

At an Ex-Parte Term of the Supreme Court of the State of New York, in and for the County of Wayne, at the Wayne County Courthouse, Lyons, New York, on the **27** day of July, 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

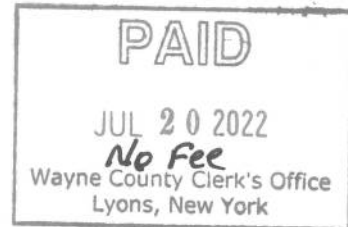
NEW YORK STATE OFFICE OF
CANNABIS MANAGEMENT,

Petitioner,

-against-

DAVID TULLEY, individually and d/b/a "I'm Stuck" and "The Weed Warehouse;" I'M STUCK LLC; EMPIRE EXPRESS ENTERPRISES LLC; the property located at 18-20 CANAL ST, LYONS, NY 14489 bearing tax account No. 7111-09-118665; EMPIRE EXPRESS ENTERPRISES LLC, as owner of the property located at 18-20 Canal Street, Lyons, NY 14489; the property located at 1146 ROUTE 31, MACEDON, NY 14502 bearing tax block account No. 62111-10-289726; NMM Properties, LLC, as owner of the property located at 1146 Route 31, Macedon, NY 14502; the property located at 4081 RIDGE ROAD, WILLIAMSON, NY 14589 bearing tax account 65117-12-930541; MICHAEL AND JUSTINE GREGORY, as owner of the property located at 4081 Ridge Road, Williamson, NY; the property located at 2020 CRANE BROOK DRIVE, AURELIUS, NY 13021 bearing tax ID No. 115.13-1-15; DONALD R. DI SANTO, as owner of the property located at 2020 Crane Brook Drive, Aurelius, NY; the property located at 9 EAST GENESEE STREET, AUBURN, NY bearing tax map No. 116.45-1-61; CAPFLOW CAPITAL LLC, as owner of the property located at 9 East Genesee Street, Auburn, NY 13021; the property located at 1944 ROUTE 104, ONTARIO, NY 14519 bearing Tax Map No. 63117-10-256660; MEANS EXCAVATING, INC., as owner of the property located at 1944 Route 104, Ontario, NY; the property located at 4865 JEFFERSON STREET, PULASKI, NY 13142 bearing County Property No. 2011 50 12; LAURI A. RUMBLE LAMICA, as owner of the property located at 4865 Jefferson Street, Pulaski, NY; JOHN DOES 1 – 10; and ABC CORPS. 1 – 10,

Respondents.



**EX PARTE ORDER TO
SHOW CAUSE WITH
TEMPORARY
RESTRAINING ORDER
AND CLOSING
ORDERS**

Index No. **89825**

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Upon the Verified Petition, verified by Benjamin Bruce, Deputy Assistant Attorney General in Charge of the Rochester Regional Office of the New York State Office of the Attorney General (“OAG”), on July 20, 2023, the Affidavit of Daniel Haughney, Director of Enforcement for the New York State Office of Cannabis Management (“OCM”) sworn to July 17, 2023; the Affidavit of OAG Investigator Andrea Buttenschon, sworn to July 18, 2023; the Affidavit of OAG Investigator Andrea Hughes, sworn to July 18, 2023; the Affidavit of OAG Investigator Jeffrey Jasewicz, sworn to July 18, 2023; the Affidavit of OAG Detective John Collins, sworn to on July 17, 2023; the Affidavit of Jasmine Norman, Deputy General Counsel for OCM, sworn to July 19, 2023, each with exhibits thereto, and the Memorandum of Law in support, and upon the motion of Letitia James, Attorney General of the State of New York, attorney for the Petitioner, it is

ORDERED that Respondents show cause before Part ___ of this Court, at a Special Term thereof, to be held at the Wayne County Courthouse, located at 54 Broad Street, Lyons, NY 13389, on the 2nd day of August, 2023 at 1:30 o'clock in the ~~forenoon~~/afternoon of that day, or as soon thereafter as counsel may be heard, why a preliminary injunction order, and ultimately a permanent order and judgment, should not be made pursuant to NYS Consolidated Law Service (“CLS”) Chapter 7-A (hereinafter “Cannabis Law”) and CPLR Article 63:

- a) permanently enjoining the Tulley Respondents,¹ from cultivating, processing, distributing, delivering, selling, transferring, giving or dispensing cannabis, cannabis product, cannabinoid hemp or hemp extract product for sale without a license in this State;

¹ The “Tulley Respondents” are David Tulley, I’m Stuck LLC and Empire Express Enterprises LLC.

