**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK**

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| NAP IV LLC, d/b/a STS MCM,<br><br>Plaintiff,<br><br>- against -<br><br>QUBE USA LLC, GEORGE VLAMIS and QUINE LIDDELL,<br><br>Defendants. | **INDEX NO.** |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Plaintiff NAP IV LLC, d/b/a STS MCM ("NAP IV"), respectfully submits this memorandum of law in support of its motion, pursuant to CPLR §§ 6301 and 6311 for an Order: (i) pending the hearing and determination of this motion, enjoining Defendants Qube USA LLC ("Qube"), George Vlamis (the "Qube Defendants") from opening a conditional retail cannabis dispensary in the building located at 1412 Broadway, New York, New York (the "Location"); (ii) pending the determination of this action, enjoining the Qube Defendants, from opening and/or operating a dispensary in the Location; and (iii) awarding NAP IV such other and further relief as this Court deems appropriate under the circumstances.

**Preliminary Statement**

NAP IV brings this action to obtain the benefit of its bargain with QUBE, Vlamis and Liddell with respect to a New York State licensed Conditional Adult Use Retail Dispensary ("CAURD") about to open at a location that has been designated as protected by the Office of Cannabis Management ("OCM") at 1412 Broadway, New York, New York. Being a protected location in some of the most valuable real estate in New York City, as a matter of law, no other licensed cannabis retail dispensary can be within a 1000-foot radius of this Times Square Location. At bottom, NAP IV expended significant time and effort procuring the Location for QUBE. QUBE, through its members, Vlamis and Lidell, caused QUBE to sign a non-disclosure agreement (the "NDA") with NAP IV by promising, among other things, that it would not circumvent the NDA by going around NAP IV and entering into any lease or other transaction with the landlord or its representatives at the Location without NAP IV's knowledge and consent.

After executing the NDA and thereby obtaining the identity of the Location and the landlord, QUBE promised that NAP IV would receive 49% equity in the company, if NAP IV

negotiated a viable lease with the landlord which also provided for landlord funding for capital and operating expenses as well as tenant improvements to the Location or in the alternative secure third-party funding. NAP IV negotiated and obtained such provisions as well as landlord's signature on a viable lease and transmitted that lease to QUBE in addition to independently securing funding from a third-party in excess of $1,250,000. QUBE acknowledged that NAP IV had fulfilled its obligations by deciding at a corporate meeting to issue NAP IV the promised equity in QUBE, issuing a corporate resolution to that effect, and representing to a court in an affidavit that NAP IV was entitled to such equity. However, instead of moving forward with NAP IV as a 49% equity holder, NAP IV has learned that, upon information and belief, QUBE bypassed and replaced NAP IV with third party investors in derogation of the NDA and negotiated another lease directly with the landlord, thereby cutting NAP IV out of its equity interest in QUBE and the transaction altogether.

NAP IV had spent significant time and resources to obtain knowledge of and effective control over the Location prior to revealing it to the QUBE Defendants after execution of the NDA and persisted in dedicating considerable time and resources, materially relying on the safeguards and protections provided by the NDA thereafter. Having misappropriated the Location from NAP IV, upon information and belief, QUBE has signed another lease for the Location, is proceeding with its buildout and intends to complete the opening of the dispensary, all while cutting NAP IV out from the equity it was promised, equity which Liddell has in fact represented in a sworn affidavit to at least one court belongs to NAP IV.

The relief in the form of a temporary restraining order and preliminary injunction sought by this motion is relief to which Plaintiff is expressly entitled and agreed to under the NDA, enjoining the Qube Defendants from proceeding any further towards allowing QUBE to open a

licensed dispensary at the Location, and maintaining the status quo until such time as QUBE's rights to the business opportunity at the Location can be fully and fairly determined. As set forth in greater detail in the accompanying affidavit of Vadim Korytny, sworn to on April 12, 2024 and the exhibits attached thereto (the "Korytny Affidavit"),[1] the accompanying affirmation of James K. Landau, dated April 12, 2024 and the exhibit annexed thereto (the "Landau Affirmation")[2] and the verified complaint e-filed herein (the "Complaint"),[3] Plaintiff has met its burden of establishing (i) entitlement to a temporary restraining order; (ii) a likelihood of success on the merits; (iii) irreparable harm and (iv) that the balancing of equities tips in favor of granting the relief requested by Plaintiff's motion. Accordingly, the motion should be granted in all respects.

