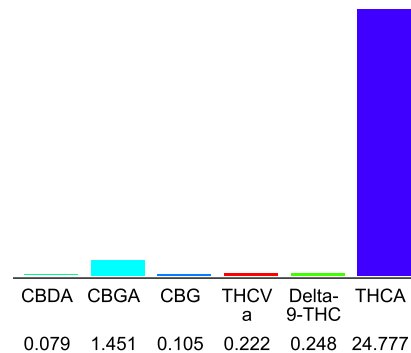
Ice Cream Cake

Plant Material: Flower

Chromatogram



Cannabinoid Profile



Cannabinoid Profile by HPLC

0.25%

Delta-9-THC

0.00%

CBD

26.88%

Total Cannabinoids

Cannabinoid	% wt	mg/g
CBDA	0.079	0.79
CBGA	1.451	14.51
CBG	0.105	1.05
THCVa	0.222	2.22
Delta-9-THC	0.248	2.48
THCA	24.78	247.77
Total Cannabinoids	26.88	268.8
Calculated Total THC	21.98	219.77
Calculated CBD Yield	0.07	0.69

Calculated Total THC = Delta-9-THC + 0.877 * THCA

Calculated Maximum CBD Yield = CBD + 0.877 * CBDA

Marin Analytics, LLC

250 Bel Marin Keys Blvd, Suite D4
Novato, CA 94949

833-321-TEST / info@marinanalytics.com

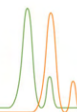
Sara Biancalana

Sara Biancalana
Chief Scientist

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Marin Analytics
250 BEL MARIN KEYS BLVD #D4 - NOVATO, CA 94949 833.321.TEST



CERTIFICATE OF ANALYSIS

Sample 616-080723-154

Tropicanna

Batch/Lot # TP20085

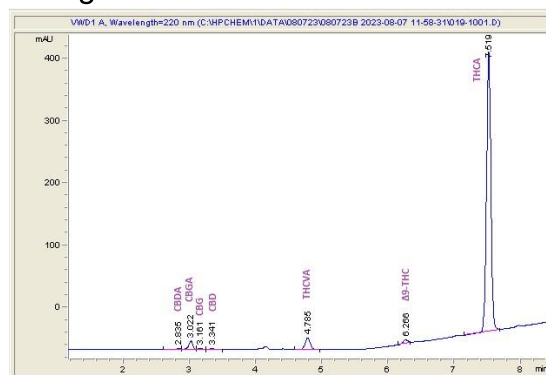
Sample Submitted: 08-07-2023; Report Date: 08-09-2023

Tropicanna

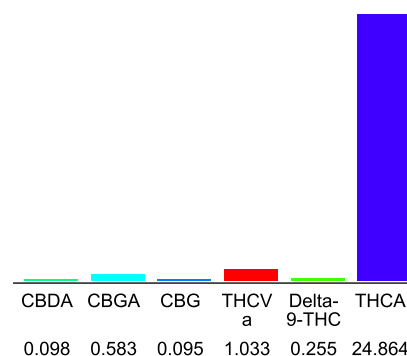
Plant Material: Flower

Batch/Lot # TP20085

Chromatogram



Cannabinoid Profile



Cannabinoid Profile by HPLC

0.26%

Delta-9-THC

0.00%

CBD

26.93%

Total Cannabinoids

Cannabinoid	% wt	mg/g
CBDA	0.098	0.98
CBGA	0.583	5.83
CBG	0.095	0.95
THCVa	1.033	10.33
Delta-9-THC	0.255	2.55
THCA	24.86	248.64
Total Cannabinoids	26.93	269.3
Calculated Total THC	22.06	220.61
Calculated CBD Yield	0.09	0.86

Calculated Total THC = Delta-9-THC + 0.877 * THCA

Calculated Maximum CBD Yield = CBD + 0.877 * CBDA

Marin Analytics, LLC

250 Bel Marin Keys Blvd, Suite D4
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VDDAS, LLC (d/b/a Delta Don),

Plaintiff,

v.

TOWNSHIP OF UNION, TOWNSHIP OF
UNION BUILDING DEPARTMENT, and
ANTHONY MONGUSO in his official
capacity as the Construction Official and
Zoning Officer of the Township of Union

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
UNION COUNTY

DOCKET NO.: UNN-L-

**BRIEF IN SUPPORT OF PLAINTIFF'S APPLICATION FOR AN
ORDER TO SHOW CAUSE**

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Plaintiff VDDAS, LLC (d/b/a Delta Don) respectfully submits this brief in support of its application for an Order to Show Cause with Temporary Restraints under Rule 4:52.

PRELIMINARY STATEMENT

On September 22, 2023, Plaintiff VDDAS, LLC (d/b/a Delta Don) (“Plaintiff”) received a letter in the mail from Defendants advising that its Certificate of Occupancy (“CO”) had been summarily revoked. The CO was revoked without any advanced notice being issued to Plaintiff or any type of administrative process taking place beforehand. Defendants have kept their cards close to the vest concerning the true reason Plaintiff’s CO was revoked, but based on scant information shared, the CO was summarily revoked based exclusively on an unproven accusation of an overzealous police detective, who does not understand the difference between legal hemp products and marijuana. While Plaintiff will prove the no illegal products have been sold out of its store in due course, the fact remains that without a CO, Plaintiff’s store is shut down. Accordingly, Plaintiff now files this application for an order to show cause seeking preliminary restraints, ordering Defendants to reinstate the CO during the pendency of this litigation. If forced to remain closed for potentially months or years during the course of litigation, Plaintiff will certainly go permanently out of business. Therefore, the requested temporary relief is necessary to preserve the *status quo* and prevent the irreparable harm of Plaintiff going out of business during the pendency of this litigation.

Plaintiff VDDA, LLC (d/b/a Delta Don) (“Plaintiff”) is a business formed under the laws of the State of New Jersey with a principal place of business at 2075 Springfield Avenue, Vauxhall, NJ 07088 (the “Store”). Plaintiff is in the business of selling hemp-derived products including, but not limited to, Delta 8, Delta 9 (less than 0.3% THC), Delta 10, THC-A, TCH-P,

and HHC, all containing less than 0.3% THC (collectively “Hemp Products”). Although “hemp” and the controlled substance, “marijuana,” originate from the same plant, hemp-derived products are legal under both New Jersey State and Federal law. See The New Jersey Hemp Program Rules, N.J.A.C. 2:25-1.2. In fact, the New Jersey Legislature has repeatedly made it clear that hemp and hemp-derived products are not controlled substances, and emphasizes that the term “marijuana” does not include hemp and hemp-derived products:

The term “marijuana” ***does not include hemp*** . . . Marijuana” means all cannabis that tests as having a concentration level of THC on a dry weight basis of ***higher than 0.3 percent***. “Hemp” means the plant Cannabis sativa L. and any part of that plant . . . whether growing or not, with a post decarboxylation delta-9 tetrahydrocannabinol concentration of ***not more than 0.3 percent***, or the current Federally acceptable hemp THC level, on a dry weight basis. Hemp and hemp-derived cannabinoids, including cannabidiol, shall be considered an agricultural commodity and ***not a controlled substance*** due to the presence of hemp or hemp-derived cannabinoids. “Hemp product” means a finished product with a post decarboxylation delta-9 tetrahydrocannabinol concentration of ***not more than 0.3 percent*** that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale . . . ***Hemp products shall not be considered controlled substances*** due to the presence of hemp or hemp-derived cannabinoids.

Id.; see also New Jersey Hemp Farming Act, N.J.S.A. § 4:28-8 (excluding hemp and hemp products from the definition of marijuana in New Jersey's controlled substance law (N.J.S.A. 24:21-2 and 24:5-23(b))). Despite this clear legal distinction between hemp-products and marijuana, Defendants have constructively criminalized Hemp Products within the Township of Union and punished Plaintiff for engaging in lawful business.

This punishment manifested on September 20, 2023, when the Union Township Police Department (“Union Police Department”) raided Plaintiff’s store, seizing hundreds of thousands of dollars’ worth of Hemp Products, electronics, cash, and other property, and placed one of Plaintiff’s owners under arrest for selling marijuana. On September 22, 2023, merely *two days*

after the raid -- presumably without the benefit of any lab reports -- the Union Township Construction Official summarily revoked Plaintiff's CO, asserting that 10 pounds of marijuana was just seized from Plaintiff's store. Defendants revoked Plaintiff's CO without any process, hearing, means to contest the accusations, or the like. Moreover, and despite Defendant's being required by law to do so, Plaintiff never received any prior notice from Defendants that they believed Plaintiff was in violation of the terms of the CO, or that the CO was in jeopardy of being revoked based on the erroneous belief that marijuana was being sold from Plaintiff's store. To the contrary, when it became apparent that local law enforcement did not understand the difference between marijuana and Hemp Products, Plaintiff, through counsel, reached out to one of the detectives, and sent multiple letters offering Plaintiff's full cooperation and to open a dialogue with the Union Police Department to demonstrate that their suspicions were a gross misunderstanding. Plaintiff's offer of cooperation fell upon deaf ears; Defendants never responded to any of those letters.

