12-Person Jury

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

PBKM, LLC, an Illinois limited liability company, and PBKM DISPENSARY 1 – 10, LLC, severally Illinois limited companies,	)	
Plaintiffs,	)	2021L007458
v.	)	2021 L _____
KUTAK ROCK, LLP, a Nebraska limited liability partnership, CHRISTOPHER P. PARRINGTON, TREES, LLC, a Colorado limited liability company, TIMOTHY E. BROWN, its Manager, CANNABIS CAPITAL GROUP, LLC, a Delaware limited liability company, and EDDIE ARMSTRONG, its Manager,	)	Jury Demanded
Defendants.	)	

COMPLAINT AT LAW

NOW COME Plaintiffs PBKM, LLC, an Illinois limited liability company, and PBKM DISPENSARY 1 - 10, LLC, each once a duly created Illinois limited liability company, by their attorneys Grasso Law, PC, and for their Complaint against Defendants, KUTAK ROCK, LLP, a Nebraska limited liability partnership, CHRISTOPHER P. PARRINGTON, TREES, LLC, a Colorado limited liability company, TIMOTHY E. BROWN, its Manager, CANNABIS CAPITAL GROUP, LLC, a Delaware limited liability company, and EDDIE ARMSTRONG, its Manager, state:

Summary of the Case

1. This is a multi-count legal malpractice, separate breach of fiduciary duty, and separate aiding and abetting case. It arises first from the Defendant Kutak Rock attorneys' negligent and last-minute preparation of applications for the issuance of ten cannabis adult use

dispensary licenses in the state of Illinois (herein, individually and collectively, the "License") to Plaintiffs who were qualified as a Social Equity Applicant (herein "SEA"), consistent with the Illinois Cannabis Regulation and Tax Act, 410 ILCS 705/1 et seq. (herein the "Act").

2. This case also separately arises from the Kutak Rock attorney Defendants knowingly acting in conflict of interest with Plaintiffs and, in breach of their fiduciary duties to Plaintiffs, intentionally creating certain Plaintiff entities and a holding company with disproportionate controlling voting rights meant to deprive Plaintiffs of operative control of the entities.

3. Finally, and also separately, this case arises from the Kutak Rock attorney Defendants aiding and abetting their codefendant clients, Trees and Cannabis Capital and their respective managers (Brown and Armstrong) in a scheme that included withholding documents and/or necessary disclosures concerning the companies and organizational structure until the eve of the application deadline. The Kutak Rock attorney defendants threatened that unless Plaintiffs agreed to the conflict waivers contained in the operational documents, and a separate hold harmless and indemnity document, no timely license application documents would be submitted for filing on the due date.

4. But for (1) the negligence, (2) separate breach of fiduciary duties and/or (3) intentional aiding and abetting of the Defendants, Plaintiffs would have qualified for and more likely than not been awarded a License under the Act. Defendants' acts, jointly and severally, caused Plaintiffs to be permanently disqualified as a SEA applicant and thus denied a License under the Act.

5. Plaintiffs' actual and compensatory damages include the lost profits and incomes they would have earned as owners of the License through PBKM, LLC, as the jury awards, plus legal fees and costs as the Court allows.

PARTIES / PLAYERS

6. **Lance Tyson** (herein "Tyson") was an attorney in the Chicago office of Kutak Rock at the time of the formation of PBKM, LLC, an Illinois limited liability company. Tyson is and was a member and manager of PBKM, LLC at all pertinent times as set forth in more detail later herein. Tyson qualifies as a SEA as defined under the Act because (1) Tyson was domiciled in his residence for over five years; (2) his residence is within a Disproportionately Impacted Area pursuant to the Act[1] and (3) but for Defendants' acts and omissions, Tyson would have had at least 51% ownership and control of the Applicant.

7. **Plaintiff PBKM, LLC** (herein "PBKM") is an Illinois limited liability company that the Kutak Defendants conceptualized and formed for Tyson on or about December 31, 2019[2] as an applicant entity for the License.

8. **PBKM Holdings, LLC** (herein "Holdings") is an Illinois liability company that the Kutak Defendants separately conceptualized and then formed on or about December 30, 2019 to hold ten separate limited liability companies, *to wit*, **Plaintiffs PBKM Dispensary 1 – 10, LLC** and the License, when granted. Tyson is and was a member and manager of Holdings at all pertinent times.

9. **Defendant Kutak Rock** (herein "Kutak" or "Kutak Defendants") is a Nebraska limited liability partnership, and a national law firm based in Omaha, Nebraska with an office in

[1] At all pertinent times, Tyson's residence was located in Humboldt Park, a Chicago neighborhood.
[2] Tyson's signature page is dated December 27, 2019. Patrick Birotte's is dated December 20, 2019. Paul O'Grady, Juan Elias and Eddie Armstrong apparently each electronically signed using "DocuSign" on Dec 30, 2019.

Chicago, Cook County, Illinois now and at all pertinent times. Kutak also conducts and transacts its business and legal services now and at all pertinent times in Chicago, Cook County, Illinois.

10. **Defendant Christopher P. Parrington** ("Parrington" or as part of "Kutak Defendants") is and was an of-counsel attorney practicing law at, for and through Kutak at all pertinent times. Parrington also was the lead attorney and worked on the creation of PBKM and Holdings and guided and prepared with other legal staff at Kutak the cannabis dispensary application documents for submission to the Illinois Department of Financial and Professional Regulation.

11. **Defendant Cannabis Capital Group, LLC** (herein "Capital") is a Delaware limited liability company that was a client of Kutak and sought and was given by Kutak and Parrington a voting interest in PBKM that was larger and disproportionate to its minority ownership in PBKM, all as part of Kutak and Parrington's formation of PBKM to apply for the License.

12. **Defendant Eddie Armstrong** (herein "Armstrong") is and was a Manager of Capital at all pertinent times. In his role as Manager of Capital, Armstrong was a client of Kutak who sought and was given by Kutak and Parrington a voting interest in PBKM that was larger and disproportionate to Armstrong's role and ownership of Capital as part of Kutak and Parrington's formation of PBKM to apply for the License.

13 **Defendant Trees, LLC** (herein "Trees") is a Colorado limited liability company that was a client of Kutak and sought and was given by Kutak and Parrington, through the creation of a new company **Trees Illinois, LLC**, a disproportionate controlling vote, and a small minority ownership interest in Holdings and thus effectively controlled each of the ten (10) dispensary company applicants for the License. Trees controlled Trees Illinois.

14. **Defendant Timothy Brown** (herein "Brown") is and was a Manager and Chief Executive Officer of Trees at all pertinent times. In his role as Manager and CEO of Trees, Brown was a client of Kutak who sought and was given by Kutak and Parrington, through their creation of Trees Illinois LLC, a disproportionate controlling vote in Holdings with a small minority ownership, and thereby effectively controlled Holdings that in turn controlled each of ten (10) dispensary applicants - all as part of Kutak and Parrington's formation of PBKM and Holdings for the application of the License so that Armstrong and Brown collectively controlled PBKM and Holdings – and thus controlled the License if it was awarded to Plaintiffs.

15. **Michael L. Curry** (herein "Curry") is a Nebraska licensed attorney who also was regional managing partner of Kutak at all pertinent times and now, and a member of Kutak's Executive and Compensation Committees who concentrates his legal practice in real estate finance and commercial lending.[3]

ALLEGATIONS COMMON TO ALL COUNTS

The Cannabis Regulation and Tax Act

16. On or about June 25, 2019, the Illinois Legislature passed the Act.[4] The Governor of Illinois signed the Act into law shortly thereafter.