## FACTS

### A. NAP IV Obtains Site Control Over the Location

On March 2, 2023, after a significant amount of effort and artful use of NAP IV's connections by NAP IV seeking suitable locations for licensed cannabis businesses, Charles Aini ("Aini"), a landlord representative, sent NAP IV a list of three addresses that NAP IV could use for a New York State licensed retail cannabis dispensary. Mr. Aini represented that each of these addresses, including the Location, were not publicly listed. Mr. Aini advised that the landlord at the Location was asking $80,000 per month in rent. NAP IV's relationship with Mr. Aini, cultivated over an extensive period was critical to obtaining this opportunity and rights to the Location, given the general lack of familiarity with adult-use cannabis issues by owners of property. Korytny Aff., ¶ 8, Compl., ¶ 11.

[1] Citations to the Korytny Affidavit shall hereafter be designated as "Korytny Aff., ¶ __."
[2] Citations to the accompanying Landau Affirmation shall hereafter be designated as "Landau Aff., ¶ __."
[3] Citations to the filed Complaint herein shall hereafter be designated as "Compl., ¶ __."

On March 4, 2023, with the permission of both NAP IV and Aini, Emely Chavez on behalf of Royal Leaf NY, LLC (OCMCAURD-2022-000548) ("Royal Leaf") emailed OCM to request its approval to use the Location as a temporary delivery hub while it sought alternative premises for a retail dispensary. OCM approved the Location for that use and conferred proximity or "site lock" protection upon it preventing another retail cannabis operator to be within a 1000-foot radius of the Location. Thereafter, Royal Leaf determined that the Location once approved by OCM was better suited for a dispensary than a delivery hub. Korytny Aff., ¶ 9, Compl., ¶ 12. Accordingly, NAP IV weighed its various options and spent several months: (i) interviewing alternative candidates with a Manhattan CAURD license to open a dispensary at the now site locked Location, (ii) keeping the Location for a delivery only hub for Royal Leaf, or (iii) partnering up with another license holder down the road all while continuing to develop a relationship with Aini because having a cannabis-friendly landlord or landlord representative was and continues to be rare. Korytny Aff., ¶ 10, Compl., ¶ 13.

**B. NAP IV and QUBE Enter into the NDA**

On May 31, 2023, NAP IV was introduced to QUBE as a potential partner with a CAURD licensee that had been trying to locate a suitable property in Manhattan to open a dispensary. Up to that point, the only property QUBE had located in the Times Square area was going to cost $200,000 a month, vastly more than the rent to be charged at the Location situated in that area. In its discussions with NAP IV, QUBE was represented at various times by its members, Vlamis and Liddell. Korytny Aff., ¶ 11, Compl., ¶ 14.

At the meeting on May 31, 2023, Vlamis represented to NAP IV that QUBE had access to celebrity, Snoop Dogg, and that Snoop Dogg could make virtual appearances in Qubes (hologram technology that Vlamis falsely claimed that QUBE owned) at the dispensary. Vlamis

further represented that QUBE had access to the necessary funding and had an operational team ready to run a dispensary. Vlamis represented that if NAP IV was able to provide a suitable location, his team would build a dispensary and turn it into a huge success with minimal effort from NAP IV. Vlamis and Liddell further promised that in exchange for providing QUBE with the identity and control over a suitable location, NAP IV would receive an ownership interest in QUBE. Korytny Aff., ¶ 12, Compl., ¶ 15.

NAP IV advised QUBE, that it would not disclose information regarding the Location or landlord without a suitable non-disclosure agreement with a non-circumvention clause. On June 1, 2023, NAP IV and QUBE executed the NDA. Korytny Aff., ¶ 13, Ex. A, Compl., ¶ 16.

The NDA provides in paragraph 6 that QUBE "agree[s] that without [NAP IV's] prior written consent, neither [QUBE] nor any of his/her Agents or Representatives shall, during the Term . . . or for a period of eighteen (18) months following expiration of the Term, directly or indirectly participate in any agreement or transaction with respect to the Opportunity identified by [NAP IV]." The Term of the NDA runs from its effective date, June 1, 2023, and terminates two (2) years from that date (see paragraph 11 of the NDA). Thus, QUBE's obligation not to circumvent the purposes of the NDA without NAP IV's prior written consent continues and does not run until November 30, 2026. Korytny Aff., ¶ 14, Ex. A, Compl., ¶ 17.