Plaintiff has been denied due process and the right to engage in lawful business based on nothing more than the unproven suspicion of a police officer. To date, Defendants have not provided Plaintiff with a scintilla of evidence reflecting that any illegal activities have taken place at the Store. Without a CO, Plaintiff is unable to operate the Store, and will go out of business if forced to wait the lifespan of a complete litigation to have its CO reinstated.

Plaintiff is forced to wait six months to initiate wrongful taking and loss of business revenue claims pursuant to the Tort Claims Act, and for other claims not yet ripe until resolution of the pending criminal action; this enhances the need for the Court to preserve the status quo, and allow Plaintiff to reopen its store and conduct lawful business while these issues are

litigated. The corrective hand of this Court is urgently needed to prevent irreparable harm and reinstate Plaintiff's CO.

STATEMENT OF FACTS

Plaintiff hereby incorporates the facts as set forth in the accompanying Verified Complaint.

LEGAL ARGUMENT

I. DECLARATORY JUDGMENT IS APPROPRIATE AND SHOULD BE ISSUED ON AN EXPEDITED AND/OR SUMMARY BASIS.

The Declaratory Judgments Act (DJA) empowers this Court to “declare rights, status and other legal relations . . .” N.J.S.A. 2A:16-52. As the New Jersey Supreme Court recently reiterated, the primary goal of the DJA is to “allow interested parties to preserve the status quo without having to undergo costly and burdensome proceedings.” Matter of New Jersey Firemen's Ass'n Obligation to Provide Relief Applications Under Open Pub. Records Act, 230 N.J. 258, 275-76 (2017). To accomplish this goal, the Act, which is remedial in nature, is liberally construed and administered to afford relief from uncertainty with respect to a party's rights, including property rights. N.J.S.A. 2A:16-51; ML Plainsboro Ltd. P' ship v. Twp. of Plainsboro, 316 N.J. Super. 200, 204 (App. Div. 1998).

The Act does not allow for courts to entangle themselves in abstract disagreements and declare the rights or status of parties upon facts that are “future, contingent, and uncertain.” See New Jersey Firemen's Ass'n, 230 N.J. at 275 (quoting Lucky Calendar Co. v. Cohen, 20 N.J. 451, 454 (1956)). Thus, to maintain an action for declaratory judgment, there must be an actual controversy. Id. Meaning that the facts must present “concrete contested issues conclusively

affecting' the parties' adverse interests.” Id. (citation omitted); see also Indep. Realty Co. v. Twp. Of N. Bergen, 376 N.J. Super. 295, 301 (App. Div. 2005) (“Not only must the plaintiff prove his tangible interest in obtaining a judgment, but the action must be adversary in character, that is, there must be a controversy between the plaintiff and a defendant, subject to the court's jurisdiction, having an interest in opposing his claim.”).

The facts here do not concern the rights or status of the parties that “are future, contingent, and uncertain” and a clear controversy exists between the parties concerning the revocation of Plaintiff’s CO. Defendants contend that Plaintiff violated a term of the CO that prohibits the sale of marijuana on the premises. However, Defendants assertion is based on unverified and unproven suspicions of a police officer. Since hemp-products and marijuana are derived from the same plant, they are not distinguishable by appearance or smell, but rather by its concentration of THC, which requires lab testing to determine.¹ Accordingly, it is

¹ Various law review articles and news reports have noted that hemp and marijuana are indistinguishable by appearance or smell, the ultimate measure is the concentration of THC. See e.g., Ryan Golden, Dazed & Confused: The State of Enforcement of Marijuana Offenses After the Texas Hemp Farming Act, 72 Baylor L. Rev. 737, 739 (2020) (“Because they are derived from the same plant, hemp and marijuana are virtually indistinguishable by sight or smell alone.”); Omar Al-Hendy, Smokable Hemp in North Carolina: Gone for Good? An Analysis of the Constitutionality of the North Carolina Farm Act of 2019, 10 Wake Forest J.L. & Pol’y 371, 371–72 (2020) (“Law enforcement must now satisfy a stronger burden to establish probable cause because both hemp and marijuana look and smell the same.”); Debra Cassens Weiss, New Hemp Laws Leave Police and Prosecutors Dazed and Confused, A.B.A. J. (Aug. 9, 2019) <https://www.abajournal.com/news/article/are-new-hemp-laws-accidentally-legalizing-pot-drug-sniffing-dogs-could-be-obsolete-along-with-pot-smell-probable-cause> (The smell test is also complicating probable-cause searches . . . The fear is that marijuana’s smell can’t be distinguished from that of hemp, destroying probable cause.”); D. Paul Stanford, Hemp, Cannabis and Marijuana: What's the Difference?, COUNTERPUNCH (Mar. 29, 2016), <https://www.counterpunch.org/2016/03/29/hemp-cannabis-and-marijuana-whats-the-difference> (explaining that to detect the difference between hemp and marijuana, one needs to be able to ascertain the quantity of THC present in the substance through quantified testing).

unreasonable for Defendants to conclude that such violation occurred without lab results or other evidence conclusively demonstrating that marijuana was found at the Store. It is highly unlikely Defendants will ever be able to obtain one, because the seized Hemp Products were already lab-certified to have a THC content less than 0.3%. *See* Exhibit H to the Verified Complaint. Plaintiff seeks the Court's determination as to whether the terms of the CO have been violated, and therefore, whether Defendants had grounds to revoke the CO.

II. PLAINTIFF IS ENTITLED TO THE INJUNCTIVE RELIEF SOUGHT

New Jersey has long recognized, in a wide variety of contexts, the power of the judiciary to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Crowe v. DeGoia, 90 N.J. 126, 132 (1982). The granting of temporary restraints or preliminary relief is an exercise of discretion. Horizon Health Center v. Felicissimo, 135 N.J. 126, 137 (1994). It is an “equitable remedy utilized primarily to forbid and prevent irreparable injury,” as to which severe inconvenience may constitute irreparable harm, and to protect the status quo. Zon. Bd. of Adj. v. Service Elec. Cable T.V., 198 N.J. Super. 370, 379 (App. Div. 1985); See also, Crowe v. DeGioia, 90 N.J. at 133; Bd. of Educ., Tp. of Middletown v. Middletown Tp. Education Ass’n, 352 N.J. Super. 501, 506-7 (Ch. Div. 2002). The determination to authorize preliminary relief summons the most sensitive of judicial discretion. Crowe, 90 N.J. at 132.

Fundamental principles guide the Court in issuing a preliminary injunction. It is well settled that a party is entitled to immediate injunctive relief upon a showing that: (1) there is a necessity for immediate relief to prevent irreparable harm; (2) the legal right underlying the applicant's claim is settled as a matter of law and there is a reasonable probability of success on

the merits; and (3) a balancing of the equities favors granting the relief. Id. at 132-134.

Additionally, Courts may employ a “less rigid” view of the Crowe factors when the relief is designed merely to preserve the status quo:

[O]ur courts have also long recognized “there are exceptions, as where the subject matter of the litigation would be destroyed or substantially impaired if a preliminary injunction did not issue.” That is, “a court may take a less rigid view” of the Crowe factors and the general rule that all factors favor injunctive relief “when the interlocutory injunction is merely designed to preserve the status quo.” The power to impose restraints pending the disposition of a claim on its merits is flexible; it should be exercised “whenever necessary to subserve the ends of justice,” and “justice is not served if the subject-matter of the litigation is destroyed or substantially impaired during the pendency of the suit.”

Waste Mgmt. of New Jersey, Inc. v. Morris Cnty. Mun. Utilities Auth., 433 N.J. Super. 445, 453 (App. Div. 2013) (internal citations omitted). This less rigid approach permits injunctive relief preserving the status quo even if the claim appears doubtful when “a balancing of the relative hardships substantially favors the movant, or the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave, or the subject matter of the suit would be impaired or destroyed.” Id. at 454.

Pursuant to Crowe, and for the reasons set forth below, Plaintiff will suffer irreparable harm if this Court fails to grant Plaintiff’s emergent relief requiring Defendants to reinstate Plaintiff’s Certificate of Occupancy.

A. Plaintiff Would Suffer Irreparable Harm if the Relief Sought is Not Granted.

An application for preliminary injunctive relief should be granted when necessary to prevent irreparable harm. Crowe, 90 N.J. at 132–33. “Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. In certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive

relief.” Id. at 133. Regarding the first Crowe factor, there is no question that Plaintiff will suffer immediate and irreparable harm if the Court does not intervene.