17. In passing the Act, the Legislature *inter alia* found and declared that the use of cannabis should be legal for persons 21 years of age or older and should be taxed in a manner similar to alcohol. 410 ILCS 705/1(a).

[3] Plaintiffs reserve the right under the "relation back doctrine" to add Curry as a Defendant should discovery show Curry to be a proximate cause of actual damages herein to Plaintiffs.
[4] As noted, the Cannabis Regulation and Tax Act, 410 ILCS 705/1 *et seq*.

18. The Legislature further found and declared therein that it is necessary to ensure consistency and fairness in the application of the Act throughout the State and that therefore the matters addressed by the Act are matters of statewide concern. Id. 1(c).

19. "Dispensing organization" is defined in the Act to mean a facility operated by an organization or business that is licensed by the Department of Financial and Professional Regulation to acquire cannabis from a cultivation center, craft grower, processing organization, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under this Act to purchasers or to qualified registered medical cannabis patients and caregivers. As used in the Act, "dispensing organization" includes a registered medical cannabis organization as defined in the Compassionate Use of Medical Cannabis Program Act or its successor Act that has obtained an Early Approval Adult Use Dispensing Organization License.

20. The Act includes "dispensing organization" in the definition of "Cannabis business establishment". Id. 1-10.

21. Under the Act, "Disproportionately Impacted Area" means a census tract or comparable geographic area that satisfies the following criteria as determined by the Department of Commerce and Economic Opportunity, that: (1) meets at least one of the following criteria: (A) the area has a poverty rate of at least 20% according to the latest federal decennial census; or (B) 75% or more of the children in the area participate in the federal free lunch program according to reported statistics from the State Board of Education; or (C) at least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program; or (D) the area has an average unemployment rate, as determined by the Illinois Department of Employment Security, that is more than 120% of the national unemployment average, as determined by the United States

Department of Labor, for a period of at least 2 consecutive calendar years preceding the date of the application; and (2) has high rates of arrest, conviction, and incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.

22. Under Sec. 5-15 of the Act, the Department of Financial and Professional Regulation ("Department") is empowered to enforce the provisions of the Act relating to the oversight and registration of dispensing organizations and agents, including the issuance of identification cards for dispensing organization agents. The Department may suspend or revoke the license of, or otherwise discipline dispensing organizations, principal officers, agents-in-charge, and agents for violations of this Act and any rules adopted under this Act.

23. Section 7 of the Act addresses Social Equity principles to govern implementation of the goals of the Act. For example, Section 7-1(h) of the Act provides that in the interest of remedying the harms resulting from the disproportionate enforcement of cannabis-related laws, the General Assembly finds and declares that a social equity program should offer, among other things, financial assistance, and license application benefits to individuals most directly and adversely impacted by the enforcement of cannabis-related laws who are interested in starting cannabis business establishments.

24. Section 7-10 of the Act creates the Cannabis Business Development Fund. As part of that Fund under subsection (a), there is created in the State treasury a special fund, which shall be held separate and apart from all other State moneys, to be known as the Cannabis Business Development Fund. The Cannabis Business Development Fund shall be exclusively used for the following purposes: (1) to provide low-interest rate loans to Qualified Social Equity Applicants to pay for ordinary and necessary expenses to start and operate a cannabis business establishment permitted by this Act; (2) to provide grants to Qualified Social Equity Applicants to pay for

ordinary and necessary expenses to start and operate a cannabis business establishment permitted by this Act.

25. Subsection (b) of that provision then provides that the Department of Commerce and Economic Opportunity has the power *inter alia* to provide Cannabis Social Equity loans and grants from appropriations from the Cannabis Business Development Fund to assist Qualified Social Equity Applicants in gaining entry to, and successfully operating in, the State's regulated cannabis marketplace.

26. The Legislature also provided fee waivers in Section 7-20 of the Act (a) for Social Equity Applicants; the Department of Financial and Professional Regulation and the Department of Agriculture shall waive 50% of any nonrefundable license application fees, any nonrefundable fees associated with purchasing a license to operate a cannabis business establishment, and any surety bond or other financial requirements, provided a Social Equity Applicant meets the following qualifications at the time the payment is due: (1) the applicant, including all individuals and entities with 10% or greater ownership and all parent companies, subsidiaries, and affiliates, has less than a total of $750,000 of income in the previous calendar year.

27. Section 7-15(a) provides that the Department of Commerce and Economic Opportunity shall establish grant and loan programs, subject to appropriations from the Cannabis Business Development Fund, for the purposes of providing financial assistance, loans, grants, and technical assistance to Social Equity Applicants. Section 7-15(d) provides that grants made under this Section shall be awarded on a competitive and annual basis under the Grant Accountability and Transparency Act. Grants made under this Section shall further and promote the goals of the Act, including promotion of Social Equity Applicants, job training and workforce development, and technical assistance to Social Equity Applicants.

28. Licensing and Regulation of Dispensing Organizations is governed and provided by Article 15 of the Act ("Article 15" hereafter). The Department has the duty to administer and enforce the provisions of the Act relating to the licensure and oversight of the dispensing organizations. Id., Section 15-5(b), Authority. The Department's authority includes prescribing forms to be issued for the administration and enforcement of this Article 15; examine, inspect, and investigate the records of the dispensing organization applicant; conduct hearings to refuse to issue a dispensary license. Id., section 5(d).

29. Under Section 15-25, the Department was to issue up to 75 Conditional Adult Use Dispensing Organizational Licenses (hereafter, "Organizational License") before May 1, 2020. The Department was to make applications for these Organizational Licenses available no later than October 1, 2019 and was to accept all such License Applications (hereafter, "License Applications") until no later than January 1, 2020. Forty-seven (47) such Organizational Licenses were to be issued in the US Bureau of Labor Statistics ("BLS") Region[5] of Chicago-Naperville-Elgin. Id., (a)(b), and (c)(5).

30. Pursuant to the Act, an Applicant must be able to identify a physical location for the dispensary within 180 days of receiving the License and meet the conditions set forth in section 15-25(e) and its agents have to pass a state police background check as provided forth on section 15-25(g).

[5] A BLS Region under the Act is defined as a region in Illinois used by the US Bureau of Labor Statistics to gather and categorize certain employment wage data. Region 5 is labeled Chicago-Naperville-Elgin consisting of nine (9) Illinois counties: Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry and Will.

31. The requirements needed to be met by an applicant for a Conditional Adult Use Dispensing Organization License (hereafter "Applicant") are set forth in subsection 15-25(d)(1)-(30) of the Act.

32. The Act provides for the award of 75 Conditional Licenses as defined therein.

33. Under the Act, the Department is tasked to gather the applicant substantive information and score the applications consistent with the Act and the Department's rules and regulations for that purpose.

34. The application required applicants to provide this information in 20 separate exhibits (referred there as Exhibits A through T). The Act constitutes state law that allows for qualified applicants to apply for a dispensary cannabis license in the state of Illinois.

35. The intent of the Legislature as expressed in the Act and in related proceedings was to give preference to applicants who qualified as social equity applicants as defined in the Act. That includes providing for minority applicants to be designated as social equity applicants.

36. The Act provides criteria for the Department to award the Conditional Licenses. The Act assigns "points" to certain categories of information so that an application could receive up to 252 points.

