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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ILLINOIS CRAFT CANNABIS ASSOCIATION,)
an Illinois Nonprofit Corporation,)

10828689

Plaintiff,)

vs.)

CASE NO. 2020 CH 06247

STATE OF ILLINOIS,)
J.B. PRITZKER, as Governor of the State of Illinois,)
ILLINOIS DEPARTMENT OF AGRICULTURE, and)
JERRY COSTELLO II, as Director of the Illinois)
Department of Agriculture,)

Defendants.)

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, ILLINOIS CRAFT CANNABIS ASSOCIATION (“Plaintiff” or “ICCA”), by its attorneys, Horwood Marcus & Berk Chartered, in support of its Emergency Motion for Temporary Restraining Order and Preliminary Injunction against Defendants, STATE OF ILLINOIS, (hereafter “State”), J.B. PRITZKER as Governor of the State of Illinois (hereafter “Governor Pritzker”), the ILLINOIS DEPARTMENT OF AGRICULTURE, (hereafter “Department”) and JERRY COSTELLO II, as Director of the Illinois Department of Agriculture (hereafter “Costello”) (collectively, “Defendants”), submits this Memorandum in support thereof, and states as follows:

I. INTRODUCTION

On October 13, 2020, Plaintiff filed a Verified Complaint for Writ of Mandamus and Other Relief (the “Complaint”), which includes relief sought by way of an immediate injunction against Defendants, whom are tasked with, among other things, carrying out a true, fair and

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timely application process for the issuance of cannabis Craft Grower, Infuser and Transporting licenses pursuant to Illinois statute and related regulations, within the State of Illinois. By law, the Defendants were mandated to award and score Craft Grower, Infuser and Transporting licenses by July 1, 2020, pursuant to Sections 30-5, 35-5 and 40-5 of the Illinois Cannabis Regulation and Tax Act, 410 ILCS 705, et seq. (the “CRTA”). This lawsuit challenges the legality of the Defendants’ actions of unilaterally and indefinitely suspending the July 1, 2020 date by which cannabis Craft Grower, Infuser and Transporting licenses were to be awarded by statute. The Complaint also identifies the reasons Defendants are violating Illinois law by their failure to timely issue licenses and describes the unnecessary, immediate and ongoing damages being suffered by the license applicants because of that failure.

II. BACKGROUND

Plaintiff brought this lawsuit on October 13, 2020, seeking a writ of mandamus, declaratory and injunctive relief to prevent further damage to Plaintiff’s members. Plaintiff’s claims are based on the Defendants’ failure to timely issue licenses in compliance with their statutory obligations under the CRTA. The injunctive relief is being requested to curtail the continuing damages being suffered by Plaintiff’s members as a result of the Defendants’ failure to comply with their legal duties and obligations.

A. The CRTA

In 2019, the Illinois General Assembly enacted the CRTA and the relevant regulations were subsequently adopted by the Department, 8 IAC 1300.010 et. seq. Under the CRTA, effective January 1, 2020, recreational cannabis production, processing, marketing, sale and use (a/k/a “adult-use”) became legal under Illinois law. The CRTA created cannabis licenses that were new to Illinois, including a Craft Grower license under Article 30 (allowing the cultivation

and processing of cannabis), an Infuser license under Article 35 (allowing the infusing of cannabis) and a Transporting license under Article 40 (allowing the transportation of cannabis from one licensed commercial facility to another licensed commercial facility).

Pursuant to the CRTA, the State, by and through its Department notified the public that it would accept applications for cannabis Craft Grower, Infuser, and Transporting licenses with an application filing deadline of March 16, 2020 (ultimately extended to April 30, 2020 due to business disruptions related to the COVID-19 pandemic). Applicants needed to submit an application that consisted of hundreds of pages of documentation. This meant not only completing multiple forms that the Department provided, but submitting fingerprints, background information of owners and employees, disclosing organizational charts, operating agreements, articles of organization, and all contracts and agreements (including oral) relating to the venture, as well as making financial disclosures and attesting to the financial viability of the applicant to proceed with the venture in the event it is awarded a license.