As the New Jersey Supreme Court has long held, “[a]cts destroying a complainant's business, custom, and profits do an irreparable injury and authorize the issue of a preliminary injunction.” Ferraiuolo v. Manno, 1 N.J. 105, 108 (1948); see also Cmty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 384 N.J. Super. 251, 255 (App. Div. 2006) (stating that it is well-settled that the destruction of a complainant’s business and profits warrant the issuance of a preliminary injunction); and U.S. Foodservice, Inc. v. Raad, 2006 WL 1029653, at *7 (N.J. Super. Ct. Ch. Div. Apr. 12, 2006) (“It also well-settled that injury to or destruction of a business constitutes irreparable harm for which preliminary and permanent injunctive relief may be appropriate.”).

Here, Plaintiff cannot operate their business without a CO. Thus, the revocation of Plaintiff’s CO has, in effect, shut down Plaintiff’s business. Consequently, Plaintiff suffers a growing loss of profits each day that their business remains shut down, losses that would continue to exponentially rise if their business remained inoperable during lengthy litigation. Such losses cannot be readily calculated nor redressed adequately by monetary damages, and greatly threatens the loss of the business itself. If the business remains closed for a significant amount of time, its customer base will be gone, Plaintiff will not be able to afford the rent, insurance, and other expenses, Plaintiff will be in breach of obligations made to third party suppliers and vendors, and Plaintiff will go out of business. This is precisely the kind of situation where the Court should exercise its discretion and prevent further harm since Plaintiff’s business is currently substantially impaired and will inevitably face destruction if relief is not granted. See

Waste Mgmt., 433 N.J. Super. at 453 (“[J]ustice is not served if the subject-matter of the litigation is destroyed or substantially impaired during the pendency of the suit.”).

B. Plaintiff’s Request is Settled as A Matter of Law and Plaintiff is Likely to Succeed on the Merits of Their Claim.

The second and third Crowe factor requires that the legal right underlying the applicant’s claim is settled as a matter of law and there is a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. Applying the second and third Crowe factors, Plaintiff’s claim is settled as a matter of law and Plaintiff can demonstrate a reasonable probability of success on the merits.²

1. Due Process

The second Crowe factor is satisfied since the law regarding violations of procedural due process is well-settled. The Fourteenth Amendment to the United States Constitution and Article I, Paragraph 1 of the New Jersey Constitution protect individuals from deprivations of life, liberty, and property, without due process of law. See Doe v. Poritz, 142 N.J. 1, 99 (1995). Procedural due process involves notice and the right to be heard before any significant deprivation of a protected property right. LaChance v. Erickson, 522 U.S. 262, 266 (1998) (“The core of due process is the right to notice and a meaningful opportunity to be heard.”). To establish a violation of procedural due process, a plaintiff must show that the defendant deprived him of a protected property interest and that procedures for challenging the deprivation were inadequate. Thomas Makuch, LLC v. Twp. of Jackson, 476 N.J. Super. 169, 185 (App. Div.

² If the Court finds that Plaintiff’s claim is doubtful, Plaintiff is still entitled to injunctive relief under the less rigid approach to the Crowe factors outlined in Waste Mgmt. of New Jersey, Inc. v. Morris Cnty. Mun. Utilities Auth., 433 N.J. Super. 445 (App. Div. 2013), due to the substantial threat of irreparable injury in the absence of the requested relief.

2023). The right to earn a living is a protected property interest subject to a consideration of the public interest and the reasonableness of the action. In re D'Aconti, 316 N.J. Super. 1, 17 (App. Div. 1998); see also Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 543 (1985) (“We have frequently recognized the severity of depriving a person of the means of livelihood.”).

Next, Plaintiff is likely to prevail on the merits under New Jersey law. Here, Defendants deprived Plaintiff of their right to earn a living, a protected property interest, by revoking their CO. As explicitly stated by the Revocation Letter, Plaintiff cannot operate their business without a CO. See Exhibit G. Prior to revoking the CO, Defendants failed to provide the required notice pursuant to N.J.A.C. 5:23-2.30, or otherwise communicate any belief that Plaintiff violated the terms of the CO. Nor did Defendants afford Plaintiff a “reasonable” time period to correct any perceived violations of the CO or any opportunity to demonstrate that their business activities did not violate the terms of the CO. Thus, Defendants violated Plaintiff’s procedural due process rights by depriving them of their protected property interests without proper notice or the opportunity to be heard on the matter.

2. Declaratory Relief

Plaintiff is also likely to succeed on the merits of its Declaratory Judgment claim, because Plaintiff did not violate the terms of its CO by selling Hemp Products. While Plaintiff acknowledges that the distinction between Hemp Products and marijuana is nuanced, New Jersey law makes the distinction clear. *See* discussion of New Jersey Hemp Farming Act and The New Jersey Hemp Program Rules in Preliminary Statement; *see also* fn 1. *supra*.

Across the nation, recent lawsuits have sprung forth challenging policies meant to restrict federally legal hemp-products. See e.g., Lawsuits Challenging Hemp Laws Reflect New

Cannabis Rift, <https://www.law360.com/articles/1736005/lawsuits-challenging-hemp-laws-reflect-new-cannabis-rift>. More recently in the State of Georgia, an appellate court ordered the return of hemp-products unlawfully seized by law enforcement citing the Georgia Hemp Farming Act -- which closely mirrors the language of New Jersey’s Hemp Farming Act -- clearly stating that hemp-products, with 0.3% or less of THC, are not controlled substances. See Elements Distribution, LLC v. State, No. A23A0842, 2023 WL 7210306, at *1 (Ga. Ct. App. Nov. 2, 2023).³ Indeed, the Court of Appeals of Georgia held that that a search warrant “based on an assertion that [defendant] was in possession of and selling products containing delta-8-THC and delta-10-THC [...] was *not supported by probable cause*.” Id. at *4 (emphasis added).

The instant matter presents the same issue. Simply because Plaintiff is selling Hemp Products does not justify Defendants leaping to the conclusion that he is also selling marijuana or otherwise engaging in unlawful activities. But that is precisely what Defendants did here, concluding that selling lawful Hemp Products is the same as selling marijuana (without a license), as the basis to revoke Plaintiff’s CO.

New Jersey Courts have also stood in the way of municipalities attempting to criminalize the recreational use of other substances which are legal under state and federal law. For example, in Noble Smoke Spot, LLC v. Borough of Point Pleasant Beach, OCN-L-192-20, the town of Point Pleasant Beach enacted an ordinance banning the sale of *Mitragyno speciosa* (Kratom), the recreational use of which is completely legal under both state and federal law. “Kratom”

³ A copy of this decision is attached as **Exhibit 1** to the accompanying Certification of J. John Kim, Esq (the “Kim Cert.”).

commonly refers to an herbal substance that can produce opioid and stimulate like effects.⁴ The ordinance imposed incredibly harsh penalties against anyone who violated it. A small business owner, who had sold Kratom for many years, filed suit challenging the Borough's constructive criminalization of the product which posed an existential threat to his business. The Court agreed with the business's owner's position, and granted summary judgment in his favor, declaring void and unlawful an ordinance enacted by Point Pleasant Beach banning the sale of Kratom. A true and accurate copy of the order is attached as **Exhibit 2** to the Kim Cert., along with that plaintiff's moving papers setting forth the basis of the decision.

In this case, Defendants' constructive criminalization -- which was done without notice or process (*i.e.* the enactment of an ordinance) -- of Hemp Products is also unlawful. The Court should not condone Defendants' constructive criminalization of Hemp Products which ultimately resulted in the wrongful revocation of Plaintiff's CO.

Based upon the above and the facts set forth herein as well as in the Verified Complaint, there is a reasonable probability of success on the merits of Plaintiff's claim that Defendants violated their procedural due process rights. Plaintiff is also likely to succeed in its Declaratory Judgment claim since it did not actually violate the terms of its CO. Accordingly, Plaintiff's request for relief is legitimate and warranted under the circumstances.

C. Balancing of the Competing Equities Favors Entry of the Temporary Restraints.

The final Crowe factor balances the relative hardship to the parties in granting or denying relief. Crowe, 90 N.J. at 134. As previously mentioned, the point of temporary relief is to

⁴ <https://nida.nih.gov/research-topics/kratom>. A true and accurate copy of this article is attached as **Exhibit 3** to the Kim Cert.

maintain the parties in substantially the same condition “when the final decree is entered as they were when the litigation began.” Crowe, 90 N.J. at 132. The intention is generally to preserve the status quo and to avoid injury during litigation. Id. Moreover, as articulated in Waste Mgmt., courts favor granting injunctive relief that preserves the status quo when “the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave, or the subject matter of the suit would be impaired or destroyed.” 433 N.J. Super. at 454.