37. The "scoring" system of the Act allowing a maximum of 252 points is as follows:

1.	Suitability of Employee Training Plan	(15 points)
2.	Security and Recordkeeping	(65 points)
3.	Business Plan, Financials, Operating, Floor Plan	(65 points)
4.	Knowledge and Experience	(30 points)
5.	Social Equity Applicant Status	(50 points)
6.	Labor & Employment Practices	(5 points)
7.	Environmental Plan	(5 points)
8.	Illinois Owner	(5 points)
9.	Veteran Status	(5 points)
10.	Diversity Plan	(5 points)
11.	Community engagement Plan	(1 or 2 points)
Total Maximum Possible Score		252 points

The Application and PBKM

38. The intent and legal objective of PBKM was to apply as a SEA and be awarded a License. This objective required the applicant to include an Illinois resident under the Act who resided for at least five of the preceding ten years in a "disproportionately impacted area" as defined, and who would be at least a 51% **controlling** owner.

39. At the time of the application, Tyson had been living for over six years in a part of Chicago that qualified under the Act for SEA status. Brown and Armstrong neither qualified for SEA status and were residents of Colorado and Arkansas[6], respectively, and were not residents of Illinois.

40. The Application Form also required the applicant to submit Exhibits A through T:[7]

A - Application Fee

B - Principal Officer Application Form

C - Business Entity operating Agreement, By-Laws, or Articles of Incorporation and Table of Organization, Ownership and Control,

D – Dispensing Organization Agent Training and Education

E – Purchaser Education Plan

F – Business Plan

G – Recalls, Quarantine, and Destruction Plan

H – Security Plan

I – Inventory Monitoring and Recordkeeping Plan

J – Proposed Floor Plan

K – Operating Plan

[6] Even if Armstrong's residency was in Illinois, he still did not qualify for SEA status.
[7] Page and/or word limits were set for each exhibit.

L – Plan for Community Engagement

M – Diversity Plan

N – Anonymous Knowledge and Experience of Principal Officers

O – Financial Information

P – Evidence of Status as a Social Equity Applicant, if applying as a SEA

Q – Labor and Employment Practices Plan (optional)

R – Environmental Plan (optional)

S - Evidence of Status as Owner (optional) and

T - Evidence of Status as Veteran (optional).

Tyson Retention of Kutak Rock and Parrington

41. Between July 2013 and February 2020, Tyson was an Illinois licensed attorney primarily practicing municipal financing and bond law for and at Kutak Rock in its Chicago office.

42. In mid-2019, Tyson discussed with his college friend, Patrick Birotte, partnering in a company to apply for a License, with Tyson having the SEA qualifications for a License under the Act. Tyson and Birotte eventually included other acquaintances, Paul O'Grady and Juan Elias, in the proposed partnership for the License.

43. On or about July 15, 2019, Birotte and Tyson retained Kutak Rock to create a company to be called PBKM, LLC with Tyson qualified as the SEA for a License consistent with the Act. This retention necessitated that Kutak form a company in which Tyson had the ownership and control required of the applicant by the Act in order to meet all aspects of SEA status to apply for the License.

44. Kutak accepted this retention and obligation, and assigned Parrington, a Minnesota attorney in Kutak's Minneapolis office as lead attorney, because Parrington purported to know

Illinois cannabis law and also had an active cannabis law practice out of the Minneapolis office of Kutak.

45. In or about October 2019, and purportedly because Tyson was a Kutak attorney (albeit in the Chicago office), Parrington and others, including Jay Selanders (Kutak's Chairman), John Petr (its Vice Chairman), and Mike Curry (Kutak's Regional Manager) insisted for unspecified "insurance reasons" that Tyson be isolated and denied access from the working files for this retention, and that Tyson play no role in the strategy, creation, or formation of the applicant entity, or drafting of the application documents.

46. In violation of RPC 1.4 (Communication), this plan by Parrington and Kutak effectively barred Kutak from meeting its obligation to communicate with Tyson so as to keep Tyson reasonably informed about the status of the matter and it also prevented Kutak from explaining its plans and legal services to the extent necessary to permit Tyson to make informed decisions regarding the representation.

47. The interests of Tyson as client and Kutak as attorney were aligned within the scope of retention for the License and were not in conflict. Nonetheless, Kutak insisted upon this isolation of Tyson, the result of which was that Tyson did not assist in the conceptualization, creation, or document preparation of the applicant for the License, and was unaware of the substance of Kutak's actions and issues generated by Defendants at all material times.

THE PBKM & DISPENSARY LLC TERM SHEET

48. In accordance with the applicable regulations, the License application had to be filed January 2, 2020. On or about December 19, 2019, Kutak and Parrington drafted a term sheet for the first time (five months after being retained) that set forth their intended structure of PBKM and Dispensary companies (hereinafter "Term Sheet"; a copy of the Term Sheet is attached as

Exhibit 1 hereto) without first consulting or conferring with Plaintiffs, Tyson, Birotte, O'Grady, or Elias.

49. The provisions of the Term Sheet for PBKM were conceptualized, devised and drafted solely by Kutak (including but not limited to Parrington and Scott Neill). Trees/Brown was never mentioned nor referenced in the Term Sheet. Nor was there reference therein to a holding company.

50. The Term Sheet summarized the principal terms of the proposed Operating Agreement of PBKM. Kutak provided that the purpose of PBKM, *inter alia*, was "… to dispense adult use marijuana…" pursuant to the Act.[8] Kutak would be the registered agent, with the registered address of the Kutak Chicago office.

51. According to the Term Sheet, the **Members** of PBKM were to be **Tyson, O'Grady, Birotte and Cannabis Capital** (Armstrong).

52. Kutak conceived the concept of an Initial Contribution by Member, delineated into three categories: Contribution (services or money), Economic Interests and Voting Interests. Tyson's Contribution was blank. O'Grady, Elias and Cannabis Capital were each to contribute Services, and Birotte's Contribution was to be $250,000.

53. Tyson was to have 87.5% Economic and Voting interests, O'Grady was to have 5.5% Economic and Voting Interests, Elias was to have 1% Economic and Voting Interests, and Birotte was to have 5% Economic and Voting Interests; together totaling 100%.

54. The Term Sheet contained a specific "Social Equity Applicant" section that stated: "The Members agree that the application to be filed (for the License) **shall at all times remain**

[8] Cannabis Cultivation and Infusion were also provided for under PBKM, but those companies were never formed, nor did they apply for those types of licenses.

compliant with the Social Equity Application requirements set forth in the Act." (emphasis added).

55. Kutak provided a section on Voting Rights that provided "all decisions" would require approval of 80% "of the units" (undefined). There was reference therein to Economic Interest or Voting Interest. Kutak never explained nor offered to explain these Voting Rights provisions.

56. Immediately thereafter, the Term Sheet provided: "In an effort to remain compliant with Illinois'; Social Equity Applicant requirements; a **revocable** voting proxy will be given **by Lance Tyson** to the other Members as follows: 0.5% to Paul O'Grady, 4% to Juan Elias, 4% to Cannabis Capital Group – totaling 8.5%. That dilution would leave Tyson with 79% - making Tyson 1% short of the 80% that was needed to control PBKM and be in compliance with the Act.

57. However, Kutak then provided a chart now based upon before and after proxies. Still without explanation to Tyson (or Birotte, O'Grady or Elias), this chart added Birotte with 5% "Voting Rights". The chart then showed Tyson diluted to 79%. Kutak never explained to Tyson (or Birotte, O'Grady or Elias) that this plan placed Tyson one percentage point under 80%.

58. Upon information and belief, Kutak and Parrington conceived proxies and voting rights and determined the amounts so as to make Tyson believe he had control and did not explain, allegedly because of the isolation Kutak imposed upon Tyson at the onset of the retention.

59. There was an added diversion in the Term Sheet of "Fundamental Transactions" which would require 80% voting for various acts necessary to operate PBKM.

