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51-53 14th Street Condominium Association, Inc.

51-53 14TH STREET CONDOMINIUM ASSOCIATION, INC., Plaintiff, v. 51-53 14 TH STREET RETAIL LLC, EXCHANGE PHYSICAL THERAPY GROUP, LLC, DREW NUSSBAUM, JACLYN FULOP, STORY DISPENSARY OF HOBOKEN, LLC, SAMANTHA SILVA, and HOWARD HINTZ, Defendants.	: SUPERIOR COURT OF NEW JERSEY : CHANCERY DIVISION: HUDSON COUNTY : DOCKET NO: HUD-C- <u>49-22</u> : <u>Civil Action</u> : COMPLAINT
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Plaintiff 51-53 Fourteenth Street Condominium Association, Inc., by and through its undersigned counsel, Becker & Poliakoff, LLP, for its complaint against defendants 51-53 14th Street Retail, LLC, Exchange Physical Therapy Group, LLC, Drew Nussbaum, Jaclyn Fulop, Story Dispensary of Hoboken, LLC, Samantha Silva and Howard Hintz, alleges as follows:

NATURE OF ACTION

1. This action arises out of the deceit employed by the current owners of the commercial unit of an eight-unit Condominium building located in Hoboken, New Jersey to permit and facilitate the installation of a cannabis dispensary under the false pretense of relocating a physical therapy practice. The proposed use is not only violative of the Association’s governing documents; it is incongruent with the character of the building, residential zone, and is undermined

by the express representations made to the seller of the commercial unit to induce sale of the unit. In short, it is a prohibited use that should be enjoined and for which damages should issue.

PARTIES

2. Plaintiff 51-53 Fourteenth Street Condominium Association, Inc. (the “Association”) is a New Jersey non-profit corporation organized and existing pursuant to N.J.S.A. 15A:1-1, et seq., which maintains a principal business address at 51-53 14th St., Hoboken, New Jersey.

3. Pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-1, et seq. (the “Condominium Act”), the master deed creating the subject condominium (the “Master Deed”) and the Association’s Bylaws (together, the “Governing Documents”), the Association’s responsibilities include managing, operating, maintaining, and repairing the “common elements” of a residential development comprised of 7 residential units and 1 commercial unit (the “Condominium”).

4. The Master Deed was recorded in the Office of the Hudson County Register of Deeds on June 20, 2005, in Deed Book 7586 at Page 74, et seq. A true and accurate copy of the Master Deed is attached hereto as **Exhibit A**.

5. The Bylaws of the Association (the “Bylaws”) were recorded as Exhibit “1-E” to the Master Deed. A true and accurate copy of the Bylaws are attached hereto as **Exhibit B**.

6. Pursuant to the Governing Documents, the affairs of the Association are managed by the Association’s Board of Trustees (the “Board”). (Ex. B, By-laws Art. II, §1).

7. The Bylaws state that the Board has the powers and privileges necessary for the administration of the affairs, business and property of the Association and the Governing Documents empower the Board with all duties necessary to discharge its powers in a manner that protects the health, safety and general welfare of the Condominium and to do or cause to be done all such other lawful acts and things as it is legally entitled to do under the law or by the Governing Documents.

8. Defendant Exchange Physical Therapy Group, LLC (“Exchange”), is a New Jersey limited liability company which maintain a principal business address located at 443 Albany Ct., West New York, Hudson County, New Jersey. (See **Exhibit C** hereto).

9. Defendant Drew Nussbaum is an individual with a principal residential address located at 443 Albany Ct., West New York, Hudson County, New Jersey. Nussbaum is the registered agent for defendant 51-53 14th Street Retail. See **Exhibit C** hereto.

10. Defendant Jaclyn Fulop (“Fulop”) is an individual with a principal residential address located at 360 Ogden Ave., Jersey City, Hudson County, New Jersey. (*Id.*)

11. Fulop is the wife of Jersey City Mayor Steven Fulop.

12. According to the New Jersey Secretary of State, Drew Nussbaum is listed as the General Partner and registered agent for service of process for Exchange. (*Id.*)

13. Exchange also maintains a website at www.exchangephysicaltherapygroup.com.

14. According to the Exchange website, Exchange operates out of three locations: (i) 200 Hudson Street, Suite 127, Jersey City, Hudson County, New Jersey; (ii) 500 Avenue at Port Imperial, Weehawken, Hudson County, New Jersey; and (iii) 133 Monroe Street, Hoboken, Hudson County, New Jersey; and (iv) 1325 Hudson Street, Hoboken, Hudson County, New Jersey.¹

15. Jaclyn Fulop is listed as the owner of Exchange on its publicly available website.²

16. Defendant 51-53 14th Street Retail LLC (“Retail”), is a New Jersey limited liability company formed on July 23, 2021, which maintains a principal place of business addressed located at 443 Albany Ct., West New York, New Jersey. (See **Exhibit D** hereto).