The CRTA, specifically 410 ILCS 705/30-5, 705/35-5 and 705/40-5, legally obligates the Defendants to review and grade duly submitted license applications and issue cannabis Craft Grower, Infuser and Transporting licenses to qualified applicants by July 1, 2020.

Craft Grower licenses - (410 ILCS 705/30-5)

“Sec. 30-5. Issuance of licenses.

(a) The Department of Agriculture *shall issue* up to 40 craft grower licenses by July 1, 2020.” (*emphasis added*)

Infuser licenses - (410 ILCS 705/35-5)

“Sec. 35-5. Issuance of licenses.

(a) The Department of Agriculture *shall issue* up to 40 infuser licenses through a process provided for in this Article no later than July 1, 2020.” (*emphasis added*)

Transporting licenses - (410 ILCS 705/40-5)

“Sec. 40-5. Issuance of licenses.

(a) The Department *shall issue* transporting licenses through a process provided for in this Article no later than July 1, 2020.” (*emphasis added*)

While the determination of the scores given to the applications may be a discretionary act of the Defendants, the act of diligently scoring the applications and the time for announcement of the scores and issuance of the licenses was not, as the General Assembly specifically mandated a deadline of July 1, 2020 in the CRTA.

B. Defendant Pritzker’s Executive Order 2020-45

On June 29, 2020, two days before the licenses were mandated by law to be issued under the CRTA, Defendant Pritzker issued Executive Order 2020-45 which, among other things, declared that “the COVID-19 outbreak and the suspension of the application deadlines have created delays in [the Department’s] application review process and have impacted IDOA’s ability to issue the Craft Grower, Infuser, and Transporting Organization Licenses by July 1, 2020.” (Order 2020-45, tenth recital). Defendant Pritzker attempted suspension of the mandated issuance of any Craft Grower, Infuser, and Transporting licenses “[d]uring the duration of the Gubernatorial Disaster Proclamations, or until [the Department] otherwise announces a new date no later than the termination of the Gubernatorial Disaster Proclamations.” (Order 2020-45, Section 1).

With respect to each category of license, Executive Order 2020-45, Section 1 provides:

“(a) The requirement pursuant to 410 ILCS 705/30-5(a) that [the Department] issue up to 40 Craft Grower Licenses by July 1, 2020, is suspended. **[The Department] shall provide notice to the public of the date such licenses will be issued;**

- (b) The requirement pursuant to 410 ILCS 705/35-5(a) that [the Department] issue up to 40 Infuser Licenses by July 1, 2020, is suspended. **[The Department] shall provide notice to the public of the date such licenses will be issued;** and,
- (c) The requirement pursuant to 410 ILCS 705/40-5(a) that [the Department] issue Transporting Organization Licenses no later than July 1, 2020, is suspended. **[The Department] shall provide notice to the public of the date such licenses will be issued.** (emphasis added)

To date, the Department has not provided any notice as to the date the licenses will be issued, despite the clear language of Executive Order 2020-45 requiring the Department to do so.

Executive Order 2020-45 provides that the legal basis for the suspension of the mandated issuance of licenses is Section 7(1) of the Illinois Emergency Management Agency Act, 20 ILCS 3305 (the “IEMA”). The relevant part of the IEMA statute, Section 7(1), provides as follows:

Sec. 7. Emergency Powers of the Governor. In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers; provided, however, that the lapse of the emergency powers shall not, as regards any act or acts occurring or committed within the 30-day period, deprive any person, firm, corporation, political subdivision, or body politic of any right or rights to compensation or reimbursement which he, she, it, or they may have under the provisions of this Act:

(1) **To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.** (emphasis added)

However, nowhere in Executive Order 2020-45 does Defendant Pritzker comply with his burden of identifying how “*strict compliance*” with any of the provisions in the CRTA mandating licenses to be issued on July 1, 2020, “*would in any way prevent, hinder or delay*

necessary action...by the Illinois Emergency Management Agency, in coping with the disaster.”