Here, when considering the competing equities of the parties, the hardship that would be imposed upon Plaintiff significantly outweighs any harm to Defendants. If the Court does not grant injunctive relief, Plaintiff’s face the destruction of their business. On the other hand, granting injunctive relief imposes no hardship on Defendants since Plaintiff only seeks the reinstatement of their CO and the preservation of the status quo; under the proposed order, Defendants may move to dissolve the temporary restraints on two-days’ notice.

For these reasons, a balancing of the equities favors temporary restraints and injunctive relief over the interests of Defendants.

CONCLUSION

For all the foregoing reasons, Plaintiff respectfully request that this Court grant the temporary relief sought and enter an Order compelling Defendants to show cause why preliminary and temporary injunctive relief as sought in the Verified Complaint and Order to Show Cause should not be granted.

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January 22, 2024

Via eCourts and Overnight Mail

Hon. Lisa M. Walsh, A.J.S.C.
Union County Courthouse
2 Broad Street, 1st Floor, Tower
Elizabeth, NJ 07207

RE: VDDAS, LLC v. Township of Union et. al.
Docket No.: UNN-L-4158-23

Dear Judge Walsh:

This firm represents Plaintiff VDDAS, LLC (d/b/a Delta Don) (“Plaintiff”) in the above-referenced matter. Please accept this reply letter brief, in lieu of a more formal memorandum of law, in further support of Plaintiff’s application for an Order to Show Cause and in reply to Defendants’ opposition.

I. Defendants violated Plaintiff’s due process rights by failing to transmit a notice of violation and giving Plaintiff an opportunity to cure prior to revoking Plaintiff’s CO.¹

Regardless of the Court’s analysis of the Crowe factors in determining the ultimate outcome of this application, it should not permit Defendants to ignore reality and pretend that they did not violate Plaintiff’s due process rights by failing to issue the statutorily required notice pursuant to N.J.A.C. 5:23-2.30, prior to revoking Plaintiff’s CO. Defendants engage in mental gymnastics to argue that they did indeed issue the required notice, and provided Plaintiff with the

¹ For the Court’s convenience, all defined terms in Plaintiff’s moving papers and Verified Complaint (“VC”) shall have the same meaning in this reply letter brief.

Hon. Lisa M. Walsh, A.J.S.C.

January 22, 2024

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statutorily-mandated opportunity to cure the supposed violation. Their argument is nothing short of revisionist history.

N.J.A.C. 5:23-2.30 requires that whenever “the construction official or the appropriate subcode official” determines that there “exists a violation of a permit or certificate issued under the regulations [...] the appropriate subcode official shall issue a notice of violation and orders to terminate directing the discontinuance of the illegal action or condition and the correction of the violation.” N.J.A.C. 5:23-2.30(a).

Subsection (b)(1) requires, among other things, that the notice to be issued by the code official shall include “an order to terminate violations within a time specified in the order” and that the notice “shall be signed by the appropriate subcode official or the construction official.”

Finally, subsection (b)(2) requires “Unless an immediate hazard to health and safety is posed, the construction official or appropriate subcode official **shall** permit such time period for correction as is reasonable within the context of the situation.” (emphasis added).²

In other words: (a) the determination that a violation exists must be made by the construction official or subcode official; (b) the notice to the certificate holder must be “issued by” and signed by the code official; and (c) the notice must give a specified amount of time for the perceived violation to be corrected, prior to any further action being taken.

² The Legislature made it mandatory (*i.e.* used the word “**shall**”) to give the certificate holder a reasonable amount of time to cure a violation prior to having penalties imposed, presumably because the Legislature saw the wisdom in not permitting code enforcement to summarily shut down businesses and deprive owners of their livelihoods. In other words, in all but the most extreme violations, it was not the Legislature’s intent to allow local code enforcement officials to be judge, jury and executioner who summarily shut down businesses with a pen stroke, without providing any notice, or going through any form of process.

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In this case, Defendants inaccurately and disingenuously argue that the required notice was issued on August 1, 2023, *via* Detective Lensi's Warning Letter. Defendants' brief ("Db.") at 4-5; See Exhibit C to the VC. This assertion is, put mildly, a real stretch. The police-issued Warning Letter has nothing to do with Plaintiff's CO and is a far cry from what is required by N.J.A.C. 5:23-2.30. The Warning Letter does not even refer to any CO violations, let alone include "an order to terminate violations within a time specified in the order." Id.

Pursuant to the governing regulations, the first step in revoking a CO is a determination by "the construction official or the appropriate subcode official" that Plaintiff was in violation of its CO. Detective Lensi's Warning Letter was issued on August 1, 2023. Mr. Monguso (the Construction Official) certifies that he was notified by the Union Police Department of suspected wrongful conduct taking place at the Store on September 21, 2023. Certification of Anthony Monguso ("Monguso Cert."), ¶ 4. How could Mr. Monguso make a determination that a violation exists – thereby causing a letter to be issued in August, when he admittedly had no knowledge of any purported violation until September, after that letter was already sent?

Mr. Monguso certifies that he issued a "Notice of Violation-Revocation of Certificate of Occupancy" on September 22, 2023. Id. ¶ 5. Contrary to Defendants' argument, this letter was obviously the "notice"; it is the same letter revoking the CO.

Second, after the construction official determines that a violation has taken place, the construction official or appropriate subcode official must sign and issue notice of the violation to the CO holder. The Warning Letter was signed and issued *by Detective Lensi*; Detective Lensi is neither the "the construction official or appropriate subcode official" of the Union Building Department – he is a police officer. On its face, the police Warning Letter cannot be an official

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notice of violation issued by the construction official, which is specifically what the statute requires.

Third, the notice is required to give a specified amount of time for the perceived violation to be corrected prior to any further action being taken, *i.e.*, notice with the chance to cure. Here, the Warning Letter does not even reference the CO or expressly or implicitly put Plaintiff on notice that its CO was in jeopardy of being revoked.

As Defendants point out, it is true that subsection (b)(2) allows the construction official to revoke a CO *without* giving the holder an opportunity to cure if “an immediate hazard to health and safety is posed.” Db. at 5. However, Defendants cite to no case law or authority indicating what “an immediate hazard to health and safety” is, or why it is applicable to these circumstances. Nor do they assert facts that would support their argument. The plain facts and timeline of events demonstrate that the offense Plaintiff is accused of is not “an immediate hazard to health and safety,” and was never considered such by the Construction Official before any action was taken.

First, Mr. Monguso’s Certification does not contain any claim that he made a determination that there was “an immediate hazard to health and safety” to the public causing him to revoke the CO. See generally Monguso Cert. Nor does the letter revoking the CO (or any other correspondence) mention any immediate hazard to public health and safety.

Second, according to the “Controlled Substance Report” documents attached to the Certification of Lieutenant Mark Martin (“Martin Cert.”), the Union Police Department received test results on June 29, 2023, creating the (incorrect) basis that the products purchased from Store contained marijuana. Martin Cert., Exhibit A. If this constituted “an immediate hazard to health and safety,” then why did the police not immediately forward this information to the Union Building Department to have Plaintiff’s CO revoked at that time? Instead, in the face of this

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supposed “immediate hazard to health and safety,” the Store was permitted to stay open and continue selling these imminently threatening and dangerous products to any customer who walked through its doors (at least, according to Defendants’ inaccurate narrative) for months until the CO was revoked.

Another set of test results were received on July 27, 2023, with the same conclusion. Nevertheless, the Store was still permitted to stay open. It was not until several months later, on September 20, 2023, that the Union Police acted upon the purported test results and conducted the Raid. This delayed government action within the timeline of events belies the Defendants’ argument, and cuts against a finding that the Store being open with a CO was *an immediate hazard to health and safety*.

Third, adult use recreational marijuana is legal in New Jersey. In other words, what Plaintiff was supposedly selling is something that any adult can legally purchase from a licensed establishment. Plaintiffs were not selling firearms, explosives, heroine, or other products which are inherently dangerous, potentially deadly, and not readily available for purchase to any adult consumer. There have been no reports or allegations of any customer illness, sickness, or any other complaints. Before there has been any adjudication whether these products were lawfully sold hemp below the threshold requirement, or unlicensed cannabis above the threshold, with no indications that the products are causing any kind of hazard or danger to the public, it is beyond strained to now claim that the store remaining open caused an immediate hazard to health and safety to the public’s welfare.

Accordingly, Defendants plainly violated Plaintiff’s due process rights by failing to comply with the mandatory requirements of N.J.A.C. 5:23-2.30 prior to revoking Plaintiff’s CO.

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II. Plaintiff will suffer irreparable harm if the status quo is not maintained; a balancing of the hardships favors maintaining the status quo before the CO was revoked.