17. Drew Nussbaum and Jackie Fulop are also the principals of Retail. (*Id.*)

¹ <https://www.exchangephysicaltherapygroup.com/about/>

² <https://www.exchangephysicaltherapygroup.com/our-team/>

18. Defendant Story Dispensary of Hoboken LLC is a New Jersey limited liability company formed on January 11, 2022, which purports to maintain a principal place of business located at 51 14th Street, 1st Floor, Hoboken, Hudson County, New Jersey, though it does not currently occupy the premises. (**Exhibit E**).

19. Defendant Samantha Silva is an individual residing at 2 Marine View Plaza, Apartment 23D, Hoboken, New Jersey.

20. Based on information and belief, Marine View Plaza is a residential building in the C-1 commercial business district, in which placement of a cannabis dispensary would be permitted; except for the fact that the Planning Board and/or City Council is considering an amendment that would specifically eliminate Marine View Plaza from the permitted area.

21. Silva is a principal for Story and, based on information and belief, owns a 60% interest serves as its CEO in addition to her position as a bartender at City Bistro, located at 56 14th Street, Hoboken New Jersey, directly across the street from the Association's Condominium building.

22. Defendant Howard Hintz is an individual residing in Maricopa County, Arizona, who owns a 40% interest in Story. Hintz is noted as the applicant designated in Story's application for development that is currently before the City of Hoboken Planning Board and Board of Adjustment.

23. Based on information and belief, while Silva is identified as holding a 60% interest in Story, Hintz and others assert domination and control over the day-to-day operations of Story.

24. Defendant Drew Nussbaum is also affiliated with Story, as his name and address were listed in the contact section of Story's application before the Cannabis Review Board.

FACTS COMMON TO ALL COUNTS

25. The Association was formed by way of the Master Deed filed on June 7, 2005.

26. The Condominium consists of a 1st floor commercial unit (the “Commercial Unit”), formerly operated as the well-known Hudson Tavern restaurant, and seven residential units above the 1st floor commercial unit (the “Residential Units”).

27. On May 26, 2020, Bren Corp, the owner of the Hudson Tavern restaurant and the associated liquor license, listed the restaurant and the liquor license for sale.

28. Following the restaurant’s listing, Bren Corp. was approached by various restaurateurs interested in purchasing the restaurant. On July 7, the listing was revised to reflect the Commercial Unit, owned by Bren II Corp., being for sale.

29. A few days thereafter, Bren II Corp. was approached by Exchange, which operates one of its four locations from a dedicated space located at 1325 Hudson Street, Hoboken, New Jersey, also directly across the street from the Condominium.

30. When Exchange approached the owner of Bren II Corp., Thomas Brennan, about acquiring the Commercial Unit, its principal, Drew Nussbaum, represented to Mr. Brennan that Retail was interested in purchasing property so it could relocate Exchange’s physical therapy practice from its current Uptown Hoboken space at 1325 Hudson Street, which was leased.

31. In attendance at the first showing of the property was Mr. Nussbaum, the chiropractor at Exchange, Ms. Fulop, a physical therapist at Exchange, and Ms. Fulop’s husband, Steven Fulop, the Mayor of Jersey City.

32. The group liked the space, and during the meeting, Mr. Fulop asked if Mr. Brennan was willing to take the property off the market at that time.

33. Thereafter, Mr. Nussbaum verbally confirmed on numerous occasions with Mr. Brennan that he intended to move his physical therapy/chiropractic practice to the commercial space.

34. In reliance upon this representation, Bren II Corp. agreed to sell the Commercial Unit to Retail, in which those parties contractually specified that the intended use of the space would be for a “medical office.”