Quoting from Section 7(1) of the IEMA. Suspension of the mandated issuance of licenses, indefinite or otherwise, was ordered without a sufficiently enumerated basis under Section 7(1) of the IEMA. Nonetheless, Defendant Pritzker has continued to renew his Gubernatorial Disaster Proclamations (currently through November 15, 2020) pursuant to a series of monthly reissued Executive Orders, none of which have provided the required basis for suspension of the mandated issuance of licenses as required under Section 7(1) of the IEMA.

Also, on April 30, 2020, Governor Pritzker issued Executive Order 2020-32, which stated, in Section 12(b), that certain businesses are essential, during the pandemic, including cannabis operations:

12. Essential Businesses and Operations. For the purposes of this Executive Order, Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:

b. Food, beverage, and cannabis production and agriculture. Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; *licensed medical and adult use cannabis dispensaries and licensed cannabis cultivation centers*; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities; (emphasis added)

While the COVID-19 pandemic does continue to persist, unlike at the time of the initial Executive Orders, the Defendants are now (and have been for a number of months) operating and no longer materially burdened in their operations by the pandemic. Notwithstanding the Executive Orders, Defendants continue to move forward with other duties and functions under the CRTA, including, but not limited, to (a) moving forward with the dispensing organization license process under the CRTA, (b) implementing a supplemental scoring process for such

dispensing organization licenses, and (c) vetting and announcing over a dozen appointments to the State's Adult Use Cannabis Health Advisory Committee.

Despite being operational and having had a substantial amount of additional time to assess the applications, as of the date of this filing, the Defendants have failed to issue any cannabis Craft Grower, Infuser or Transporting licenses or even provide a date when such action will be taken. There is no justifiable reason or circumstance preventing the Defendants from complying with their legal obligation to issue the essential cannabis Craft Grower, Infuser and Transporting licenses without delay, as required by the CRTA.

C. Ongoing Damages Incurred By Plaintiff's Members, the License Applicants

In many cases, Plaintiff's members spent a significant portion of their life savings to submit competitive license applications. The requirements mandated by the CRTA and related regulations obligate applicants to retain ownership or legal rights in property for the specific location of their proposed operation, in addition to proper zoning sufficient for such operation. In many cases, applicants were also required to hire and retain at least 10 full-time staff persons to qualify as a Social Equity applicant under the CRTA and Defendants' rules. These employees remain idle until which time as the Defendants decide to act and only then if the applicant is issued a license to operate.

After committing significant capital and resources to complete their applications timely and in accordance with the CRTA and related regulations, license applicants now also have the added obligation to maintain their property interest and continue to employ their employees, *beyond the statutory deadline of July 1, 2020, until licenses are issued by Defendants*. If the Defendants had complied with their legal and statutory obligations, applicants would have known their fate by July 1, 2020. Now they are faced with the obligation to maintain their

property interest and their employees from the time of original application date of March 15, 2020, indefinitely until Defendants issue the licenses.

Plaintiff estimates that the 570 applicants currently vying for the 80 total Craft Grower and Infuser licenses expend as a group up to \$5,000,000 each month just to maintain their application requirements in hopes of receiving a license. Obviously, for a vast majority of these applicants, this will be money spent for nothing, as most will be unsuccessful.

Another example of the unfair and inequitable treatment of Plaintiff's members is the required timing for completion of construction and starting of cultivation operations. 8 IAC 1300.310(e) requires that successful applicants have their cultivation facilities operational within 6 months of license award. This optimistic requirement may have been workable for a license awarded on July 1, where construction could start on a summer day with time to complete construction before challenging weather. However, given the current situation in which the date for issuance of licenses is unknown, license applicants now face construction through the winter months, reducing the likelihood that a successful applicant will be able to meet the deadline.