60. Kutak never communicated with the Members to get a meeting of the minds and never provided any consideration for the voting proxies. The Term Sheet was apparently conceived to confuse the Members, especially Tyson, Birotte, Elias and O'Grady. Facially it

appeared to pay homage to the SEA requirements and provided Tyson with percentages that would at first blush appear to give him control. While the voting proxies were not explained, per the Term Sheet the proxies were to be revocable and PBKM would control the ten Dispensaries.

61. It was late in the process. The application(s) were due to be filed twenty-seven days from the date of the Term Sheet within the holiday season and New Years.

THE KUTAK-PARRINGTON CONTROL SCHEME

62. Parrington brought other clients of his – Capital and Trees – to the table because they each purportedly had significant cannabis business credentials that Parrington claimed would bolster the application credentials of PBKM. Parrington, Armstrong and Brown proposed that they would hold only small minority economic interests in PBKM. Tyson and Birotte, aware of the short deadline before the Application would be due, agreed in order to move the applications forward to filing. Time was slipping away.

63. The Kutak Defendants went to work in mid to late December having procrastinated since the mid July retention. Without consulting or informing Tyson or Birotte consistent with the applicable Rules of Professional Responsibility anytime between mid-July 2019 and January 2, 2020, Kutak and Parrington changed the structure for the applicant as described in the Term Sheet to something far more complicated than was needed to achieve the Plaintiffs' legal objective.

64. Apparently by design, this overly complicated structure provided a means to hide the fact that Armstrong through Capital, and Brown through Trees, would together be able to exercise control over the company structure of the applicant and thus control the License when it was awarded. Specifically, Kutak switched voting proxies from revocable in the Term Sheet **to irrevocable** in the final documents, which they delivered on the eve of them needing to be filed.

65. Kutak also removed the Dispensary companies from being under PBKM, and instead created a separate holding company and Trees Illinois, LLC. Kutak then inserted Trees/Brown into Holdings through a separate Holdings Operating Agreement that contained 80% voting for "all decisions" and effectively gave Trees/Brown control of Holdings and thus the Dispensary applicants.

66. Based upon the documents prepared and delivered by Kutak on the eve of the deadline for filing the application, PBKM was no longer in control of the Dispensary company applicants.

67. Plaintiffs intended and it was their legal objective that the SEA applicant for the License would be PBKM with Tyson qualified as the SEA. Kutak did not follow that legal objective but instead devised its own mechanism to involve Capital and Trees.

68. In contravention of the Plaintiffs' intent and legal objective, Kutak and Parrington, and upon information and belief, Scott Neill of Kutak, created ten (10) individual dispensary companies, each to be an applicant, and each being held by a company Kutak named PBKM Holdings, LLC ("Holdings"). Holdings in turn was owned by PBKM which included Capital, one of Parrington's out of state cannabis clients, as a member, along with Trees Illinois, another member of PBKM. Parrington created Trees Illinois for and owned by Trees (Colorado), another of Parrington's out of state cannabis clients.

69. Thus, Parrington put Capital into PBKM, and he also put Trees into Holdings.

70. Parrington and Kutak then structured PBKM, Plaintiffs' intended applicant (but in fact no longer the actual applicant) to require 80% (80 votes) in order to make "all decisions", gave Tyson 87.5% (87.5 votes) in one part of the operating agreement, but later diluted Tyson's votes by 8.5 votes through proxies down to 79 votes – one short of 80-vote control.

71. Parrington and Kutak also structured Holdings to require 80% (80 votes) in order to make "all decisions" and gave Trees 24.5% (24.5 votes) and PBKM 75.5% (75.5 votes) - thus giving veto control to Trees as a minority member. Holdings held each of the ten subsidiary company applicants. Thus, Trees actually controlled – as a minority member with veto power – each of the ten potential licensees.

72. Without consulting or informing Tyson, Birotte, O'Grady or Elias anytime between mid-July 2019 and January 2, 2020 (and in violation of the applicable rules of professional responsibility) Kutak created PBKM, LLC with economic interests of the members that were disproportionate to their voting rights. (PBKM Operating Agreement ("PBKM OA"), attached as **Exhibit 2 hereto**).

73. Article V of the PBKM OA provided for Management with customary management powers in pertinent part as follows:

> **5.1 Manager Management of the Company.** The Company and its business, operations and affairs and the Property, shall be managed by one or more Managers, pursuant to the terms of this Agreement. Except as otherwise provided in this Agreement, each Manager shall have the power and authority to act for and on behalf of the Company in the regular, ordinary and usual course of the Company's business, provided that any such action shall not be taken knowingly in contravention of, or in a manner inconsistent with an action or decision of the Members or other Managers authorized or approved in accordance with this Agreement. Whenever in this Agreement a matter is to be determined by the Managers, or an action or decision is to be taken or approved by the Managers, such determination, action or approval shall be made, taken or approved by a Majority of the Managers. The Members hereby designate **Lance Tyson** as the sole initial Manager of the Company. If or when, the initial Manager resigns, is otherwise removed from that position, or is otherwise incapable of serving as Manager, then one or more Managers shall be selected as provided in Section 5.9 hereof.

74. Nonetheless, Kutak provided in the PBKM OA, art. 5.3 for several limitations on the Manager's power including: (c) borrowing over $25,000, (d) expend over $25,000, (e) no single transaction over $10,000 or (n) employ anyone in any fiscal year for more than $25,000.

75. Kutak provided voting rights in Article VI of the PBKM OA for PBKM, LLC.

> **6.1 Voting Rights.** (a) Each Member shall have voting rights in proportion to its Interests, unless otherwise agreed by unanimous consent of the Members**. All decisions of the Members shall require the approval of eighty percent (80%) of the Members**, unless expressly stated otherwise herein for a specific decision of the Members. (b) Contemporaneously with the execution and delivery of the Agreement, Lance Tyson grants to each of PAUL O'GRADY, JUAN ELIAS and CANNABIS CAPITAL GROUP **an irrevocable voting proxy** substantially in the form attached hereto as Exhibit B. *(emphasis added here)*

76. Kutak drafted the Membership Interest set forth in Exhibit A of the PBKM OA as:

Name	Contribution	Interests	Common Units	Incentive Units
Lance Tyson	Services	**87.5%**	N/A	**87.5%**
Paul O'Grady	Services	5.5%	N/A	5.5%
Juan Elias	Services	1%	N/A	1%
Patrick Birotte	$250,000	5%	5%	N/A
Cannabis Capital Group, LLC	Services	1%	N/A	1%

77. However, this was deceptive because Kutak further provided that the voting percentages of PBKM, LLC included those voting proxies granted by Lance Tyson to O'Grady, Elias and Capital in the following amount: 0.5% to Paul O'Grady; 4.0% to Juan Elias; and 4.0% to Cannabis Capital Group.[9] This allocation totaled 8.5% - thereby effectively reducing Tyson's voting power to **79.0% - one vote less than 80% required to approve "all decisions" of PBKM.**

78. As a result, Tyson was not in voting control of PBKM and thus did not meet the control element to be a SEA for the License application.

79. Moreover, as Manager, Tyson had little actual authority. As a practical matter, Tyson's authority would be subject to Capital (Armstrong) control because of the 80 votes requirement for "all decisions".

[9] Birotte was not given additional voting power.

80. More importantly, and again in violation of the applicable rules of professional responsibility, Kutak and Parrington, without consulting or informing Tyson, Birotte, O'Grady or Elias, conceived and inserted voting proxies into the PBKM OA that gave disproportionate voting rights to certain members as follows:

> Tyson (**87.5% economic, 79% voting**), Paul O'Grady (5.5% economic, 6% voting), Juan Elias (1% economic, 5% voting), Patrick Birotte (5% economic, 5% voting) and Kutak client Capital Cannabis, LLC (**1% economic, 5% voting**).[10] **(Exhibit 3 hereto** Organizational Chart, part of Exhibit C to the PBKM, LLC application, emphasis added for pleading purposes).