35. And, on August 3, 2021, Bren II Corp. entered into a contract of sale with Retail.

36. Retail was formed only *11 days earlier*.

37. Under § 12 of the Purchase Agreement, captioned “Building and Zoning Laws.” the Buyer represented as follows: “The Buyer intends to use the Property as a Commercial **CONDO for use as a medical office.**” (**Exhibit F**) (emphasis in original).

38. In late December 2021 or early January 2022, Andrea Aronoff, the owner of a residential unit in the Association, entered the building when Mr. Brennan and Mr. Nussbaum were speaking in the entryway. Mr. Brennan introduced Mr. Nussbaum to Ms. Aronoff and indicated he was one of the new owners of the Commercial Unit.

39. During the conversation, Mr. Nussbaum stated to Ms. Aronoff that he would be relocating Exchange’s physical therapy practice to the Commercial Unit.

40. On the basis of these representations, the purchase was ultimately consummated.

41. On November 19, 2021, Bren II Corp. sold its interest in the property located at 51-53 14th Street (Block 245, Lot 10) to Retail for the sum of \$2,400,000. (See Exh. F hereto).

42. To finance this purchase, Retail obtained a commercial mortgage from BCB Community Bank in the amount of \$1,800,000. (**Exhibit G**).

43. The mortgage and security agreement securing this loan was executed by Fulop and Nussbaum as Retail’s members.

44. Based on information and belief, Fulop and Nussbaum also own Exchange.

45. The Mortgage and Security Agreement was accompanied by a Condominium Rider requiring the Mortgagor to, among other things: (i) “perform all of its obligations under the Condominium’s Organizational Documents;” (ii) not take “any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to the Mortgagee.” (Id. at 21-22).

46. Unbeknownst to Mr. Brennan or the other residential unit owners of the Condominium, following the sale of the commercial unit, Retail entered into a letter of intent to lease this commercial space to Story – a newly formed entity.

47. Despite the representations made by Retail, the property is not intended to be used as a “medical office,” but rather by Story as a recreational cannabis dispensary.

48. Of the seven residential units in the Condominium, five residential units are owner occupied and the remaining two are rented by Mr. Brennan.

49. Mr. Brennan had been told prior to the sale of the Commercial Unit, by both of his tenants of his residential units, that they were interested in purchasing their units. However, now that the Commercial Unit has been sold, and it has become known that Defendants intend to operate a recreational cannabis dispensary, both of the renters have informed Mr. Brennan they are no longer interested in purchasing.

50. All of the residential unit owners are opposed to the improper and unapproved use of this space as a cannabis dispensary.

51. The use of the Commercial Unit as a cannabis dispensary is in direct contravention to the Association’s Governing Documents as a deleterious activity.

52. In addition, on April 30, 2022, the Association’s Board of Trustees adopted a Resolution Clarifying the Sale, Use, Display, Transfer, Distribution and/or Smoking Vaping, or

Aerosolizing of Cannabis and/or Marijuana as a Deleterious Activity and prohibiting same due to various negative impacts on the Association and its members.

The Story Application

53. On January 24, 2022, Story officially submitted its Cannabis Business Application to the City of Hoboken Cannabis Review Board (“CRB”). (**Exhibit H**).

54. Story submitted this CRB application *13 days after* its formation by Samantha Silva as Story’s Chief Executive Officer – who also serves as a bartender across the street at City Bistro.

55. Critically, the CRB application provides that the requested use is for “retail cannabis license.” Notably, no “Medical Cannabis License” is requested. (Id.)

56. The local operator of the proposed dispensary designated as the “person responsible for day-to-day operations” is Aaron Epstein.

57. Based on information and belief, Epstein was previously affiliated with Garden State Dispensary, an entity that has a number of dispensaries in other cities in NJ. Mr. Epstein testified during the CRB hearing and provided the addresses of three of those dispensaries, all of which are in single-story, standalone buildings, located on highways and not near any residential areas.

58. Furthermore, the application provides that the applicant does not have ownership or a lease with respect to the subject property; rather, it is simply the beneficiary of a letter of intent. This representation is made under penalty of perjury. (Id. at 5).

59. Story was represented at a public hearing before the CRB by its CEO Silva on February 24, 2022.

60. No advance notice was provided of this hearing.

61. Silva testified at the CRB hearing that she was "approached with an opportunity" to invest in this business, but declined to disclose who had approached her with that opportunity.