The NDA also provides, in paragraph 13 that:

> A breach of this NDA may cause [NAP IV] either individually or collectively to suffer loss that cannot be adequately compensated for by monetary damages alone. In addition to claiming damages in respect of such loss . . ., [NAP IV] may seek an injunction, or other equitable relief to specifically enforce the terms of this NDA and such right shall be cumulative and in addition to any other remedies which may be available to [NAP IV] . . . ."

Korytny Aff., ¶ 15, Ex. A, Compl., ¶ 18.

### C. NAP IV Hands QUBE the Location Together with Buildout Funds In Exchange For QUBE's Promise of 49% Equity

In reliance upon QUBE's entering into the NDA and the promises and representations of Vlamis and Liddell (which turned out to be false), NAP IV disclosed the Location to QUBE. Korytny Aff., ¶ 16, Ex. B, Compl., ¶ 19. Soon after, QUBE expressed an interest to secure the Location for a dispensary and partner with NAP IV. QUBE's sole concern revolved around addressing the presence of the existing tenant, Stubhub, at the Location. The primary question was how to persuade Stubhub to terminate its leasehold earlier than planned, with terms that would satisfy both Stubhub and the landlord. Securing the landlord's consent for this arrangement was deemed essential. Korytny Aff., ¶ 17, Compl., ¶ 19.

On June 12, 2023, NAP IV arranged a meeting and showing of the Location to Liddell and Vlamis. Later that night, Vlamis called NAP IV and confirmed that as long it could deliver the opportunity at the Location, NAP IV could have equity in QUBE. Korytny Aff., ¶ 18, Compl., ¶ 20. Thereafter, NAP IV spoke with Royal Leaf, which in the eyes of the Office of Cannabis Management still had 'site lock' control over the Location, and as a result of that communication, Royal Leaf advised OCM that it was no longer interested in using the Location as a delivery hub thus clearing the way for NAP IV to get a substituted proximity lock for QUBE which sought to install a retail dispensary. Korytny Aff., ¶ 19, Compl., ¶ 21.

On June 13, 2023, Vlamis requested that NAP IV provide QUBE with a document showing that QUBE controlled the Location for purposes of submission to OCM to get the substituted proximity lock. Korytny Aff., ¶ 20, Ex. C, Compl., ¶ 21. In pursuit of obtaining substituted proximity lock for QUBE, NAP IV shared a preliminary submission letter with Vlamis, which revealed Aini's identity. Vlamis reviewed the letter, granted approval for its finalization, and acknowledged receipt of this information from NAP IV. Had there been no

agreement providing for equity in QUBE for NAP IV, NAP IV would not have done so and would not have sent the submission letter to Aini for his signature to effectuate the anticipated notification to OCM. Korytny Aff., ¶ 21, Ex. D, Compl., ¶ 21. Later that same day, NAP IV emailed Vlamis a copy of the submission letter signed by Aini as the landlord representative, which Vlamis submitted on QUBE's behalf to the OCM. Confirmation of this submission was sent by Vlamis to NAP IV. Korytny Aff., ¶ 22, Ex. E, Compl., ¶ 22.

Later that night, the parties began the process of jointly negotiating a term sheet for a lease at the Location. The landlord previously had concerns in leasing the Location for cannabis use because it knew that it would have to finance its mortgage in 2029. To alleviate that concern, NAP IV convinced Aini to put an option for the landlord to terminate the lease should having a cannabis tenant affect its ability to refinance its mortgage. Aini and the Landlord agreed that was a sufficient remedy to eliminate the concern. Korytny Aff., ¶ 23, Compl., ¶ 22. After a few weeks, when negotiations on the Term Sheet to sublease the Location from the present tenant, Stubhub, had significantly progressed, Aini stated that the landlord and its representatives had requested an in person meeting to meet QUBE's owners and operators to make sure they have the necessary experience as well as explain the planned use of the money to be advanced by the landlord in connection with QUBE's capital expenditures, operating expenditures and towards the build out at the Location. Korytny Aff., ¶ 24, Compl., ¶ 23.