81. Thus, Kutak and Parrington provided that Tyson was one vote short of control – Tyson had 79 votes when 80 were needed for "all decisions" by Kutak's drafting.

82. Rounding out the scheme, Kutak had provided that Capital, with only 1% interest, nonetheless had 5 votes to Tyson's 79 votes – effectively giving Capital control of "all decisions".

83. Kutak and Parrington also created Holdings and provided in the Holding Operating Agreement ("Holdings OA") in a similar deceptive manner, to wit: 80% voting needed for all decisions, and then created Trees Illinois, LLC to give another Kutak client, Trees (Colorado) and Brown, disproportionate control of Holdings as follows: PBKM, LLC (75.5% economic ownership / voting) and Trees (24.5% ownership / voting). (Holdings OA is attached hereto as **Exhibit 4**).

84. Kutak and Parrington then set up Trees Illinois so that Brown owned 90% and a certain Jack R. Taylor owned 10%. This governance structure gave Brown control of Trees Illinois which held voting control of Holdings due to the 80% voting requirement for all decisions.

[10] Kutak also provided that Capital was 77.5% owned by Eddie and Sherra Armstrong, thus apparently giving the Armstrongs control of Capital. Regardless, Capital had 5 controlling votes in PBKM.

85. Without discussing, disclosing, informing, or explaining to Tyson, Birotte, O'Grady or Elias, Kutak again conceived, devised, formed, and prepared the requisite documents to create and establish ten dispensary subsidiaries of Holding, to, wit: PBKM Dispensary 1, LLC through PBKM Dispensary 10, LLC. As devised by Kutak, it appeared that each Dispensary LLC would be a separate applicant for a License. This company structure was never contemplated or discussed with Plaintiffs by Kutak.

86. On its face, it appeared to Tyson that he controlled PBKM which in turn, controlled Holdings. In operational fact, Capital (Armstrong) controlled PBKM, and Trees/Trees Illinois (Brown) controlled Holdings – and Holdings controlled each of ten dispensary subsidiaries as the real applicant for a License. Armstrong and Brown were *in* – and Tyson, Birotte, Elias and O'Grady were *out*.

87. To add insult to injury, neither Capital nor Trees provided any equity and if there were subsequent capital calls at PBKM, Capital would only be obligated to put up 1% and Trees would owe zero.

88. Kutak and Parrington created PBKM so that Capital (and the Armstrongs) controlled PBKM and also created Holdings so that Trees and Brown through Trees Illinois controlled it. Thus, Kutak's outside clients Armstrong and Brown, who Parrington brought to the table, ultimately would control the SEA License when it was awarded – contrary to the SEA requirement of the Act.

89. Kutak did all the legal work to prepare and file ten (10) Adult Use dispensary licenses applications on behalf of Plaintiffs prior to the deadline of January 2, 2020. All of this legal work was done pursuant to the engagement agreement for Plaintiffs. Kutak knew or should have known that it had to form PBKM as applicant in strict compliance with the provisions of the

Act and rules and regulations of the Department, especially control of PBKM by the social equity applicant.

90. Kutak knew or should have known that if it did not form PBKM as applicant in strict compliance with the provisions of the Act and the rules and regulation of the Department, PBKM would be rejected by the Department and would not be awarded the License.

91. In this latter regard, Kutak knew that it was the intent and goal of PBKM, through Tyson, to apply as an SEA requiring the applicant to be an Illinois resident under the Act that is at least 51% owned AND controlled by one or more individuals who have resided for at least five of the preceding ten years in a "disproportionately impacted area" as defined.

92. Tyson and PBKM relied upon Kutak and Parrington to structure the organizational entities and qualify Tyson as SEA so that the application(s) fully complied with the provisions of the Act.

93. Kutak and Parrington waited until on or about January 1, 2020 – a day before the filing deadline for the License application - to send all the final documents to Kutak's Chicago office for Tyson to physically file the applications on January 2, 2020.

94. Prior to sending the final documents to file for the License, Kutak demanded that Tyson (and the other members) sign separately sent signature pages without the final documents or Kutak would not send the final documents to its Chicago office for filing on time on January 2, 2020.

95. Kutak and Parrington compounded their deception by focusing Tyson on the conflict waiver on January 1. Curry expressly threatened Tyson that if he did not sign the documents with the conflict waivers, Curry would prevent Parrington from forwarding the

application documents to the Chicago office in order to file the License application timely on January 2.

96. This was done so that neither Tyson nor Birotte, O'Grady or Elias could reasonably review the hundreds of pages of documents that Kutak prepared setting forth the company structure and control provisions and properly understand the implications of what Kutak and Parrington had done.

97. Kutak and Parrington took these actions negligently or intentionally to deprive Plaintiffs of the control required by the Act to be a SEA for the License. Ultimately this deprivation also deprived Plaintiffs of the License as well.

98. In taking these concerted and coordinated efforts, Kutak, Curry and Parrington caused Plaintiffs to sign the application documents without reading them – trusting Kutak where Tyson was a partner.

99. As a result, Kutak's acts and omissions caused Plaintiffs to become irreparably ineligible to be a SEA.

100. Later, when Illinois reopened applications to the original applicants for the dispensary licenses, the one category of original applicants that could not apply were any of those who had not originally met the ownership and control provisions to be a SEA.

101. Since Kutak and Parrington had created PBKM and Holdings in contravention of the ownership and control provisions to be a SEA, Plaintiffs was not permitted to reapply for the License.

102. PBKM's one chance to be awarded a License as a SEA had been lost because of the acts and omissions, intentional and/or negligent, of Kutak and Parrington.

103. Kutak simultaneously prepared the Operating Agreement of PBKM Dispensary Holdings, LLC ("HOA"). The HOA membership interests were provided in Exhibit A: PBKM, LLC 75.5% interests, 75.5% common units, and no incentive units.

104. Kutak then created TEN 100% wholly owned subsidiary limited liability companies of the HOA as follows: PBKM DISPENSARY **1**, LLC PBKM DISPENSARY **2**, LLC, PBKM DISPENSARY **3**, LLC PBKM DISPENSARY **4**, LLC PBKM DISPENSARY **5**, LLC PBKM DISPENSARY **6**, LLC PBKM DISPENSARY **7**, LLC PBKM DISPENSARY **8**, LLC PBKM DISPENSARY **9**, LLC PBKM DISPENSARY **10**, LLC, each operating agreement purportedly signed electronically by Lance Tyson, Manager and Timothy E. Brown, Manager.

105. Kutak also created and crafted the Operating Agreement of Trees Illinois, LLC on or about December 26, 2019 to operate and own an Illinois cannabis retailer services business under 80 ILCS 180/1-1 et seq. of the Illinois Compiled Statutes. The Members of Trees were Timothy Brown (90%) and Jack Taylor (10%).

106. Trees, Brown, and Taylor were each and all clients of Kutak at all material times.

107. Kutak also created and crafted the Limited Liability Company Agreement of Cannabis Capital Group, LLC in or about November 2018 – a Delaware company ("Cannabis Cap"). The Members of Cannabis Cap were Eddie Lee Armstrong, III (50%) and Sherra Maurie Armstrong (50%).

108. Cannabis Cap, Eddie Armstrong and Sherra Armstrong were each and all clients of Kutak at all material times.

109. In August 2019, Kutak drafted an Independent Contractor Agreement between Cannabis Cap and John Engle (herein the "Contractor") for Engle to serve in the capacity of Chief Investment Officer of Cannabis Cap.