62. New Jersey's Cannabis Regulatory Commission provides priority review and approval for three types of cannabis businesses: (i) Diversely Owned Businesses – minority-owned, woman-owned, or disabled veteran owned as certified by the New Jersey Department of Treasury in one or more listed categories (ii) Social Equity Businesses and (iii) Impact Zone Businesses.³

63. The proposed use of the Commercial Unit to house a cannabis dispensary not only belies the representations of the purchasers of the commercial unit; it was not intended to be permitted by the City of Hoboken and is not a permitted use under the Condominium's Governing Documents.

64. During the CRB hearing, the CRB members stated that Story needed to be more communicative and transparent with neighboring property owners and members of the community.

65. On March 10, 2022, Story submitted its application for Site Plan approval from the City of Hoboken Planning Board in connection with the proposed operation of the cannabis dispensary (the "Planning Board Application").

66. The Planning Board Application includes alterations to the Condominium's Common Elements.

67. Similarly, on April 4, 2022, Story appeared before the Hoboken Historic Preservation Commission – without any advance notice to the Association – seeking approval of proposed changes to the exterior Common Element façade of the Condominium.

68. Far from being transparent as recommended by the CRB, Story similarly failed to provide notice of the hearing before the Hoboken Historic Preservation Commission; and, even more egregiously, has not sought the legally required permission of the Association to make any of the alterations to the Condominium's Common Elements detailed before the Hoboken Historic Preservation Commission and in the Planning Board Application.

³ <https://www.nj.gov/cannabis/businesses/priority-applications/>

69. The Association's Governing Documents and the New Jersey Condominium Act both require the owner of the Commercial Unit, 51-53 14th Street Realty, LLC, to obtain the approval of the Association with respect to any and all changes to the Common Elements of the Condominium, which includes the exterior façade.

70. The New Jersey Condominium Act provides, at N.J.S.A. 46:8B-14. "Responsibilities of association," that the Association, acting through its Board, "shall be responsible for the maintenance, repair, replacement, cleaning and sanitation of the common elements."

71. The New Jersey Condominium Act further provides, at N.J.S.A. 46:8B-18. "Prohibited Work," that "[t]here shall be no material alteration of or substantial addition to the common elements except as authorized by the master deed. No unit owner shall contract for or perform any maintenance, repair, replacement, removal, alteration or modification of the common elements or any additions thereto, except through the association or its officers."

72. Section 6 of the Association's Master Deed clearly states that the Common Elements of the Condominium include the "roof of the building, foundations, footings, columns, girders, beams, supports, *exterior or interior bearing or main walls* and floors between Units[.]" (emphasis added).

73. In addition, there is nothing within the Master Deed which permits a Unit Owner (or tenant thereof) to alter the Common Elements without the approval of the Association.

74. These deceptive and fraudulent actions on the part of Defendants were effectuated to deprive the Association the opportunity to be heard before the CRB and Hoboken Historic Preservation Commission and prevent the Association from enforcing the requirements of the New Jersey Condominium Act and its Governing Documents.

75. The Condominium is located on the corner of Hudson St., which is in the R-1 residential district and 14th Street, which was previously zoned as residential but is now in the C-3 commercial district.

76. After the CRB hearing, Hoboken's City Council announced plans to introduce amendments to its cannabis zoning laws, one of which would require dispensaries to be at least 600 feet from primary or secondary schools, limit the total number of dispensaries to six, and create other new restrictions.⁴

77. The new amendment would also add a notice requirement to provide notice to property owners within 200 feet of the location. (Id.).

78. The amendment would also eliminate dispensaries from the C-3 district, which includes Fourteenth Street where the Condominium is located.

79. Councilwoman Tiffanie Fisher was quoted as commenting that “No one thought through the implications’ of the city’s original relatively generous marijuana zoning laws”⁵ and that Fourteenth Street and the C-3 district was not meant to be included as an area zoned for cannabis dispensaries.

80. On April 5, 2022, the Hoboken Planning Board unanimously voted to approve the removal of the C-3 district as an area zoned for cannabis dispensaries.

81. On April 6, 2022, the Hoboken City Counsel similarly voted to approve the removal of the C-3 district as an area zoned for cannabis dispensaries.

⁴ <https://www.nj.com/hudson/2022/03/cannabis-zoning-restrictions-quickly-head-hoboken-city-council-after-uproar-over-proposed-dispensary.html#:~:text=Hoboken's%20City%20Council%20plans%20to,and%20create%20other%20new%20restrictions.>

⁵ (Id.)