Defendants argue that the “present matter is the antithesis of a situation which could result in irreparable harm to Plaintiff [because a]ny possible harm to the Plaintiff could be remedied by money damages.” Db. at 3. Essentially, Defendants contend that if it turns out that this was all just a big mistake – as Plaintiff has consistently maintained – and the Store was shut down without justification, Defendants can simply cut Plaintiff a check and call it a day. While it is true that a *portion* of Plaintiff’s harm could potentially be remedied with money damages, such as lost profits and product spoilage, Defendants are missing the forest for the trees.

Defendants completely ignore and do not even attempt to address or refute that Plaintiff’s true harm if the status quo is not maintained, is that Plaintiff’s reputation and business would be destroyed. If Plaintiff is evicted because it can no longer pay rent, if he defaults on his debts with vendors and third parties, if his reputation in the community is permanently tarnished and his business permanently destroyed, how can monetary damages be adequately assessed?

Supreme Court precedent makes clear, in no uncertain terms, that the destruction of a party’s business constitutes irreparable harm. Ferraiulo v. Manno, 1 N.J. 105, 108 (1948) (“Acts destroying a complainant’s business, custom, and profits do an **irreparable injury** and authorize the issuance of a preliminary injunction” (emphasis added)); see also Cmty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Freid & Forte, P.C. 394 N.J. Super. 251, 255 (App. Div. 2006) (finding that it is well-settled that the destruction of a complainant’s business and profits constitutes irreparable injury that warrants the issuance of a preliminary injunction). Here, without the CO, the Store cannot operate and generate revenue. Each day the Store remains shut down, Plaintiff’s losses continue to grow, and cannot be readily calculated. Moreover, if the Store

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remains shut down for a significant portion of time (*i.e.* for the duration of a long and protracted litigation), its customer base will be gone, Plaintiff will not be able to afford rent, insurance, and other expenses, become in breach of obligations made to third party suppliers and vendors, and go permanently out of business. This is precisely the type of situation where a preliminary injunction should be issued to maintain the status quo while the key determination is made. See Waste Mgmt. of New Jersey, Inc. v. Morris Cnty. Mun. Utilities Auth., 433 N.J. Super. 445, 453 (App. Div. 2013) (if “the subject matter of the litigation would be destroyed or substantially impaired if a preliminary injunction did not issue [...] a court should take a less rigid view of the Crowe factors and the general rule that all factors favor injunctive relief when the interlocutory injunction is merely to preserve the status quo”) (internal citations omitted).

Defendants’ claim that there “is a real and immediate threat to the Township[]” if Plaintiff is permitted to re-open the Store rings hollow. Db. at 6. Arguing that what they did was necessary to rid the Township of marijuana misses the point entirely. While Plaintiff certainly does not condone unlawful marijuana sales and understands that a proper license must be obtained to sell marijuana, there are dozens of lawful retail establishments throughout this State where adult residents of the Township can purchase recreational use marijuana and bring it back to their homes in the Township. Defendants’ attempts to cast Plaintiff as a drug-peddling boogieman are improper, unfounded and a red herring. On the other hand, if it is determined that the products were lawful hemp under the threshold, but the Store was required to remain shut down for the duration of this entire litigation, Plaintiff would undoubtedly suffer irreparable harm. Accordingly, issuing the requested preliminary restraints is necessary to preserve the status quo and balancing the harms weighs in favor of Plaintiff.

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III. More accurate and precise test results confirm that the “marijuana” seized and tested by Defendants were, in fact, lawful hemp products.

To demonstrate to the Court that the products purchased from the store were unlicensed marijuana and not lawful hemp products, Defendants present documents entitled “Controlled Substance Report[s].” Martin Cert. Exhibits A, B and D. The Controlled Substance Reports do not include, or append, the actual lab test results, or any data. Instead, they merely summarize in conclusory fashion what the purported results were (*i.e.* that the “result of analysis” was “Marijuana (Cannabis)”). Moreover, the Controlled Substance Reports do not even state with particularity what type test methodology was used to reach this conclusion, but instead merely advises that: “Evidence was tested by one or more of the following methods: GC-FID, Microscopic Examination, Modified Duquenois-Levine Color Test.”³

While the test methods utilized by Union County Crime Laboratory may be useful and appropriate in detecting the presence of tetrahydrocannabinol (THC) and cannabinoids *generally*, or in determining whether an organic substance was derived from the Cannabis Sativa plant, they are not effective or reliable at delineating between marijuana and Hemp Products because both are derived from the same plant and both contain at least some amount of THC.

The key differentiating factor – and what makes Hemp Products legal – is the *amount* of “delta 9” THC. That is because under governing law, “Hemp” means the plant Cannabis sativa L. and any part of that plant . . . whether growing or not, with a post decarboxylation delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent, or the current Federally acceptable hemp THC level, on a dry weight basis.” N.J.A.C. 2:25-1.2 (emphasis added). If a

³ In these circumstances, a visual test is completely unreliable to distinguish between Hemp Products and marijuana, because the two are indistinguishable by appearance. See sources cited in *fn.* 4 to Plaintiff’s moving brief.

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product is below the 0.3% delta-9 THC threshold, it is definitionally a legal Hemp Product. Id. To ascertain the percentage of THC, a more specific testing methodology, such as a High Performance Liquid Chromatography test (an “HPLC test”), must be used. Reply Certification of Joon Tae (Tony) Yi (the “Yi Reply Cert.”), ¶ 4. Unlike many other tests, such as the tests seemingly performed by the Union County Crime Laboratory in this case, an HPLC test has the capability to *quantify* the level of cannabinoids within the test sample. See e.g. Pourseyed Lazarjani, M., Torres, S., Hooker, T. et al. Methods for quantification of cannabinoids: a narrative review. J Cannabis Res 2, 35 (2020). Reply Certification of J. John Kim (the “Kim Reply Cert.”), ¶ 2.

Here, the Martin Cert. claims that tests performed by Union County Crime Laboratory on products purchased from the Store labeled as “Birthday Pie”, “Birthday Cake”, “Garlic Knots”, “Maple Syrup”, and “Red Head” tested positive as marijuana. Martin Cert., ¶¶ 4, 5, and 7. Based on the type of tests apparently used by the Union County Crime Laboratory, it is unsurprising that these Hemp Products tested positive as marijuana. **Virtually all Hemp Products** would appear to be marijuana under visual tests such as the Modified Duquenois-Levine Color Test. Yi Cert., ¶ 4.

However, as required by law, all Hemp Products sold by Plaintiff are first subject to thorough and rigorous laboratory testing. The relevant test results are attached as **Exhibit 1** to the Yi Cert. The HPLC test results demonstrate that the products tested by the Union County Crime Laboratory and determined to be marijuana -- in reality -- have a THC level of below 0.3%, thereby making them legal Hemp Products. A summary of the test results is below:

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Date sold	Delta Don name	Original name	Supplier	COA	COA date	Delta-9 THC %
26-May-2023	Birthday Pie	Starburst	Hemp Supply Prime	New Bloom Labs	4/28/2023	0.193%
28-Jun-2023	Birthday Cake	Gelato	Hemp Supply Prime	New Bloom Labs	4/28/2023	0.175%
28-Jun-2023	Maple Syrup	Mr. Nasty	Hemp Supply Prime	New Bloom Labs	5/11/2023	0.283%
28-Jun-2023	Garlic Knots	G Kush	Final Distribution	New Bloom Labs	4/28/2023	0.176%
8-Sep-2023	Garlic Knots	Garlic Kush	Final Distribution	CCTL	7/25/2023	0.273%
8-Sep-2023	Garlic Knots	Garlic Kush	Final Distribution	CCTL	7/25/2023	0.273%
8-Sep-2023	Red Head	Tropicanna	Alpha Brands	Marin Analytics	8/7/2023	0.255%

[Yi Cert., Exhibit 2.]

Accordingly, Plaintiff has a great likelihood of success on the merits.⁴

IV. Plaintiff did not improperly delay filing this application.

It was argued during the December 21, 2023 hearing that Plaintiff should be denied the requested preliminary restraints because Plaintiff “sat on” its rights and did not immediately initiate legal action against Defendants to have its CO reinstated back in September when the CO was initially revoked. While it is true that Plaintiff did not immediately rush to the courthouse to sue the township that it hoped to do business in, Plaintiff’s actions were not willful or dilatory.

⁴ Assuming the Court believes that this key fact is in dispute, Plaintiff has at least presented credible evidence to substantiate its position that the products tested by Defendants are not what they claim to be. In light of the existential threat to Plaintiff’s business, compared against the minimal hardship to Defendants, Plaintiff’s CO should be re-issued to prevent irreparable harm during the pendency of this litigation. See Waste Mgmt. of New Jersey, Inc., 433 N.J. Super. at 453.