That meeting occurred on June 27, 2023. NAP IV prepared most of the materials for the meeting with the landlord's team. NAP IV individually met with Aini and the landlord team and convinced them to submit a modified term sheet to Stubhub to sublease to QUBE. The landlord's team represented to NAP IV (which NAP IV would materially depend on) before Vlamis and Liddell joined the meeting, that it had no interest in doing this deal with anyone unless NAP IV

was involved. NAP IV was to be the point of contact. Had NAP IV declined, there would be no term sheet submitted to Stubhub, and there would have been no lease. Korytny Aff., ¶ 25, Compl., ¶ 24.

When Vlamis and Liddell arrived at the meeting, the terms of the most recent version of the term sheet dated June 27, 2023, were explained to both of them. The QUBE Defendants then submitted the term sheet to Stubhub. Korytny Aff., ¶ 26, Ex. F, Compl., ¶ 25. This term sheet provided that QUBE would pay $620,000 in annual rent in year one and $1,170,000 in year two. Stubhub would remain the sub landlord, pay the difference in rent between its lease and what it collected from QUBE and Stubhub would continue to guarantee the lease. The landlord would provide QUBE $650,000 in a tenant improvement allowance that could be used for capital and operating expenses while Stubhub would provide another $100,000. QUBE would deposit into a security deposit account $24,375 monthly for 12 months to build up its reserve to put down towards the security deposit of the lease it would have to sign when Stubhub's sub-lease to QUBE ended in about three years. Both Liddell and Vlamis were so delighted with this term sheet that they treated NAP IV to drinks and food, with Vlamis generously covering the bill. Korytny Aff., ¶ 27, Compl., ¶ 26.

Unfortunately, Stubhub rejected the term sheet because ultimately, as a publicly traded company and with cannabis being illegal on a federal level, it had concerns about issues they could experience subleasing to a cannabis sub-tenant. Stubhub requested that NAP IV continue negotiations through its broker who had recently attempted to sublease the property to other potential non-cannabis related tenants without success and was not previously known to NAP IV. Despite Vlamis making initial contact with the broker independent of NAP IV, it was NAP IV who negotiated a new term sheet with Stubhub's broker. Korytny Aff., ¶ 28, Compl., ¶ 27. NAP

IV spent almost two months negotiating a deal between Stubhub and the landlord to release Stubhub from its lease early without any help of any other member of QUBE. Finally, on or about July 27th, QUBE was informed that Stubhub, agreed it would pay more than $1,700,000 to be released from the lease and the Landlord represented to NAP IV that it would release Stubhub. Thereafter, Aini represented to NAP IV that it would give QUBE a lease and still provide $650,000 for QUBE to use for buildout, capital, and operating expenses so long as the landlord received an equity pledge from NAP IV's equity in QUBE. Korytny Aff., ¶ 29, Compl., ¶ 28.

In August 2023, Aini provided NAP IV with a draft lease which NAP IV thereafter negotiated per input from Vlamis and the attorney hired by Vlamis and NAP IV. Korytny Aff., ¶ 30, Compl., ¶ 29. After redlined drafts were exchanged with NAP IV, Aini prepared a lease for signing on August 10, 2023, with a conditional rider and Aini represented that he included a provision stipulating that a security deposit of $420,000 is required until NAP IV furnishes the necessary equity pledge to obtain the landlord's waiver of the security deposit. Korytny Aff., ¶ 31, Ex. G, Compl., ¶ 30. Vlamis then contacted NAP IV, urging an end to negotiations and the immediate signing of the lease. Korytny Aff., ¶ 31, Compl., ¶ 30.

Vlamis insisted it was necessary to sign the lease so that QUBE could submit it as part of its Phase II supplemental materials to the OCM and thereafter qualify to apply to the Supreme Court, Albany County, in a matter known as *Fiore v. New York State Office of Cannabis Management,* Index No. 907282-23, for relief from a preliminary injunction that was impacting their CAURD license and progress in getting a dispensary location secured and opened for business. Vlamis also wanted the newly approved amended operating agreement that had been

drafted by the attorney hired by Vlamis and NAP IV to be signed and submitted to the Court in furtherance of the request for relief from the injunction. Korytny Aff., ¶ 32, Compl., ¶ 30.