110. In creating and drafting the documents for each and all these related companies, Kutak provided that, in fact, Lance Tyson as the principal SEA member only actually owned and controlled **66.0625% of PBKM, LLC**. (**Exhibit 5 hereto** PBKM Dispensary LLC, Table of Organization (Ex. C)).

111. Defendant Kutak knew or should have known that providing cumulative controlling interest to co-Defendants Trees and Capital (and thereby their respective Managers Brown and Armstrong) in fact would cause Plaintiff PBKM, LLC to be viewed as deceptive about it being a SEA under the Act and cause the regulators to permanently disqualify Plaintiff PBKM, LLC as an applicant for a License.

112. Defendants Trees and Capital, in concert with each other and through their respective managers Brown and Armstrong, knew or should have known that the cumulative controlling interest given to co-Defendants Trees and Capital (and thereby their respective Managers Brown and Armstrong) in fact would cause Plaintiff PBKM, LLC to be viewed as deceptive about it being a social equity applicant and Illinois resident under the Act, and cause the regulators to permanently disqualify Plaintiffs as an applicant for a License.

113. Kutak and Parrington did not show, apprise or discuss the corporate structures of PBKM, Holdings or the ten applicant LLCs and the consequences thereof, before dumping the documents on Tyson without explanation on the eve of the filing deadline at the proverbial eleventh hour.

114. An attorney acquaintance of Tyson, Steven Ginsberg, briefly reviewed the holding company structure, questioned the complicated structure to Kutak attorney Neill who told Ginsberg that the Kutak-Parrington legal team told Neill that it was the way it had to be done.

Deficiency Emails

115. On or about June 12, 2020, Plaintiffs received eleven separate deficiency emails from the state regulators for Dispensary 1 through 10 and Holdings. Respectively **Exhibits 6-1, 7-2, 8-3, 9-4, 10-5, 11-6, 12-7, 13-8, 14-9, 15-10, and 16-HO hereto**. ("Deficiency Emails").

116. Each Deficiency Email contained the same language, to wit:

> Exhibit P. The application did not include evidence which establishes the applicant's status as a Social Equity Applicant. In particular, the application did not provide sufficient evidence that: • One or more persons asserting they resided in a disproportionately impacted area for at least 5 of the preceding 10 years did not provide sufficient documentation to support that assertion, and/or did not provide sufficient documentation that the individual owns and controls a sufficient percentage of the dispensing organization alone or in conjunction with other proposed principal officers to qualify as a Social Equity Applicant. and/or • The applicant did not provide sufficient evidence to support its assertion that it is an Illinois resident.

117. There were no other deficiencies noted by the Regulators.

118. Plaintiffs had provided in their applications all the necessary documentation to meet the points and elements of the Act for a License, to wit:

1.	Suitability of Employee Training Plan	(ex: D / 15 points)
2.	Security and Recordkeeping	(ex: H / 65 points)
3.	Business Plan, Financials, Operating, Floor Plan	(ex: F / 65 points)
4.	Knowledge and Experience	(ex: N / 30 points)
5.	Social Equity Applicant Status	(ex: P / 50 points)
6.	Labor & Employment Practices	(ex: Q / 5 points)
7.	Environmental Plan	(ex: R / 5 points)
8.	Illinois Owner	(ex: S / 5 points)
9.	Veteran Status	(ex: T / 5 points)
10.	Diversity Plan	(ex: M / 5 points)
11.	Community engagement Plan	(ex: L / 1 or 2 points)
Total Maximum Possible Score		252 points

A copy of Plaintiffs' application for Dispensary 3 is attached as **Exhibit 17 hereto**.[11]

[11] The other applications were identical except they pertained to Dispensary 2-10 and Holdings. Please note, Exhibits B, P and S to the application have been intentionally omitted and can be submitted to the Court *in camera*. These exhibits contain financial and personal information of parties and non-parties.

119. Kutak drafted the License application documents contrary to the control requirement for a SEA, and instead gave Trees and specifically Brown, a non-Illinois resident, non-social equity member, control of Holdings and thus control of each of the eleven applicants contrary to the spirit and specific SEA requirements of the Act.

120. There were applications for different areas of the state, to wit:

Dispensary 1: Rockford
Dispensary 2: Davenport-Moline-Rock Island
Dispensary 3: Chicago-Naperville-Elgin
Dispensary 4: Chicago-Naperville-Elgin
Dispensary 5: Chicago-Naperville-Elgin
Dispensary 6: St. Louis
Dispensary 7: St. Louis
Dispensary 8: East Central Illinois Non-Metropolitan
Dispensary 9: East Central Illinois Non-Metropolitan
Dispensary 10: South Illinois Non-Metropolitan
Holdings: Chicago-Naperville-Elgin.

121. The Deficiency Emails disclosed to Plaintiffs the governance and control failures of the structure and formation of PBKM and Holdings, using subsidiaries, voting proxies and 80% voting thresholds for all decisions that fell far short of the SEA requirements central to the application process and the Act.

122. Trees and Brown specifically, through Foley & Lardner LLP as counsel, objected to complying with the control and SEA provisions of the Act, thereby demonstrating to Plaintiffs their complicity with Kutak in giving Trees control of Holdings.

123. In their Response to Deficiency Emails (and Trees' objection) dated June 20, 2020, Plaintiffs timely submitted corrective documents in an attempt to rectify the ownership, control and residency issues caused by Trees' position in Holdings and each Dispensary application. **Exhibit 18 hereto**.

124. Through the Response, PBKM tried to correct these material control and SEA failures in the License applications. It *inter alia*: (1) amended its Operating Agreement to remove irrevocable voting proxies and 80% voting thresholds; and (2) terminated the holding company and subsidiaries so that PBKM, LLC could meet the Social Equity Program governance expectations of the Act.

125. However, while Illinois allowed certain applicants who received deficiency or denial emails for the License to reapply, Plaintiffs did not qualify to reapply because regulators did not allow social equity control to be changed. Thus, Plaintiffs were ineligible to reapply for the License.

126. As a result of the acts and omissions of the Defendants, separately or working in concert, Plaintiff PBKM did not qualify as a social equity applicant for a License and was deemed to be permanently disqualified to be an applicant for a License because of the control, voting rights and irrevocable proxies that the Defendants inserted and allowed to be inserted into the operating agreements of Plaintiffs and creation of the subsidiaries.

127. As a result of the acts and omissions of the Defendants, separately or working in concert, Plaintiffs lost interest, ownership and control in a License.

128. The award of a License would have generated millions of dollars in profits and income to the Plaintiffs.

COUNT I
LEGAL MALPRACTICE
KUTAK ATTORNEYS

129. At all pertinent times, the Illinois RPC applied to the acts and omissions of the Kutak Defendants, especially RPCs 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication) and 5.1 (Responsibility of a Partner or Supervisory Lawyer).

130. When the Kutak Defendants accepted Tyson as a Client to prepare a SEA application for the License, a duty arose as a matter of law running from the Kutak Defendants to Plaintiffs to communicate, advise, and prepare all the necessary documents in conformance with the Act and to timely and properly apply for the License with Tyson as a SEA, all in conformance with the applicable standard of care then governing all attorneys who would undertake such a retention in Illinois at that time.