A more detailed itemization of the types of damages being suffered by the Plaintiff's members as a direct and proximate result of the Defendants' failure to act in accordance with their statutory and legal duties include the following:

- a. Applicants' obligation for payroll, taxes and other employee costs from and after July 1, 2020 and which are continuing as of this filing until which time as the Department issues licenses;
- b. Rent and other related costs to maintain an applicant's rights to real property required by the CRTA to be under applicant's control and necessary for

construction of a craft grow or infusion facility, from and after July 1, 2020 until which time as the Department issues licenses;

c. Loss of real property acquired or secured by applicants, in compliance with the CRTA, because of inability to pay continuing rent, penalties or violation of purchase or rental agreements, all due to Defendants' delay in issuing licenses;

d. For successful applicants, lost revenue because of the delay in starting operation of their licensed facilities or transportation services;

e. For successful applicants, additional construction costs required to complete construction of their craft grow or infusion facilities because of delay and the effect of building during winter months;

f. For the employees of successful applicants, lost opportunity of increased wages and a higher standard of living;

g. For the employees of unsuccessful applicants, lost employment opportunities, employment search costs, and other general damages; and

h. For successful applicants, the inability to meet statutory construction deadlines because of work being required during winter months.

III. THE LEGAL STANDARD FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

The issuance of a temporary restraining order ("TRO"), pursuant to Section 11-101 *et seq.*, of the Illinois Code of Civil Procedure, is appropriate where the facts demonstrate that (1) the party seeking relief has a protectable right; (2) the party will suffer irreparable injury if injunctive relief is not granted; (3) the party has an inadequate remedy at law; and (4) there is a likelihood that the party seeking injunctive relief will succeed on the merits. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52 (2006), 62 (Ill. 2006); *Tierney v. Village of Schaumburg*, 182

Ill. App. 3d 1055, 1059 (1st Dist. 1989). A temporary restraining order should be granted to maintain "the last, actual, peaceable, uncontested status which preceded the controversy." *Baal v. McDonald's Corp.*, 97 Ill. App. 3d 495, 502 (1st Dist. 1981)). The standard required for this Court to enter a preliminary injunction is the same as the standard for a TRO. *Bollweg v. Richard Marker Assoc., Inc.*, 353 Ill. App. 3d 560, 575 (2nd Dist. 2004).

The party seeking injunctive relief need only show that there is a "fair question" of the existence of the protectable right and that the court should preserve the status quo to prevent immediate harm until the case can be decided on the merits. *Murges v. Bowman*, 254 Ill. App. 3d 1071, 1082 (1st Dist. 1993). Where a plaintiff is seeking to preserve the status quo between the parties, a plaintiff does not need to establish that there is a likelihood of success. *In re Marriage of Joerger*, 221 Ill. App. 3d 400, 407-08 (4th Dist. 1991). Another expressed purpose of an interlocutory injunction is the prevention of a threatened wrong or further perpetration of injury until the merits of the case can be decided. *Mohanty v. St. John Heart Clinic, S.C.*, 358 Ill. App. 3d 902, 910 (1st Dist. 2005)).

IV. ARGUMENT

A. License Applicants have a Clear and Ascertainable Right in Need of Protection and Seek to (i) Compel Defendants to Revise Obligations to Maintain Property and Employees and (ii) Enjoin Any Negative Effects in Scoring the Applications.

The license applicants have expended a vast amount of time and resources to prepare and submit their license applications in the form required by the Defendants. This was done in reliance upon the statutory process set forth in the CRTA, (specifically related to this case, the license issuance deadline set forth in 410 ILCS 705/30-5(a), 705/35-5(a) and 705/30-5(a)), and the general regulatory process developed by the State and the Department of Agriculture.