However, the August 10th lease included spaces for a notary, and it was conveyed to Aini that QUBE could not sign if notarization was required. Subsequently, NAP IV communicated to Aini that QUBE would proceed by removing the notary fields. Korytny Aff., ¶ 33, Compl., ¶ 31. On August 11, 2023, Aini sent an email requesting to disregard all previous versions and attached an unmarked copy, without notary fields, for signing. The lease sent by Aini on August 11th was successfully executed by QUBE and the landlords of the Location. Korytny Aff., ¶ 34, Ex. H, Compl., ¶ 32.

On August 23, 2023, Vlamis sent to NAP IV a resolution passed by QUBE's Board indicating that QUBE held a meeting and voted to grant NAP IV's designee, STS MCM, a 49% interest in QUBE, provided that two conditions were met: (1) providing a viable lease and (2) funding of at least $500,000 for QUBE's build-out and operations. Korytny Aff., ¶ 35, Ex. I, Compl., ¶ 33. The conditions were in fact satisfied back on August 11th when NAP IV delivered a lease signed by the landlord to QUBE, and which contained a provision for $650,000 for build-out and operations. Korytny Aff., ¶ 36, Compl., ¶ 33.

**D. QUBE Confirmed and Ratified Its Promise of 49% Equity to NAP IV**

When this lease was delivered to QUBE by NAP IV on August 11th, QUBE did not express any complaints or reservations about it to NAP IV. To the contrary, on August 22, 2023, eleven days later, QUBE signed a resolution formalizing the decision to grant NAP IV's designee 49% equity in QUBE and expressly acknowledging that all conditions precedent had been satisfied. Korytny Aff., ¶ 37, Compl., ¶ 34. And as if that were not enough confirmation, Liddell submitted an affidavit to intervene in *Fiore, et al. v. New York State Cannabis Control*

*Board, et al.*, Sup. Ct. Albany Cty., Index No. 907282 (the "Affidavit") so that QUBE may seek relief from the preliminary injunction temporarily staying the CAURD program. Korytny Aff., ¶ 38, Ex. J, Compl., ¶ 34.

In his Affidavit, Liddell stated in paragraph 5 that "[o]n or about August 4th, 2023, I agreed to transfer 49% of my company equity to a third party for successfully gaining the lease rights and sourcing funding for the location that was approved by the OCM." Mr. Liddell also represented to the *Fiore* Court in his Affidavit that if the injunction was not lifted "our 49% partner who chose us will sue us because of the promises we made, causing them to pass on other opportunities [for the Location], including more viable CAURD licenses." Korytny Aff., ¶ 39, Ex. J, Compl., ¶ 34.

**E. QUBE's Breach of the NDA and of its Promise to NAP IV**

Having obtained the knowledge and control of the Location after the execution of the NDA and non-circumvention agreement, and having gotten the benefit of NAP IV's time, effort, and connections, QUBE is, upon information and belief, directly negotiated another lease with the landlord, in derogation of the NDA and without notice to and the consent of NAP IV. The new lease no longer contained the buildout money previously promised by the landlord. Korytny Aff., ¶ 40, Ex. K, Compl., ¶ 35.

After learning about the new lease, NAP IV advised QUBE that it had access to more than enough funds to cover the security deposit as well as the buildout and would deposit such funds upon the execution of a mutually agreeable updated and amended operating agreement. Korytny Aff., ¶ 41, Ex. L, Compl., ¶ 36. Upon information and belief, QUBE has given away a portion if not all of NAP IV's 49% equity in QUBE to different investors who have purportedly provided it with additional funding. Korytny Aff., ¶ 42, Ex. M, Compl., ¶ 37.

Upon information and belief, QUBE is in the process of building out and proceeding towards opening a dispensary at the Location, without NAP IV's having any ownership interest in QUBE despite the earlier Board resolution provided to the Supreme Court. As such, QUBE has and is effectively misappropriating the Location and 49% equity from NAP IV. Consequently, QUBE is representing to the Court, OCM, and CCB that it has had the right to the Location since August 11, 2023, long before this new lease was purportedly signed. Korytny Aff., ¶ 43, Compl., ¶ 38.

**ARGUMENT**

CPLR § 6301 provides in pertinent part that "[a] preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff." Moreover, CPLR § 6301 further provides that "[a] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had."