- b) permanently enjoining the Building Owners² from permitting any conduct prohibited by the Cannabis Law, including the sale of cannabis without a license, at the Stores³ or any building or premises they own;
- c) pursuant to Cannabis Law § 132(1), imposing a penalty of \$10,000 for each day during which the Tulley Respondents sold cannabis without a license, and imposing a penalty of \$20,000 per day for each day the Tulley Respondents continued to engage in unlicensed sale of cannabis after receiving an order to cease from OCM, and an additional civil penalty of five times the revenue from such prohibited sales or, in an amount of no more than three times the projected revenue for any such product found in the Tulley Respondents' possession based on the retail list price of such products;
- d) pursuant to Cannabis Law § 132(1-a) imposing a penalty of \$5,000 for each day during which the Tulley Respondents engaged in indirect retail sales after receiving an order to cease from OCM;
- e) pursuant to Cannabis Law § 16-a(1)(h), imposing on the Building Owners, and as to the Stores, a penalty of \$10,000 for each day the Building Owners permitted the Tulley Respondents' unlicensed activity at the Stores;

² The "Building Owners" are Empire Express Enterprises LLC, NMM Properties, LLC, Michael and Justine Gregory, Donald Di Santo, Capflow Capital LLC, Means Excavating, Inc., and Lauri A. Rumble Lamica.

³ The "Stores" are located at 18-20 Canal Street, Lyons, NY; 1146 Route 31, Macedon, NY; 4081 Ridge Road, Williamson, NY; 2020 Crane Brook Drive, Auburn, NY; 9 East Genesee Street, Auburn, NY; 1944 Route 104, Ontario, NY and 4865 Jefferson Street, Pulaski, NY.

- f) pursuant to NYCRR § 133(b)(4) and (6), and Cannabis Law § 16(1), imposing a fine of up to \$5,000 for each time the Tulley Respondents removed a notice of violation, cease order or warning notice;
- g) pursuant to Cannabis Law § 16(4) granting equitable relief including disgorgement as to the Tulley Respondents for sales of cannabis prior to May 3, 2023;
- h) directing the award of actual costs, expenses and disbursements of OCM and the OAG in bringing and maintaining this proceeding, pursuant to Cannabis Law § 16-a(7)(e) and directing that such amount be included in a judgment against Respondents;
- i) directing the Tulley Respondents to provide a full financial accounting for each of the Stores, including daily sales receipts, bank account statements, and other documents necessary to calculate the applicable penalties under Cannabis Law § 132 from February 2022 to the present;
- j) directing the Building Owners to provide a full accounting of all rents paid to them by the Tulley Respondents;
- k) directing entry of a judgment in favor of OCM against the Tulley Respondents, jointly and severally, plus interest;
- l) directing that any judgment issued as to a Building Owner or Store become a priority lien on such real property pursuant to Cannabis Law § 16-a(7)(d);
- m) directing that any illicit cannabis found in the possession of the Tulley Respondents or located at 18-20 Canal Street, Lyons, New York; 2020 Crane Brook Drive, Auburn, New York; 1944 Rt. 104, Ontario, New York; 4085

Ridge Road, Williamson, New York; 9 East Genesee Street, Auburn, New York; 1146 Route 31, Macedon, New York; or 4861 Jefferson Street, Pulaski, New York be seized and turned over to OCM;

- n) authorizing any police officer or peace officer with jurisdiction to seize and remove from the property located at 18-20 Canal Street, Lyons, New York; 2020 Crane Brook Drive, Auburn, New York; 1944 Rt. 104, Ontario, New York; 4081 Ridge Road, Williamson, New York; 9 East Genesee Street, Auburn, New York; 1146 Route 31, Macedon, New York; or 4861 Jefferson Street, Pulaski, New York all material, equipment, and instrumentalities used in the creation and maintenance of the unlicensed sale of cannabis and directing the sheriff to sell such property;
- o) directing the closure of the premises located at 18-20 Canal Street, Lyons, New York; 2020 Crane Brook Drive, Auburn, New York; 1944 Rt. 104, Ontario, New York; 4081 Ridge Road, Williamson, New York; 9 East Genesee Street, Auburn, New York; 1146 Route 31, Macedon, New York; and 4861 Jefferson Street, Pulaski, New York for a period of one year pursuant to Cannabis Law § 16-a; and
- p) for such other and further relief as this Court seems just and proper.