82. Pursuant to the Governing Documents, the affairs of the Association are managed by its Board of Trustees (the “Board”).

83. The powers of the Board include: (i) the adoption and amendment of rules and regulations covering the details of the operation and use of the property (§2(C)); (ii) “enforcing obligations of the unit owners, to allocate profits and expenses and to do anything and everything else necessary and proper for the sound management of the Condominium, including the right to bring lawsuits to enforce the Rules and Regulations promulgated by the Board (§2(G)); (iii) establishing rules and regulations for the use of the Common Areas (§2(J)); and (iv) “taking such action as may be necessary to comply promptly with any and all orders or requirements affecting the Association placed thereon by any Federal, state, county or municipal authority have jurisdiction there over” (§2(S)).

84. The owners of the Commercial Unit have violated the Master Deed by, amongst other things, failing to seek approval of alterations to the Common Elements.

85. The owners of the Commercial Unit have also violated the Bylaws of the Association by engaging in “activities deleterious to the aesthetics or property values of the Condominium;” eroding the comfort and security of the Unit Owners, their guests, invitees and lessees; and undermining the “general welfare and safety of the Condominium community.” (Art. VII, § 1).

86. On February 25, 2022, the Association was informed by its current insurance carrier AmTrust Financial Services, Inc. (“AmTrust”) that the Association would not be eligible for an insurance policy at AmTrust if cannabis and/or marijuana was sold, used or consumed on Association property, and likewise would not be able to renew its current policy given same.

87. For the benefit of the Association and of the individual owners, the Board adopted a resolution on April 30, 2022 to affirm the prohibitions already contained within the Governing Documents with respect to the sale, use, display, transfer, distribution or smoking, vaping, or aerosolizing of cannabis and/or marijuana at the Condominium as a deleterious activity.

88. Any action that tends to decrease property values or increase insurance rates to the members of the Association is “deleterious” in contravention of Article VII, Section 1.B of the Bylaws, as it negatively impacts the property values of the Association’s members and, as such, is not aligned with the common interest of the individual Owners of the Association.

89. Moreover, additional security may be required, should cannabis and/or marijuana be sold at or in the vicinity of the Condominium, thus adversely affecting the general welfare and safety of the Association contrary to Article VIII, Section 1.D, of the Bylaws.

90. Similarly, the presence of cannabis and/or marijuana paraphernalia and the sale, use, display, transfer or distribution of cannabis and/or marijuana and associated paraphernalia at, in or in the vicinity of the Condominium, or the or smoking, vaping, or aerosolizing thereof, would tend to decrease the comfort of the Unit Owners, their guests, invitees, and lessees, contrary to Article VIII, Section 1.C, of the Bylaws.

91. The New Jersey State Legislature passed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (the “Act”), S. 21, 2020 Leg., 219th Sess. (N.J. 2021), an act concerning the legalization of the personal use of cannabis for certain adults, subject to State regulation, signed into law on February 22, 2021.

92. The Act provides that notwithstanding that the use or possession with intent to use drug paraphernalia, as defined by N.J.S.A. § 2C:36-1, to ingest, inhale, or otherwise introduce marijuana or hashish into the human body, is not a punishable crime, offense, act of delinquency,

or civil violation, pursuant to this section, the use of drug paraphernalia for that purpose may be prohibited or otherwise regulated on or in any property by the person or entity that controls that property, including the units of a condominium, as defined by N.J.S.A. § 46:8B-3.

93. N.J.S.A. § 24:6I-31 provides that in reviewing initial permit applications for sale of cannabis licenses, the Cannabis Regulatory Commission shall prioritize applications on the basis of “impact zones,” defined as a municipality wherein past criminal marijuana enterprises contributed to “higher concentrations of law enforcement activity, unemployment, and poverty”.

94. The municipality of Hoboken has a crime index total of 745 according to the 2019 Uniform Crime Report by the Division of State Police, and an unemployment rate of 1.6% according to the 2019 U.S. Bureau of Labor Statistics and U.S. Census Bureau, neither of which qualifies the municipality of Hoboken as an “impact zone” according to the Act.

95. The Act further specifies that it does not prohibit an entity that owns or controls a property from prohibiting or otherwise regulating the consumption, use, display, transfer, distribution, sale, or transportation of cannabis items on or in that property; with respect to consumption, however, it may prohibit or regulate only the smoking, vaping or aerosolizing of cannabis and not other types of consumption.