As set forth in greater detail in the accompanying Korytny Affidavit, Landau Affirmation and the Complaint, the Qube Defendants, by their improper actions have breached the NDA and are in the process of misappropriating the Location from Plaintiff. Accordingly, a temporary restraining order and preliminary injunction must be granted.

**A. Plaintiff Will Sustain Irreparable Harm Absent a Temporary Restraining Order and Preliminary Injunction**

Plaintiff has met its burden of showing irreparable harm. "Irreparable harm is presumed, where, as here, trade secrets[4] have been misappropriated." *Sylmark Holdings Ltd. v. Silicone Zone Intern. Ltd*, 5 Misc.3d 285, 299, 783 N.Y.S.2d 758, 772 (Sup. Ct. N.Y. Co. 2004), *citing DoubleClick, Inc. v. Henderson,* 1997 WL 731413, *7 (Sup. Ct. N.Y. Co. 1997). The Location was not listed for lease or sale at the time of that the parties entered into the NDA. Korytny Aff., ¶ 8; Compl., ¶ 11. Without Plaintiff's hard work to identify the opportunity protected by the NDA, there would have been no way for the Qube Defendants or anyone else to know that both the landlord at the Location and the existing tenant were prepared to sublease to any subtenant, let alone an adult-use cannabis dispensary.[5]

The NDA specifically defined the address of the Location and identity of the landlord as confidential information. Korytny Aff., Ex. A. By entering into the NDA, NAP IV materially depended on its protection and the Qube Defendants specifically authorized Plaintiff to seek an injunction to specifically enforce the NDA and recognized that breach of the NDA and its non-circumvention clause may cause Plaintiff to suffer loss that cannot be adequately compensated by monetary damages alone." Korytny Aff., ¶ 15, Ex. A; Compl., ¶ 18. The identity of the

[4] In *Sylmark*, the Court stated that "New York courts have adopted the trade secret definition set forth in the Restatement of Torts, § 757 Comment B as "any . . . information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." *Sylmark*, 5 Misc.3d at 298; 783 N.Y.S.2d at 771.

[5] Even if the Qube Defendants could demonstrate that the address of the location was publicly known at the time of the NDA signing, it must be emphasized that neither the identity of the landlord nor Aini was known to QUBE when the NDA was signed. Securing the landlord's consent was pivotal for subleasing the space from the current tenant at the Location or securing a new lease. At the time of the NDA's signing, the approval of adult-use cannabis was recent, and it was widely acknowledged that reaching out to landlords or their representatives often yielded no results. It was also recognized that contacting landlords or their representatives often yielded no results due to their reluctance to engage with unknown tenants, particularly those involved in cannabis-related businesses. Landlords were cautious about accepting cannabis tenants due to concerns such as the risk of defaulting on mortgages or facing other legal issues. Korytny, Aff., ¶ 10.

Location and that of the landlord are clearly trade secrets and the presumption of irreparable harm applies.

Moreover, New York courts have endorsed preliminary injunctive relief "where it appears that the defendant threatens or is about to do… an act in violation of plaintiff's rights respecting the subject of the action and… tending to render the judgment ineffectual." *Matter of Brion,* 2012 NY Slip Op 52076(U) (Surr. Ct. Sept. 10, 2012). In fact, "it is better to prevent the violation of a party's rights at the beginning rather than allow them to be violated and remit the petitioner to his remedy at law, which may be uncertain." *Id.* Here, if not enjoined, the Qube Defendants will be allowed to proceed to complete the work needed to open the dispensary, and once the dispensary is opened any lease for the Location that has been signed will be fully effective, and part of the relief sought by Plaintiff, a permanent injunction enjoining the Qube Defendants from opening will be rendered moot, and Qube Defendants' theft of NAP IV's promised 49% equity interest in QUBE will have been fully enabled. Landau Aff., ¶¶ 5, 6.