IT APPEARING that cause for *ex parte* temporary injunctive relief in the form of a temporary closing order as to the Stores and a temporary restraining order as to all Respondents exists under Cannabis Law §§ 16(4) and 16-a and CPLR Article 63, in that the Tulley Respondents continue to sell cannabis without a license in violation of an OCM order to cease, the Stores operate as unlicensed cannabis dispensaries and the Building Owners have permitted

the Stores to operate, which actions have caused and will continue to cause injury unless Respondents are restrained before a hearing can be held; it is hereby:

ORDERED that pending the hearing and determination of Petitioner's motion for a preliminary injunction, Respondents, their agents, employees, successors, assigns, and any other person acting under Respondents' direction or control, whether acting individually, or through any corporation, company, entity or device, are hereby temporarily restrained from:

1. cultivating, processing, distributing, delivering, selling, transferring, giving or dispensing cannabis, cannabis product, cannabinoid hemp or hemp extract product for sale without a license in this State;
2. permitting anyone leasing or otherwise occupying a building or premises they own, including the Stores, to engage in cultivating, processing, distributing, delivering, selling, transferring, giving or dispensing cannabis, cannabis product, cannabinoid hemp or hemp extract product for sale without a license in this State;
3. use and/or occupancy of the Stores, specifically the premises being occupied by the Tulley Respondents for commercial purposes, for any purpose whatsoever;
4. removing or in any manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting such unlicensed activity;
5. transferring, selling or otherwise disposing of any assets owned, possessed or controlled by the Tulley Respondents, including any assets in the control or custody of any third party on behalf of Tulley Respondents;
6. destroying, transferring or otherwise disposing of any business records, documents, electronic data or property related to the Tulley Respondents' unlicensed cannabis businesses; and it is further

ORDERED that pending the hearing and determination of Petitioner's motion for a preliminary injunction, the properties located at 18-20 Canal Street, Lyons, New York; 2020 Crane Brook Drive, Auburn, New York; 1944 Rt. 104, Ontario, New York; 4081 Ridge Road, Williamson, New York; 9 East Genesee Street, Auburn, New York; 1146 Route 31, Macedon, New York; and 4861 Jefferson Street, Pulaski, New York that have been used and/or occupied by the Tulley Respondents for commercial purposes shall be CLOSED, and the police officer or peace officer serving this order shall:

- i. enter upon the building or premises;
- ii. command all persons present in the building or premises to vacate the premises forthwith;
- iii. seize any cannabis, cannabis product, cannabinoid hemp or hemp extract product, as authorized by Cannabis Law § 138-a, to be held or turned over to OCM pending a permanent injunction in this proceeding pursuant to Cannabis Law § 16-a(7)(a);
- iv. make and return to the Court an inventory of personal property situated in and used in conducting, maintaining or permitting the unlicensed activity, which may consist of photographs of such property;
- v. upon the building or premises being vacated, the premises shall be secured locked, including by using a padlock or changing the lock, with the keys delivered to the owner, lessor or lessee of the building or retained by the officer until the appropriate party is ascertained;
- vi. post a copy of this Order and accompanying notice stating that the premises have been "closed by court order" and warning that "mutilation or removal of such a

posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five thousand dollars or by imprisonment not exceeding ninety days, or by both,” pursuant to Cannabis Law § 16-a(5)(e); and it is further

ORDERED that upon service of a copy of this Order, via electronic mail, facsimile or as otherwise provided for in the CPLR, on any bank, payment processor or other institution which holds funds in the name of or to the credit of David Tulley, I’m Stuck LLC, or Empire Express Enterprises LLC and any fictitious names used thereby, is hereby temporarily restrained from paying out, transferring, honoring drafts, checks or charges against or setting off or assigning to themselves or any other person or firm any such funds until further order of this Court; and it is further

ORDERED that Petitioner is permitted to exceed the word limit provided for in NYCRR 202.8-b in its Memorandum of Law; and it is further

ORDERED that as required by Cannabis Law § 16-a(1)(f) within three days of receipt of this Order, the Building Owners shall provide to Petitioner the names of any other owners, lessors and lessees of the Stores; and it is further

SUFFICIENT CAUSE to me appearing therefore,

LET service for *in rem* jurisdiction over the Stores be executed pursuant to Cannabis Law 16-a-1(c), by affixing this Order to Show Cause to the door of the building or premises and by mailing the Order to Show Cause by certified or registered mail, return receipt requested; and let service for *in personam* jurisdiction over the Building Owners be executed by sending them via overnight mail this Order to Show Cause, with supporting papers, at their last known address as listed on the deed, and let service for *in personam* jurisdiction over the Tulley Respondents be

executed by either personal service upon Respondent David Tulley, or if personal service cannot be made upon David Tulley following a reasonable attempt, then by emailing Respondent Tulley and his attorney this Order to Show Cause, with supporting papers; and

Papers in opposition to Petitioner's motion for a preliminary injunction, if any, shall be served upon counsel for Petitioner, Benjamin Bruce, New York State Attorney General's Office, 144 Exchange Blvd. Suite 200, Rochester, New York, 14614, so as to be received by one business day prior to the hearing on the preliminary injunction.

Enter,



Richard M. Healy