131. The Kutak Defendants failed to meet the applicable standard of care that required them to properly advise the Plaintiffs and meet the legal objectives of the representation to timely and properly apply for the License as a SEA, through one or more of the following acts or omissions:

a. lacked the competence to provide representation of Plaintiffs within the scope of retention in violation of RPC 1.1(a); [12]

b. failed to associate with competent counsel to provide proper representation in violation of RPC 1.1(b);

c. failed to learn and know (a) the material provisions of the Act, (b) applicable regulations of the Department for the application process to apply for a License, (c) the requirements to be a SEA for the License, and (d) apply that knowledge to their representation of Plaintiffs;

d. failed to specifically learn and understand that Tyson was required to own and control Plaintiffs to be a SEA for the License;

e. failed to act with reasonable diligence and promptness in representing Plaintiffs, in violation of RPC 1.3;

f. failed to communicate with Plaintiffs so that the Kutak Defendants properly understood and carried out the objectives of the retention, in violation of RPC 1.4;

g. failed to communicate with Plaintiffs so they could make informed decisions about the objectives of the representation, in violation of RPC 1.4;

[12] While the Rules may not themselves be a basis for a cause of action, and are not here being pled as such, the Rules may be relevant to the standard of care as shown by the evidence.

h. failed to supervise associates and legal staff to know the Act and apply that knowledge to this representation for the benefit of the clients in violation of RPC 5.1;

i. negligently created and prepared documents that gave significant voting rights and irrevocable proxies for Trees (Brown) and Capital (Armstrong);

j. negligently created and prepared documents that failed to give Tyson control of Plaintiffs that would allow Plaintiffs to meet the requirements of being a SEA applicant for the License; and

k. negligently created and prepared documents that gave Trees (Brown) and Capital (Armstrong) veto power and ultimate control of Plaintiffs which barred Plaintiffs from meeting the requirements of being a SEA applicant for the License.

132. But for any and all of the acts and omissions by the Kutak Defendants, Plaintiffs more likely than not would have been awarded a License.

133. The loss of the License has caused Plaintiffs to suffer substantial actual damages in lost profits and revenue from operating an adult-use dispensary for recreational and medical use of cannabis in compliance with the laws of Illinois.

WHEREFORE, Plaintiffs seek an award against Kutak and Parrington, jointly and severally, of actual monetary damages exceeding the jurisdictional threshold of this Court, plus costs and legal fees where applicable.

COUNT II
BREACH OF FIDUCIARY DUTY
KUTAK ATTORNEYS

134. As previously stated herein, the Kutak Defendants insisted on implementing a means to block any participation and knowledge of Tyson in the creation of the applicant and drafting of the formation and operating documents as a SEA for the License.

135. This included creating a communication wall between Tyson and the Kutak Defendants which prevented Tyson from knowing about the particulars and elements of the creation and corporate structures of PBKM, Holdings and the ten dispensary subsidiaries.

136. Given their professional relationship with Trees (Brown) and Capital (Armstrong), the Kutak Defendants also knew they were in a material conflict of interest and – at the eleventh hour – drafted a purported conflict of interest waiver clause as part of the PBKM OA (section 14.16) which purported to disclose and acknowledge: (a) that Kutak Rock prepared the agreement; (b) that there was an "inherent potential for conflicts of interest among the Members" because Kutak Rock "separately represented" CCG, LLC;[13] (c) that due to "such potential conflicts", Kutak Rock advised Members to get their own legal counsel to review the agreement; and purportedly (d) Members had the opportunity to seek the advice of separate legal counsel.[14] Kutak purported to provide additional disclosures that: (i) Tyson was then a partner of Kutak Rock; (ii) Kutak Rock provided "legal advice to the Company in preparation of this Agreement"; (iii) neither Kutak Rock nor Tyson were "representing Members in their investment in the Company."

137. This "wavier" was deficient for several reasons. First, it appears only to disclaim that Kutak Rock was representing only PBKM when in fact Kutak represented at least Capital and also Trees through Armstrong and Brown.

138. This waiver also failed to actually disclose that there was and is a conflict of interest; it merely states that there was an "inherent" "potential for conflicts". This language mis-identified and mis-informed about the actual conflicts that then did exist.

139. This "disclosure" also did not meet IL RPC 1.7 and thus violated the Illinois rules of professional conduct.

[13] Co-Defendant Cannabis Capital Company.
[14] In fact, Kutak devised and knew there was not time for either (c) or (d).

140. Informed consent of a client under IL RPC 1.8 requires better, more explicit disclosure than the Kutak Defendants provided for in section 14.16 of the PBKM OA. Each affected client must be made "aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects… including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved." Rule 1.8 Commentary.

141. Kutak also impermissibly attempted to have the Plaintiffs and their clients waive future undefined and therefore undisclosed conflicts.

142. Upon information and belief, the several deficiencies within the conflict waiver in the PBKM OA also is directly attributable to Curry and his last-minute insistence that Tyson and others execute the waiver, or he would not allow the Kutak Defendants to file the SEA application timely for the License.

143. The Kutak Defendants decided to place their interests above those of Plaintiffs at all material times.

144. The Kutak Defendants separately also decided to place the interests of Trees (Brown) and Capital (Armstrong) above those of Plaintiffs at all material times. This preference was demonstrated by Kutak's choice of assigning non-Illinois licensed attorneys to handle the License applications, but who had prior, direct attorney-client dealings with Trees (Brown) and Capital (Armstrong).

145. Specifically, the Kutak Defendants took these actions against Plaintiffs by intentionally isolating and excluding Tyson from discovering their plans to form a holding company and give Trees (Brown) and Capital (Armstrong) disproportionate voting rights and

irrevocable proxies, and thus control, compared to each of their purported minimal minority ownership interests in Plaintiffs.

146. The Kutak Defendants took these affirmative acts against Plaintiffs knowing the voting rights and irrevocable proxies inserted in the operating agreements of Plaintiffs did violate or likely violated the control requirement Tyson needed to meet the SEA requirements, and thus foreseeably would result in Plaintiffs and Tyson being disqualified as a SEA for the License.

WHEREFORE, Plaintiffs seek an award against Kutak and Parrington, jointly and severally, of actual monetary damages exceeding the jurisdictional threshold of this Court, plus costs and legal fees where applicable.

COUNT III
BREACH OF FIDUCIARY DUTY
TREES (BROWN) AND CAPITAL (ARMSTRONG)

147. Trees (Brown) and Capital (Armstrong) were members in Holdings and PBKM, respectively, for the License with Tyson, Birotte, O'Grady and Elias.

148. Trees (Brown) and Capital (Armstrong) knew or reasonably should have known that Tyson was seeking the License as a SEA.

149. Trees (Brown) and Capital (Armstrong) knew or reasonably should have known that Tyson had to control the applicant PBKM in order to qualify as a SEA for the License.

150. As members in PBKM and Holdings for the License, Trees (Brown) and Capital (Armstrong) owed fiduciary duties to Tyson, Birotte, O'Grady and Elias not to act to undermine or subvert Tyson from being a SEA for the License.

151. Nonetheless, Trees (Brown) and Capital (Armstrong) jointly and severally decided to seek voting rights and irrevocable proxies disproportionately greater than their minimal minority

interests in PBKM and Holdings so as to actually prevent Tyson from having control of PBKM and Holdings to qualify as a SEA for the License.

152. Trees (Brown) and Capital (Armstrong) jointly and severally, breached their fiduciary duties to Plaintiffs when they sought voting rights and irrevocable proxies disproportionately greater than their minimal minority interests in PBKM and Holdings so as to actually prevent Tyson from having control of PBKM to qualify as a SEA for the License.

153. As a proximate cause of one or more of their actions, Trees (Brown) and Capital (Armstrong), jointly and severally, Tyson lacked the control of PBKM and Holdings to qualify as a SEA for the License, thereby disqualifying Tyson as a SEA for the License.

WHEREFORE, Plaintiffs seek an award against Trees (Brown) and Capital (Armstrong), jointly and severally, of actual and consequential monetary damages exceeding the jurisdictional threshold of this Court, plus costs and legal fees where applicable.