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When the Raid occurred and the CO was revoked, Plaintiff earnestly believed that the situation would best be resolved by explaining its business to Defendants and putting their concerns at ease. Yi Cert., ¶¶ 10-11. This belief was informed by Plaintiff's prior experience with another store it operates which sells identical Hemp Products in New Brunswick, New Jersey (the "New Brunswick Store"). Yi Cert., ¶ 12. Plaintiff opened the New Brunswick store approximately two (2) years ago. Yi Cert., ¶ 12.

The New Brunswick Store sold and continues to sell Hemp Products identical to the products sold in this Store in Union County.⁵ Yi Cert., ¶ 12. Just like Defendants, the New Brunswick police and building department did not at first understand Plaintiff's business and the difference between Hemp Products and marijuana, and were initially suspicious and reluctant to issue Plaintiff its certificate of occupancy. Yi Cert., ¶ 12. And as he did with these Defendants, Plaintiff reached out to New Brunswick police and the building department, and extended an invitation to have a conversation and explain its business and address any concerns the town might have. Yi Cert., ¶ 12; see also Exhibits D and E to the VC (letters from Plaintiff's criminal counsel to Detective Lensi offering to explain his misunderstanding concerning the products an undercover police officer allegedly purchased from the Store).

But unlike these Defendants, the New Brunswick police and building department accepted Plaintiff's invitation, and as a result, came to understand that Plaintiff sells lawful Hemp Products, and only Hemp Products. Yi Cert., ¶ 12. Since receiving that explanation, and having a better understanding of Plaintiff's business, the New Brunswick Store has prosperously operated for two

⁵ As does the Speedy Gas Station located within Union, according to statements made by police during the Raid. VC ¶ 35.

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(2) years, and Plaintiff and the New Brunswick police and building department have a very positive, perhaps even friendly, relationship. Yi Cert., ¶ 12.

Based on this experience with the New Brunswick Store, it was simply inconceivable to Plaintiff that the situation in Union would escalate to the level of where it is now. Plaintiff genuinely believed that it could explain its business to Union and local police, they would understand that the revocation of Plaintiff's CO was based on an unfortunate misunderstanding, and that the CO would be reissued. Yi Cert., ¶ 13. Plaintiff did not want to sue the town where it hoped and planned to have a long-term business. Yi Cert., ¶ 13. Unfortunately, Plaintiff was wrong. And when it became clear that no explanation would change Defendants' minds, and as Plaintiff continued to pay rent and other expenses for a business that cannot operate indefinitely to avoid eviction and the permanent destruction, it realized that it had no choice but to retain counsel and file an application for an order to show cause. Plaintiff's belief that local police and government officials would at least be willing to sit down and talk with a small business owner and taxpayer should not be held against it, and deprive Plaintiff of the relief it now seeks.

Conclusion

For all the forgoing reasons, and those set forth in Plaintiff's moving papers, it is respectfully requested that Plaintiff's application be granted and the requested preliminary restraints be imposed.

Respectfully submitted,

s/J. John Kim

J. John Kim, Esq.

cc: Counsel of Record (via eCourts)
Client (via e-mail)

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VDDAS, LLC (d/b/a Delta Don)

VDDAS, LLC (d/b/a Delta Don),

Plaintiff,

v.

TOWNSHIP OF UNION, TOWNSHIP OF
UNION BUILDING DEPARTMENT, and
ANTHONY MONGUSO in his official
capacity as the Construction Official and
Zoning Officer of the Township of Union

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
UNION COUNTY

DOCKET NO.: UNN-L-4158-23

FINAL ORDER

THIS MATTER being brought before the Court by Pashman Stein Walder Hayden, P.C., attorneys for Plaintiff VDDAS, LLC (d/b/a Delta Don) ("Plaintiff"), seeking relief by way of Order to Show Cause, and based upon the facts set forth in the Verified Complaint filed herewith, and the submissions of the parties, and oral argument having taken place on January 23, 2024, and for good cause having been shown;

IT IS on this 23rd day of January, 2024, **ORDERED**,

A. Plaintiff's application for a preliminary injunction is **DENIED**.



Hon. Lisa M. Walsh, A.J.S.C.

For the reasons stated on the attached statement of reasons.

UNN-L-4158-23

VDDAS, LLC v. Twp. Of Union, Twp. Of Union Building Dept., and Anthony Monguso
 Attorneys for Plaintiff: J. John Kim and Zach Levy (Pashman Stein Walder Hayden, P.C.)
 Attorney for Defendants: Robert F. Varady (La Corte, Bundy, Varady, & Kinsella)

Statement of Reasons

Before the Court is plaintiff VDDAS, LLC d/b/a Delta Don's, Order to Show Cause application for a preliminary injunction pursuant to R. 4:52. On December 20, 2023, plaintiff filed the instant Order to Show Cause and Verified Complaint pursuant to R. 4:52 seeking the following immediate injunctive relief against defendants Township of Union, Township of Union Building Department, and Anthony Monguso in his official capacity as the Construction Official and Zoning Officer of the Township of Union:

- (a) Reinstating plaintiff's Certificate of Occupancy ("CO") with respect to its business location at 2075 Springfield Avenue, Vauxhall, New Jersey; and
- (b) An order to prohibit interference with plaintiff's use, enjoyment, and lawful business operations at 2075 Springfield Avenue, Vauxhall, New Jersey.

On December 21, 2023, the Honorable Robert J. Mega¹, P.J.Ch., denied plaintiff's application for Temporary Restraints. Plaintiff is seeking a preliminary injunction order reinstating their CO with respect to its' business location at 2075 Springfield Avenue, Vauxhall, New Jersey.

Background

Plaintiff is in the business of selling hemp-derived products containing less than 0.3% THC. Hemp products under the 0.3% THC concentration threshold are considered an agricultural commodity and not a controlled substance under New Jersey and Federal Law. On April 25, 2022, after receiving a CO, plaintiff opened for business selling tobacco, vape, hemp and CBD products. Subsequently, on August 1, 2023, Plaintiff received a written "warning" from Detective Christopher Lensi of the Union Police Department, alleging that marijuana products had been purchased from their business in violation of N.J.S.A. 2C:35-5. In response to this warning letter, plaintiff's criminal defense counsel, Robert M. Biagiotti, Esq., sent two letters inquiring as to specific information regarding the alleged purchase of marijuana products from plaintiff. Both the August 18, 2023, and the September 18, 2023, letters to Detective Lensi went unanswered.

¹ This matter was filed as an action In Lieu of Prerogative Writs pursuant to R. 4:69, which are ordinarily heard by the Assignment Judge. However, plaintiff's emergent application seeking immediate injunctive relief was heard by Judge Mega as he was temporarily presiding as Acting Assignment Judge on December 21, 2023.

On September 20, 2023, members of the Union Township Police Department executed a search warrant plaintiff's store, seizing various hemp products, electronics, cash, and other property. One of plaintiff's owners, Juan Addison, was also placed under arrest for selling marijuana in violation of N.J.S.A. 2C:35-5(B)(11)(A). Thereafter, on September 22, 2023, the Union Township Construction Official sent plaintiff a notice advising that its' Certificate of Occupancy was being revoked for violation of its terms. Specifically, defendants asserted that "well over 10lbs of marijuana was seized" from plaintiff's store. See Plaintiff's Exhibit G.

Plaintiff's Position

Plaintiff argues that defendants summarily revoked its' CO without any advanced notice or any type of administrative process, and instead relied upon "an unproven accusation of an overzealous police detective..." Plaintiff's Brief at 1. Plaintiff contends that it will prove no illegal products have been sold at out of its store in due course, but if the store remains closed in the interim, plaintiff will go out of business. In further support of this application, plaintiff argues that the hemp products that were sold are not considered marijuana under New Jersey and Federal law. See New Jersey Hemp Farming Act, N.J.S.A. § 4:28-8 (excluding hemp and hemp products from the definition of marijuana in New Jersey's controlled substance law (N.J.S.A. 24:21-2 and 24:5-23(b))). Plaintiff maintains that irreparable harm will be done if the business remains inoperable for an extended period of time. Specifically, plaintiff argues they will default on certain obligations made to third parties and eventually will be forced to close permanently. Additionally, plaintiff argues that this claim is settled as a matter of law as it pertains to defendants' alleged violation of plaintiff's right to procedural due process. Plaintiff also contends that the evidence demonstrates a reasonable probability of success that defendants' have constructively criminalized hemp products, as all products sold were below the 0.3% THC threshold. Plaintiff further asserts that defendants violated N.J.A.C. 5:23-2.30 by failing to issue a notice of violation, and by failing to provide defendants an opportunity to cure any violation before revocation of the CO.