Under the CRTA and related regulations, there are a vast number of requirements and obligations for license applicants to follow when applying for one of the few, coveted licenses. Even a slight deficiency to fully comply with the numerous requirements under the CRTA can mean the difference between the slim chance to qualify for a license and no chance at all. License applicants spent thousands of hours and dollars to do everything possible to fully meet all of the requirements and to score as many points as possible on the application.

Under the current circumstances, an applicant's obligation to secure real property and have local zoning approved, plus maintain a staff of full-time employees who qualify as social equity applicants, for the entire life of the application and beyond (assuming a license is issued) is an immense and expensive undertaking. Under the CRTA and related regulations, if a license applicant secured a property prior to submitting the application in March/April, 2020, through an executed lease or purchase contract, the applicant must maintain control over that property for the purpose of ultimately receiving a license when issued by the Defendants. Losing the secured property during the process means an applicant loses the right to a license. The same strict compliance applies to those applicants qualifying as social equity applicants through their employees. Failure to maintain your qualifying staff through the process results in a failure to receive a license.

The State and the Department, on the other hand, have comparatively very few obligations to meet with respect to the license applications under the CRTA. One of those few obligations of the State and Department is to timely score applications and timely issue licenses to the top qualifiers, specifically, by July 1, 2020.

Having a mandated deadline of July 1, 2020 in the CRTA provided the license applicants with a way to analyze and quantify their potential outlay of capital and timing for the need to

hold property under lease or contract and to keep employees on staff. Once the Defendants' delays extended beyond July, those analyses and calculations by license applicants were meaningless. Without question, Plaintiff's members and all license applicants had, and continue to have, a clear right to expect that Defendants meet their statutory obligations to score and issue essential cannabis Craft Grower, Infuser and Transporting licenses in a timely manner.

B. Applicants Have No Adequate Remedy at Law.

A legal remedy is inadequate where damages are difficult to calculate at the time of the hearing. Even if there is a potential legal remedy, "for a legal remedy to preclude injunctive relief, the remedy must be clear, complete and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." *In re Marriage Joerger*, 221 Ill. App. 3d at 406. The fact that a plaintiff may ultimately be entitled to monetary relief does not deprive a court of equity of the power to grant an injunction. *All Seasons Excavating, Co. v. Bluthhardt*, 229 Ill. App. 3d 22, 28 (1st Dist. 1992)

Here, Plaintiff's members have no adequate remedy at law because the amount of money needed to remedy their ongoing loss and damage suffered because of Defendant's failure to comply with their legal obligations is unknown. Similarly, Plaintiff's members will have lost employees, income, construction opportunities, property and zoning if something is not done immediately to provide them some means of protection. *See North Pole Corp.*, 263 Ill. App. 3d 327, 330 (2nd Dist. 1994). The loss of employees, opportunities, future profits and goodwill cannot readily be quantified. *Id.* Consequently, an injunction is appropriate.

C. The Irreparable Harm to Applicants is Continuing in Nature Because They Continue to be Required to Maintain Property and Employees in the Absence of an Injunction.

Without this Court's intervention, Plaintiff's members will be irreparably harmed by Defendants' conduct. The "injury a party fears need not be irreparable or incapable of compensation, but must merely 'denote transgressions of a continuing nature.'" *In re Marriage Joerger*, 221 Ill. App. 3d at 407 (quoting *Tamalunis v. City of Georgetown*, 185 Ill. App. 3d 173, 190 (4th Dist. 1989)). Here, the risk to license applicants is immediate, severe, and continuing. Plaintiff's members will be irreparably harmed if suspension of the Defendants' inequitable rules and regulations is not made while this Court considers the merits of Plaintiff's claims.