96. The Association determined that because the Condominium is not in an “impact zone,” the prohibition of the sale, use, display, transfer, distribution or smoking, vaping, or aerosolizing of cannabis and/or marijuana on Association property is not in conflict with the Legislature’s intent in passing the Act.

97. Despite the prohibitions in the Governing Documents, Retail and Story have indicated their intent to proceed with the Planning Board Application to impermissibly alter the Common Elements of the Condominium and use the Commercial Unit as a cannabis dispensary.

98. Thus, an actual controversy has arisen between the Association and Retail.

99. While not required to offer mediation, on April 15, 2022, the Association offered to proceed to mediation with Retail and Story on the condition that (a) the costs of mediation would be split equally amongst the Association, Retail and Story (b) Story agree to voluntarily adjourn any hearings before the Planning Board until no earlier than July 15, 2022 (c) Retail execute a stipulation that it would not use the Commercial Unit as a consumption lounge.

100. Retail and Story declined to participate in mediation.

101. As a result, the Association has commenced this action.

COUNT ONE
(Declaratory Judgment)

102. The Association repeats the allegations heretofore stated.

103. By reason of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist under the Association's Governing Documents.

104. The dispute between the parties is ripe and justiciable under the Uniform Declaratory Judgment Act ("the Act"), N.J.S.A. 2A:16-50, et seq.

105. The rights, status and other legal relations of the Parties under the Governing Documents are sufficiently certain and crystallized that the entry of declaratory judgment by this Court will resolve the controversy that has given rise to this proceeding.

WHEREFORE, the Association respectfully requests that the Court enter judgment against the Defendants as follows:

- A. Declaring that the proposed use of the Commercial Unit as a cannabis dispensary is not a permitted use under the Governing Documents;
- B. Awarding injunctive relief; and

C. Granting such other relief as the Court deems fair, just and equitable.

COUNT TWO
(Injunctive Relief)

106. The Association repeats the allegations heretofore stated.

107. The Association is entitled to permanent injunctive relief for the following reasons.

108. Section 14 of the Master Deed provides that “[e]ach Unit Owner or occupant shall comply with the provisions of this Master Deed, the By-Laws of the 51-53 Fourteenth Street Condominium Association, Inc., and with any amendments or supplements to the foregoing. Failure to comply with any such provisions, shall be grounds for injunctive relief by the Grantor, the Association, and any other Unit Owner.”

109. The Association has the exclusive right to regulate use of the common elements, which include, without limitation: (a) curbs and sidewalks; (b) conduits and utility lines; (c) public connections; (d) the roof, foundations, footings, columns, girders, beams, supports, exterior or interior bearing or main walls and floor between units; (e) all other facilities or any improvement within the Condominium necessary or convenient to the existence, management, operation, maintenance, or safety of the Condominium or normally in common use. (Master Deed, §6).

110. In addition, as detailed above, the proposed use is violative of the Association’s Governing Documents and will prove deleterious to the health, safety, and well-being of the residential unit owners, erode property values; and imperil the ability of the Association to obtain insurance and financings from federal insured financial institutions. It may also impact the ability to obtain mortgages for the Units.

111. If the Court does not grant relief, the residential unit owners will be irreparably damaged and the equities favor a grant of relief in favor of the Association and its residents.

WHEREFORE, the Association respectfully requests that the Court enter judgment against the Defendants as follows:

- A. Declaring that the proposed use of the Commercial Unit as a cannabis dispensary is not a permitted use under the Governing Documents;
- B. Awarding injunctive relief; and
- C. Granting such other relief as the Court deems fair, just and equitable.

COUNT THREE
(Nuisance – Use of Land Interfering with Others)

112. The Association repeats the allegations heretofore stated.

113. In connection with the intended use of the Commercial Unit as a cannabis dispensary, Defendants have violated the Governing Documents of the Association.

114. Defendants unapproved use of the Commercial Unit has interfered with and limited the Association’s unit owners’ use and enjoyment of their residential units and will result in, inter alia, additional pedestrian traffic, increased congestion and debris constituting a nuisance per se.

115. As a result of the actions of Defendants, the Association has suffered damages.

WHEREFORE, the Association respectfully requests that the Court enter judgment against the Defendants as follows:

- A. Declaring that the proposed use of the Commercial Unit as a cannabis dispensary is not a permitted use under the Governing Documents;
- B. Awarding injunctive relief; and
- C. Granting such other relief as the Court deems fair, just and equitable.