In reply, plaintiff argues that defendants failed to issue the proper notice of violation. Specifically, plaintiff again argues that Detective Lensi's August 1, 2023, letter was insufficient to serve as a notice of violation of the CO because it was not issued by the Construction Official in accordance with NJ regulations. Furthermore, plaintiff argues that if there was a true risk to public safety, defendants should have revoked the CO once the products tested positive for

marijuana in June of 2023, rather than waiting until September. Additionally, plaintiff has provided contrary lab test results of the products that were purchased by undercover police officers. These lab results allegedly support plaintiff's position that the products were not marijuana, but rather are hemp products under the legal threshold to constitute marijuana. Plaintiff further reinforced the arguments made in their earlier submission regarding the various Crowe factors.

Defendants' Position

In opposition to plaintiff's application seeking a preliminary injunction, defendants argue that plaintiff's CO was not revoked without advanced notice, but rather, plaintiff was warned to cease selling marijuana products on August 1, 2023. Additionally, defendants have provided test results from the Union County Prosecutor's Office Forensic Laboratory that confirms the products purchased from plaintiff tested positive for marijuana. Specifically, defendants argue: (1) if the CO is reinstated, the only irreparable harm would be to defendants and the general public, nevertheless, any irreparable harm to plaintiff can be remedied by monetary damages; (2) there is no likelihood of success on the merits for either of plaintiff's claims because testing results confirm marijuana was sold from plaintiff's store and because defendants acted in conformance with the procedural requirements of N.J.A.C. 5:23-2.23²; and (3) balancing of the hardships favors defendants as a reinstatement of plaintiff's CO poses a threat to the Township's ability to enforce the laws of the state.

Along with its' opposition, defendants provided a certification of Lieutenant Mark Martin of the Township of Union Police Department, who provided a more detailed accounting of the facts underlying this action. According to Lieutenant Martin, during the week of May 15, 2023, the Union Police Department received information that plaintiff was engaged in the illegal distribution of marijuana. Thereafter, during the weeks of May 22, 2023, and June 25, 2023, two separate undercover purchases of suspected marijuana were conducted at plaintiff's store. Products purchased on both occasions were submitted to the Union County Prosecutor's Office Forensic Laboratory where they tested positive for marijuana. On August 1, 2023, Union Police detectives provided plaintiff's manager, Juan Addison, with a written warning to cease the distribution of marijuana without a license. During the week of September 4, 2023, a third undercover purchase of suspected marijuana was conducted at plaintiff's place of business, and once again, the products

² Plaintiff asserted two counts in its Verified Complaint: Count I which is a declaratory judgment claim and Count II which alleges a violation of Procedural Due Process Rights.

tested positive for marijuana. Subsequently, on September 18, 2023, the Honorable Richard Wischusen, J.S.C., authorized the search of plaintiff's place of business for marijuana and paraphernalia for the use, packaging, and distribution of marijuana. On September 20, 2023, acting pursuant to the search warrant, members of the Union Police Department seized 88 total items from plaintiff's place of business. During the execution of the search warrant, Juan Addison was placed under arrest for the prior distribution of marijuana to an undercover police officer. The next day, the Township of Union Building and Health Departments were notified of the police investigation.

Defendants also provided a certification from Anthony Monguso, who is employed as the Construction/Zoning Officer for the Township of Union. In pertinent part, Monguso stated that on September 21, 2023, he was notified by the Union Police Department of Mr. Addison's arrest and on the next day, issued a Notice of Violation-Revocation of plaintiff's CO.

Law & Analysis

An application for a preliminary injunction is generally governed by the standards set forth in Crowe v. De Gioia, 90 N.J. 126, 132-5 (1981). The New Jersey Supreme Court has held that, to obtain injunctive relief, a party must show by clear and convincing evidence that:

- 1) absent injunctive relief, there is a likelihood of imminent and irreparable harm;
- 2) the claim is based upon a settled legal right;
- 3) the party has a reasonable probability of ultimate success on the merits; and
- 4) a balancing of hardships favors the party who is seeking relief.

Id.; Parks v. Commerce Bank, 377 N.J. Super. 378, 387 (App. Div. 2005).

Analysis

Factor One – Irreparable Harm

A preliminary injunction should not issue except when necessary to prevent irreparable harm. Crowe, 90 N.J. at 132. Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. Id. at 133. New Jersey Supreme Court has long held, “[a]cts destroying a complainant's business, custom, and profits do an irreparable injury and authorize the issue of a preliminary injunction.” Ferraiuolo v. Manno, 1 N.J. 105, 108 (1948); see also Cnty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 384 N.J.

Super. 251, 255 (App. Div. 2006) (stating that it is well-settled that the destruction of a complainant's business and profits warrant the issuance of a preliminary injunction).

Under the first Crowe factor, harms that can be remedied by monetary compensation do not constitute irreparable harms. Plaintiff urges this Court to grant its application for a preliminary injunction, arguing that it cannot operate its business without a CO. While plaintiff cannot operate its business without a Certificate of Operation, the Court notes that the facts set forth in plaintiff's moving papers, and in defendants' opposition suggest that its CO was revoked on September 23, 2023. As such, plaintiff will not suffer immediate and irreparable harm if this Court does not grant its belated application seeking reinstatement of its Certificate of Occupancy that was revoked over 90 days ago.

Moreover, harm is not considered irreparable if it can be remedied by monetary damages. Despite the fact that plaintiff avers it will suffer irreparable harm in this action but for the Court granting its requested injunction, plaintiff's brief in support of its application states it is concerned with the business' lost profits or inability to generate revenue. While plaintiff argues that it will suffer from losses (including lost profits) that cannot be readily calculated nor redressed by monetary damages, it fails to adequately demonstrate how it will suffer imminent irreparable harm if the Court declines to enter the above requested injunction.

Given that plaintiff presently seeks equitable relief in the form of the issuance of a preliminary injunction, this Court finds that the following equitable maxim is applicable in this matter: "Equity aids the vigilant, not those who sleep on their rights." This maxim is often considered the positive statement of what is considered as the defense of laches. In Stout v. Seabrook's Executors, 30 N.J. Eq. 187, 190-91 (Ch. Div. 1878) after noting that "great delay is a great bar in equity," the Court stated:

The justice of this doctrine is obvious. He who delays asserting his rights until the proof in vindication of them is so indeterminate that it is very difficult to decide whether what seems to be justice to him is not injustice to his adversary, ought to lose all right to the aid of a court of conscience, for, by his laches, the path of justice has become so obscure that it cannot be traced with certainty. The law assists those who are vigilant, not those who sleep upon their rights.

This equitable proposition has otherwise been stated as "equity does not aid one whose indifference contributed materially to the injury complained of." Harrington v. Heder, 109 N.J.

Eq. 528, 534 (E.&A. 1931). Here, plaintiff argues that it will face irreparable harm to its business, customs, and reputation should the Court deny its application. However, its argument is weakened by the fact that plaintiff's losses to business, profits, and customs are, at least in part, the result of plaintiff's failure to take action until December 20, 2023, despite having its CO revoked on September 22, 2023. Plaintiff cannot demonstrate that it will face immediate irreparable harm if this Court does not reinstate plaintiff's CO because the facts demonstrate that should the Court deny the present application, plaintiff's position would remain the same as it has since September 22, 2023. It should also be noted that in a reply certification, Tony Yi, owner and President of plaintiff, stated that he was "stunned" when he received the September 22, 2023, CO revocation letter. He further stated that rather than rushing to the courthouse to litigate, he hoped to "meet with the police and Union Building Department" to help them better understand the differences between hemp and marijuana. However, Anthony Monguso, the Construction/Zoning Officer for the Township of Union stated in his certification that: "In the September 22, 2023, correspondence, I provided my email address and telephone number to Plaintiff for any questions. However, to date (January 16, 2024), no one associated with Mr. Addison or TGL Partners d/b/a Delta Don has reached out to me." Rather than reaching out to come to a resolution with the Construction Official, plaintiff sat upon their rights for almost 90 days, and then initiated this instant action.

Because plaintiff has failed to demonstrate by clear and convincing evidence that it will be in any worse of a position than it has been in since September, plaintiff has failed to meet the first Crowe factor.

Factor Two – Settled Legal Right

The second Crowe factor is that injunctive relief should be withheld when the legal right underlying plaintiff's claim is unsettled. Crowe, 90 N.J. at 133. Again, it is the plaintiff's burden to demonstrate this by clear and convincing evidence. Id. Plaintiff has asserted two counts in its Verified Complaint, Count I seeks a declaratory judgment under the Declaratory Judgment Act, and Count II alleges a violation of procedural due process rights.