COUNT IV
EQUITABLE ESTOPPEL
TREES (BROWN) AND CAPITAL (ARMSTRONG)

154. After being retained, Kutak introduced Brown and Armstrong to Tyson as persons with a strong history of success, experience and knowledge of the cannabis business that would enhance Tyson's goal of being awarded a License as a SEA.

155. Throughout 2019, Brown and Armstrong separately and together assured Tyson that they had the financial wherewithal and the success, experience and knowledge of the cannabis business that would enhance Tyson's goal of being awarded a License as a SEA.

156. Tyson relied on the representations of Brown and Armstrong and brought them both into the retention with Kutak to be part of the ownership of the applicant for the License as a SEA consistent with the Act.

157. Brown and Armstrong understood and agreed with Tyson that Tyson would have to have at least 51% of the ownership and control of the applicant to qualify as a SEA to give them all the best chance of being awarded a License.

158. Consistent with the goal of being an SEA, Brown and Armstrong professed to Tyson to only want a relatively small minority position in the ownership with no control of the applicant.

159. In fact, Brown and Armstrong planned together to prevent Tyson from controlling Holdings and thus PBKM and also planned to control PBKM through voting proxies that would prevent Tyson from controlling PBKM.

160. Brown and Armstrong each knew or reasonably should have known that their plan would jeopardize Tyson's goal of being qualified as an SEA and cause the application for the License to be denied.

161. The Illinois regulators for the application of the License realized and understood the ownership and voting disparities that Brown and Armstrong concocted together with Kutak.

162. The Illinois regulators then issued a deficiency letter based upon the ownership and voting disparities and determined that PBKM was not a qualified social equity applicant. As a result, PBKM's application was denied on that basis.

163. Tyson did not discover the substance of the labyrinth of LLCs, operating agreements, voting powers, and related documents until Tyson received the deficiency letter from the Illinois regulators rejecting the applications for the License.

164. But for the acts and omissions of Brown and Armstrong as set forth herein, PBKM through Holdings would have qualified as a SEA and more probably than not have been awarded a License.

WHEREFORE, Plaintiffs seek an award against Trees (Brown) and Capital (Armstrong), jointly and severally, of actual and consequential monetary damages exceeding the jurisdictional threshold of this Court, plus costs and legal fees where applicable.

COUNT V
AIDING AND ABETTING
KUTAK ATTORNEYS WITH TREES (BROWN) AND CAPITAL (ARMSTRONG)

165. Brown and Armstrong, jointly and severally, planned to control PBKM through Holdings and each Dispensary, the License applicants, and thus control the License.

166. Brown and Armstrong knew they could not accomplish the objective of controlling the License by directly controlling PBKM. To do so, they knew they had to destroy Tyson's control as the social equity applicant under the Act.

167. Upon information and belief, Brown and Armstrong discussed their scheme with Parrington who had brought Brown and Armstrong into the companies as members.

168. Parrington knew or reasonably should have known that this scheme would undermine Tyson's ownership and control of PBKM.

169. Parrington also knew or reasonably should have known that if he aided Brown and Armstrong in the scheme, Parrington and Kutak would be breaching their fiduciary duties to Tyson and PBKM and Holdings.

170. Nonetheless, Parrington abetted the scheme with his advice and aided Brown and Armstrong in formulating and carrying it out.

171. Parrington also failed to disclose the scheme to Tyson and actively kept it from Tyson through the isolation policy that Kutak implemented at the inception of its retention in this matter.

172. The isolation policy was anathema to the attorney-client relationship between Kutak and PBKM. Its purposes were illegitimate: to keep Tyson (and thereby Birotte, O'Grady and Elias) in the dark about the plans between Kutak, Trees (Brown) and Capital (Armstrong) to control Holdings and PBKM, and thereby control the License.

173. Using Parrington's advice, Brown, Armstrong, and Parrington conceived a Holding company that would hold ten Illinois LLC applicants in the hopes of one of them being awarded the License.

174. The three conspirators then also conceived Holdings as being formed in a manner that gave Holdings' ownership and management of PBKM.

175. To complete the scheme, Kutak and Parrington formed PBKM as though Tyson was 87.5% owner of PBKM with 87.5% voting power. But Parrington and Kutak then reduced this 87.5% voting power to 79% by inserting irrevocable proxies at the proverbial eleventh-hour in the following amounts: 0.5% to Paul O'Grady; 4.0% to Juan Elias; and 4.0% to Cannabis Capital Group all totaling 8.5% - just one percentage point enough to take control of PBKM away from Tyson.

176. Thus, Tyson actually only had 79% voting power even though he believed he owned 87.5% of PBKM, which was not enough to control PBKM according to the terms that Parrington had drafted within the Operating Agreement of PBKM.

177. Through a scheme of provision for voting power and vetoes, Parrington provided a different control structure of Holdings and PBKM that gave Brown and Armstrong through Trees and Capital veto and voting control of Holdings and PBKM greater than their purported minority ownership of those companies.

178. The conspirators planned to use the veto and voting powers to control PBKM and thus the License. They also knew or reasonably should have known that this was against the intent and provision of the Act and could foresee that if this scheme were recognized by the Illinois regulators, that PBKM would be permanently barred from applying and Tyson would likely be tainted from ever being approved as an applicant for the License.

179. As part of implementing the scheme, Kutak, Parrington and Curry acted in concert on or about December 31, 2019 and January 1, 2020 by suddenly delivering by electronic means all the operating agreements, proxies, addendums, and related documents setting up PBKM, Holding and ten dispensary LLC applicants for a License along with purported conflict of interest disclaimers and documents to indemnify Kutak.

180. In addition, Curry, in his role as Regional Manager of Kutak and effectively his boss, contacted Tyson on or about Monday, December 31, 2019 directly and demanded Tyson (and the other members) sign a hold harmless and indemnity of Kutak, or else Curry would not allow Parrington or Kutak to deliver the application documents to the Chicago Kutak office and thereby would prevent the License applications from being timely filed on January 2, 2020. Curry's act caused Tyson and the other members to sign the documents under coercion and duress.

181. On December 31, 2019 and January 1, 2020, and before Kutak conveyed the final documents for filing the application, Tyson (and the other members) then signed all the signature pages of the final documents and hold harmless and indemnity and conflict waiver that required their signatures under coercion and duress and without the time reasonably to review the final documents for compliance with the Act.

182. As such, Kutak, Brown, and Armstrong prevented Tyson and the other members from understanding the import of structures of the companies and the provisions of the numerous documents that formed the applications for the License.

183. Parrington throughout knew and substantially assisted in the creation and implementation of this scheme.

184. The Illinois regulators for the application of the License realized and understood the ownership and voting disparities that Brown, Armstrong, and Parrington concocted together.

185. The Illinois regulators then issued deficiency emails as described herein based upon the ownership and voting disparities, and non-residency and non-social equity membership of Trees and Brown and determined that PBKM was not a qualified social equity applicant and denied the License applications.

186. Tyson did not discuss the substance of the labyrinth of LLCs, operating agreements, voting powers, and related documents with the various members until Tyson received the deficiency emails in June 2020.

187. But for the acts and omissions of Parrington, Brown and Armstrong as set forth herein, Plaintiffs would have qualified as a social equity applicant and more probably than not have been awarded a License.

188. As a result of the conduct alleged in this Count V, Plaintiffs sustained actual damages, including the loss of the issuance of the License, and therefore the loss of millions of dollars in receipts.

WHEREFORE, Plaintiffs seek an award against each and all of the Defendants, jointly and severally, of actual and consequential monetary damages exceeding the jurisdictional threshold of this Court, plus costs and legal fees where applicable.

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