D. Applicants Have a Likelihood of Success on the Merits.

Significantly, Plaintiff does not have to demonstrate that they are entitled to relief on the merits nor are they required to make out a case that would entitle them to relief on the merits. *Mister v. A.R.K. Partnership*, 197 Ill. App. 3d 105, 111 (2nd Dist. 1990). Instead, Plaintiff must only raise a "fair question" about the existence of its right to the requested relief. *Id.* Where a plaintiff is merely seeking to maintain the status quo between the parties, it does not have to show that it is likely to prevail on the merits. *In re Marriage Joerger*, 221 Ill. App. 3d at 409. The status quo is characterized as "the last peaceable uncontested status which preceded the litigation." *Id.* In this case, the last peaceable uncontested status which preceded litigation was the license applicants' position on the original date licenses were to be awarded, July 1, 2020. This Court should act to preserve that status through immediate injunctive relief while this Court considers the merits of Plaintiff's claims.

Nonetheless, Plaintiff has demonstrated a likelihood of success on the merits. Defendants legal obligations to act in a timely manner are clear as is their violation of those obligations. As detailed above, Defendant Pritzker's attempts to postpone the date of license award by his Order 2020-45 were legally ineffective. Assuming, arguendo, that the original emergency declaration

was effective, the justification for such emergency action no longer exists as the State and its Department are operational and the obligation to score and issue licenses is not affected by the Covid-19 pandemic. Balancing the damages being suffered by Plaintiff's members with the need to further delay action by the Defendants clearly weighs in favor of Plaintiff and action must be taken to protect those needlessly suffering losses while Defendants continue to delay decisions with no urgency or concern for the license applicants, some of whom are on the verge of abandoning their licenses or becoming bankrupt.

Plaintiff has in fact made a greater showing than is necessary because it has demonstrated a likelihood of success on the merits when they need only raise a fair question about the existence of their right to the requested relief and the need to preserve the status quo. Given the arguments set forth in this Memorandum and the Complaint, this Court should grant the emergency injunctive relief requested.

V. CONCLUSION

Plaintiff's members will be significantly harmed if this motion is not granted. Plaintiff simply seeks to preserve the status quo and stay application of Defendants' inequitable law and regulations until licenses are issued or this Court makes a determination on the merits of the pending claim, seeking to (i) compel Defendants to revise the obligations to maintain property and employees and (ii) enjoin Defendants from any negative effects on license applicants in scoring the applications.

WHEREFORE, Plaintiff, ILLINOIS CRAFT CANNABIS ASSOCIATION, respectfully requests that this Court issue a Temporary Restraining Order and a Preliminary Injunction, and grant the following relief:

- A. Enjoining Defendants from disqualifying license applicants or reducing application scores where license applicants have not maintained one or more statutory requirements reflected in their application, due to Defendants' delays in issuing licenses on July 1, 2020, including, but not limited to, loss of property, zoning, social equity qualification through employee staffing, or other change in circumstance since July 1, 2020;
- B. Compelling Defendants to score all submitted applications as they were reflected when submitted, without consideration of changes in circumstance of the license applicants since July 1, 2020;
- C. Enjoining Defendants from enforcing the provisions of 410 ILCS 705/7-20(c) and finding any applicants ineligible to proceed as social equity applicants if they furlough employees until such time as the Department rules on the license applications;
- D. Compelling Defendants to provide successful applicants additional time to complete construction of their licensed facilities beyond the time limit set forth in 8 IAC 1300.310(e);
- E. Compelling Defendants to provide successful applicants a reasonable amount of time to correct expired zoning and/or locate, retain and rezone, if necessary, replacement property for locations lost after July 1, 2020 due to the delay by the Defendants in carrying out their statutory and legal obligations;
- F. Compelling Defendants to allow applicants time and ability to correct their organizational chart and replace individuals who have left applicant after July 1,

2020 as a result of the delay by the Defendants in carrying out their statutory and legal obligations;

and

G. Such other, further, and different relief as the Court deems proper.

Respectfully submitted,

**ILLINOIS CRAFT CANNABIS
ASSOCIATION**, an Illinois Nonprofit
Corporation,

By: /s/ David S. Ruskin

One of Its Attorneys

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