Plaintiff contends that the law regarding violations of procedural due process is well-settled. Specifically, plaintiff cites to The Fourteenth Amendment to the United States Constitution and Article I, Paragraph 1 of the New Jersey Constitution that protect individuals from deprivations of life, liberty, and property, without due process of the law. See Doe v. Poritz, 142 N.J. 1, 99

(1995). Plaintiff stated, “as of the date of this filing, any search warrants issued in connection with the Raid, if any, have not been disclosed to Plaintiff or Mr. Biagiotti.” Plaintiff’s Complaint at 7. Plaintiff also noted that to establish a violation of procedural due process, plaintiff must show that there was a deprivation of a protected property interest, among other things. While plaintiff’s probability of overall success on the merits remains up for dispute, it has a clear right to bring actions based on claims of procedural due process violations and on claims that the Township and its respective officials failed to properly provide plaintiff with notices and opportunities to appeal. Plaintiff has also challenged defendants’ actions under N.J.A.C. 5:23-2.30, which requires a construction official to permit any violations of a CO to be remedied before revocation. Procedural claims such as these are certainly well settled as a matter of law.

Factor Three – Probability of Success on the Merits

The third Crowe factor is whether there is a reasonable probability of success on the merits, which requires a showing that the material facts are uncontroverted. Crowe, 90 N.J. at 133.

Plaintiff has not demonstrated that it has probability of success on the merits in this action. Plaintiff argues that all products sold from this location are hemp products, and not marijuana, but defendants have provided lab testing results that purportedly contradict that assertion. Plaintiff at first contended that the CO was revoked based upon “unverified and unproven suspicions of a police officer.” However, in Detective Lesi’s August 1, 2023, letter to Plaintiff, he stated that “In the last 90 days an investigation was conducted in which marijuana products were purchased from ‘Delta Don’...the purchased products were then tested by the Union County Police Lab and confirmed to contain marijuana.” Plaintiff’s Exhibit C. Additional information regarding the police investigation has been provided since the December 21, 2023 hearing seeking temporary restraints. Defendants have provided a certification from a representative of the Township of Union police department that details the investigative efforts undertaken prior to the seizure of various products from plaintiff’s store. Specifically, after receiving information from a concerned citizen that illegal marijuana distribution was taking place at Delta Don, the Union police initiated an investigation. In total, three undercover purchases yielded products that subsequently tested positive for marijuana. In between the second and third undercover purchase, Detective Christopher Lensi provided plaintiff’s manager with a written warning to cease the unlawful distribution of marijuana without a license. Thereafter, one month later, a third undercover purchase yielded marijuana.

Subsequently, a lawfully issued search warrant was authorized and executed upon plaintiff's business location. During the execution of the search warrant, Mr. Addison was arrested and charged with distribution of marijuana to an undercover officer.

The information provided by defendants directly contradicts plaintiff's assertion that only hemp products were sold at their store. Plaintiff's CO was revoked because the alleged illicit distribution of marijuana violated the terms of the CO. Furthermore, in plaintiff's brief filed on December 20, 2023, they argued that when their CO was revoked on September 22, 2023, it was done so "summarily" and "presumably without the benefit of any lab reports." However, this is not the case. Lab test results from the Union County Prosecutor's Office Forensic Laboratory show that the samples were analyzed on: (1) the week of June 9, 2023; the week of July 6, 2023; and September 13, 2023, all of which are prior to the date that plaintiff's CO was revoked.

In their reply, plaintiffs maintain that marijuana was never sold from their store. Rather, they argue that the testing methodology utilized by the Union County Prosecutor's Office Forensic Laboratory only tests for the presence of THC or cannabinoids generally, therefore all hemp products would test positive as marijuana. Plaintiff maintains that a more precise testing methodology, such as a high-performance liquid chromatography test should be used. Plaintiff provided copies of "Certificates of Analysis" that allegedly confirm each of the samples tested by defendants maintain a delta-9 THC level below 0.3%. At oral argument plaintiff's counsel confirmed that the Certificates of Analysis appended to their reply brief are test results of their in-store inventory, rather than samples of the items that were either purchased or seized by police officials and support the pending criminal charges. Accordingly, as of the date of this application, plaintiff has not had the opportunity to perform independent testing of the items that were purchased or seized by the Union police and later tested by the Union County Prosecutor's Office Forensic Laboratory. Plaintiff's reply papers reinforce this Court's conclusion that plaintiff has not proven by clear and convincing evidence that the material facts are uncontroverted.

Essentially at dispute in this matter is the chemical composition of the suspected marijuana. Plaintiff and defendants have each provided test results reach different conclusions. Plaintiffs have also provided this Court with a scholarly article that details the nuanced nature of the chemical differences between hemp and marijuana. While this article is instructive, this Court will not determine which test results are more compelling or trustworthy at this juncture. For the purposes of issuing a preliminary injunction, the standard for showing a probability of success on the merits

requires a showing that the material facts are uncontroverted. The opposite is true here; the most material fact in this matter is controverted. The majority of plaintiff's arguments in support of a preliminary injunction are predicated on the belief that marijuana was not sold from their store. Rather, plaintiff believes that defendants have constructively criminalized hemp products, arguing that defendants concluded that "selling lawful Hemp Products is the same as selling marijuana" and that provided the basis for revocation of the CO. However, that is not an accurate description of events based upon the evidence before this Court. Presently, nothing before this Court supports plaintiff's position that a constitutional due process violation took place. Plaintiff was provided with a written warning after two undercover purchases yielded marijuana, thereafter another undercover purchase yielded additional marijuana. A search warrant was obtained and executed; at which time the manager of plaintiff's store was arrested. At each stage of the investigation, Union Police had the benefit of controlled dangerous substances test results that tested positive for marijuana. After the foregoing sequence of events, defendants served a Notice of Violation-Revocation of Certificate of Occupancy in accordance with N.J.A.C. 5:23-2.23(n). Plaintiff contends that this notice of revocation was improper as it failed to provide proper notice of violation, and similarly failed to provide plaintiff with a "reasonable" time period to correct any violations.

N.J.A.C. 5:23-2.23(n) states: "The enforcing agency may revoke a certificate of occupancy whenever a condition of a certificate has been violated." Plaintiff's CO plainly prohibited the sale of marijuana; and test results from the Union County Prosecutor Office's Forensic Laboratory confirmed that marijuana was purchased and seized at their place of business. Furthermore, N.J.A.C. 5:23-2.30(b)(2) states: "**Unless an immediate hazard to health and safety is posed**, the construction official or appropriate subcode official shall permit such time period for correction as is reasonable within the context of the situation." (emphasis added). Plaintiff overlooks the first clause of this regulation that limits the construction official's responsibility to provide an opportunity to correct violations. When read together, this regulation provides that if there is an "immediate hazard to health and safety" the construction official does not need to permit a time for correction of the violation. Rather, the construction official may revoke the CO pursuant to the N.J.A.C. 5:23-2.30(n) by providing a notice of violation in accordance with N.J.A.C. 5:23-2.30(b)(1). On September 22, 2023, Construction Official Anthony Monguso provided the notice of violation to plaintiff in accordance with the applicable regulations. Here, defendants argue that

such a hazard to health and safety was evident, therefore, there was no requirement to allow for a time period to correct the underlying violation. Specifically, defendants argue that given the pending criminal charges and the allegations of illegal activity, there is an immediate hazard to health and safety posed to the general public. Despite the fact that possession of small amounts of marijuana for personal use has been decriminalized in New Jersey, these are allegations of the unregulated sale of marijuana and there is no doubt that poses a threat to public safety.

Because Plaintiff has failed to show that the material facts here are uncontroverted, they cannot meet the third Crowe factor.

Factor Four – Balance of the Equities

The fourth Crowe factor in considering the granting of a temporary injunction is the relative hardship to the parties in granting or denying relief. Crowe, 90 N.J. at 134. The Court also considers the public interest in deciding whether to issue an injunction. This facet is related to the balancing test, as the Court must balance the harm to the public if the injunctive relief is issued, against the impact if the injunctive relief is denied. J.H. Renarde, Inc. v. Sims, 312 N.J. Super. 195, 206 (Ch. Div. 1998).

When balancing the equities, it is this Court's role to weigh if an injunction will do more harm than good. Among the considerations are the hardships of each party and the public interest.

Certainly, there is a strong public interest in protecting the public from the illegal distribution of marijuana. The allegations as set forth and discussed above, are serious allegations. Defendants have test results that show a positive result for marijuana. Plaintiff's test results are for substances they purport are the same as those seized – items from the in-store inventory – but this evidence carries no weight. Defendants have an obligation to protect the public from illegal activity, and the issuance of an injunction would hinder defendants' ability to do so. Given the evidence before this Court, this factor is at best neutral, therefore, plaintiff has failed to show, by clear and convincing evidence, that plaintiff will suffer greater than defendants if an injunction were not to be issued.

Conclusion

For the foregoing reasons, plaintiff's application for a preliminary injunction is **DENIED**.