**B. Plaintiff is Likely To Succeed On The Merits**

"The showing of likelihood of success [on the merits] … must not be equated with the showing of a certainty of success on the merits." *Bingham v. Struve,* 591 N.Y.S.2d 156, 158 (1st Dep't 1992) (quoting *Tucker v. Toia,* 54 A.D.2d 322, 326 (4th Dep't 1976)). Rather, to satisfy this prong, a party need only make a "prima facie showing of a reasonable probability of success." *Barbes Rest. Inc. v. ASRR Suzer 218, LLC,* 140 A.D.3d 430, 431 (1st Dep't 2016); *251 W. 30th St. LLC v. 251 W. 30th St. Owner, LLC,* 2017 WL 1349978, at *3 (Sup. Ct. N.Y. City. Mar. 31, 2017). A reasonable probability of success may be established "even where the facts are in dispute, and the evidence" is inconclusive. *IGH Management (Maryland) LLC v. West 44th Street Hotel LLC,* 163 A.D.3d 413, 414 (1st Dep't 2018) (quoting *Barbes Rest. Inc.,* 140 A.D.3d

at 431); *Siras Partners LLC v. Activity Kuafu Hudson Yards LLC,* 171 A.D.3d 680, 681 (1st Dep't 2019).

"The degree of proof required to establish the likelihood of success on the merits" is lessened where – as here – "denial of injunctive relief would render the final judgment ineffectual." *Grammercy Co. v. Benenson,* 223 A.D.2d 497, 498 (1st Dep't 1996) (internal quotation marks and citation omitted.) Where the moving party demonstrates that it will potentially be irreparably harmed without injunctive relief, a lesser showing is required. *Id.*

NAP IV has more than demonstrated a likelihood of success on the merits here. As set forth above, it has demonstrated that it entered into the NDA with QUBE, that the NDA treated the Location and the Opportunity to use the Location for a dispensary as valuable and confidential information, and that the NDA expressly prevents the QUBE Defendants from going forward as they have, doing an end run around NAP IV, negotiating a lease with the landlord at the Location and proceeding to move forward with a dispensary there without issuing NAP IV the 49% equity in QUBE that was promised. Korytny Aff., Ex. A.

### C. The Balance of Equities Favors the Issuance of a TRO and a Preliminary Injunction

The equities in this matter weigh heavily in favor of issuance of a temporary restraining order and a preliminary injunction to prevent the Qube Defendants from finalizing their plan to misappropriate the Location for their own benefit as expressly prohibited by the NDA without following through on their promise to issue NAP IV the promised equity in QUBE. Temporary injunctive relief is warranted when the equities weigh in favor of preserving the status quo. *See Board of Managers of Colonnade Condominium v. 32F at 347 West 57th Street, LLC,* 171 A.D.3d 682, 682 (1st Dep't 2019) ("[P]urpose of a temporary restraining order is to preserve the

status quo"). Plaintiff merely seeks to preserve the status quo until such time as the parties' respective rights to the Location can be properly adjudicated.

**D. Plaintiff Should Not Be Required to Post an Undertaking As a Condition to the Issuance of the TRO**

Pursuant to CPLR § 6313(c), the court has discretion in determining whether or not an undertaking should be posted as a condition of a temporary restraining order. No undertaking should be required here. Given the terms of the NDA, there can be no serious dispute that the Opportunity (as that term is defined in the NDA) is confidential information, that the Qube Defendants were expressly prevented from circumventing that Opportunity without NAP IV's consent and they are well on their way to doing so. Depending on where they are in the process of building out the Location, finalizing their license and opening their dispensary, a temporary restraining order will actually save the QUBE Defendants money, if it should later be determined that they had no right to usurp the Opportunity.

## CONCLUSION

By reason of the foregoing, it is respectfully requested that this Court enter an Order: (i) pending the hearing and determination of this motion, enjoining Defendants Qube USA LLC , George Vlamis and Quine Liddell from opening a cannabis dispensary in the building located at 1412 Broadway, New York, New York; (ii) pending the determination of this action, enjoining the Qube Defendants from opening a cannabis dispensary in the Location; and (iii) awarding NAP IV such other and further relief as this Court deems appropriate under the circumstances.

Dated: Purchase, New York
April 12, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify pursuant to NYCRR § 202.70(g), Rule 17 that the foregoing memorandum of law was prepared on a computer using Microsoft Office 365.

*Type.* A proportionally spaced typeface was used, as follows:
Name of typeface: Times New Roman
Point size: 12
Line spacing: Double

*Word Count.* The total number of words in this memorandum of law, exclusive of the caption, signature block and pages containing the proof of service or certification of compliance, is 5408 words.

Dated: White Plains, New York
April 12, 2024

James K. Landau
James K. Landau