COUNT FOUR
(Common Law Fraud)

116. The Association repeats the allegations heretofore stated.

117. In expressing their interest in the commercial unit and inducing Bren II Corp. to convey the commercial unit to Retail, Retail and its principals represented to Bren II Corp. that it intended to use the commercial unit for a medical office.

118. Retail incorporated this express representation in the contract of sale for the commercial unit.

119. Furthermore, Nussbaum, a principal of Retail, also misrepresented to the Association his intent to move his physical therapy practice at Exchange, in which he and Fulop owned an interest, into the commercial space in order to induce Bren II Corp. to convey the Commercial Unit to Retail.

120. These representations were made intentionally and with knowledge of their falsity.

121. Bren II Corp. and the Association justifiably relied upon the accuracy and truthfulness of the representations of Retail, Exchange, Nussbaum and Fulop in reaching its decision to sell the unit.

122. As a direct and proximate result of the fraudulent actions of Retail, Exchange, Nussbaum and Fulop, the Association and its residential unit owners have been damaged.

WHEREFORE, the Association demands judgment against defendants Retail, Exchange, Nussbaum and Fulop for damages, together with attorneys' fees, interest, costs of suit, and such other and further relief the court deems proper.

COUNT FIVE
(Civil Conspiracy)

123. The Association repeats the allegations heretofore stated.

124. The foregoing acts to induce the sale of the Commercial Unit based upon misrepresentations as to its intended use was done in collaboration and concert with Story and Silva.

125. Defendants failed to disclose their intention to mislead the Association and mislead Bren II Corp. into conveying the Commercial Unit to Retail on the express representation that the unit would be used as a medical practice.

126. Based on information and belief, it was never Defendant's intention to transition the physical therapy practice located at 1325 Hudson Street to 51-53 Fourteenth Street.

127. Rather, Defendants conspired to mislead the Association and Bren II Corp. and open the cannabis dispensary.

128. In fact, this planning was substantially complete before Story's formation.

129. Story was not formed until January 11, 2022, 13 days before it filed its cannabis licensing application with the City of Hoboken.

130. Similarly, Retail was not formed until July 23, 2021, 11 days before executing a contract of sale for the Commercial Unit.

131. As a result of the aforesaid conspiracy, the Defendants were able to secure the Commercial Unit for an unauthorized use, which will result in damage to the residential unit owners of the Condominium.

WHEREFORE, the Association demands judgment against the Defendants, jointly and severally, for damages, together with attorneys' fees, interest, costs of suit, and such other and further relief the court deems proper.

COUNT SIX
(Corporate Veil Piercing/Alter Ego)

132. The Association repeats the allegations heretofore stated.

133. Retail is simply the alter ego and mere instrumentality dominated and controlled by Exchange and its corporate members, Nussbaum and Fulop.

134. As alter egos, Exchange, Nussbaum and Fulop may be held responsible for the conduct of Retail where, as here, adherence to the fiction of a separate corporate existence would perpetrate a fraud or injustice, or otherwise circumvent the law.

135. Based on information and belief, Exchange, Nussbaum and Fulop failed to operate Retail independently or abide by corporate formalities, such that Retail merely served as the “alter ego” of Exchange, Nussbaum and Fulop in the acquisition of the Commercial Unit of the Condominium.

136. Based on information and belief, Retail was created for the sole purpose of consummating the acquisition and lease of the Commercial Unit by Retail under the control and direction of Exchange, Nussbaum and Fulop for the purpose of leasing the Commercial Unit to Story to open a cannabis dispensary.

137. Retail was formed on July 23, 2021 as a single purpose entity for the sole purpose of acquiring and leasing the Commercial Unit.

138. Retail was formed *11 days before* contracting to purchase the Commercial Unit.

139. Retail ultimately acquired the Commercial Unit four months later in November 2021.

140. Based on information and belief, the mortgage provided by BCB that supported the acquisition of the Commercial Unit, was secured by the financial wherewithal of Exchange, Nussbaum and Fulop, further cementing the financial interdependence of these persons and entities and the lack of any meaningful demarcation of the corporation form.

141. Based on information and belief, the mortgage was purposefully obtained from BCB for the Commercial Unit because BCB was comfortable with the operation of the Commercial Unit as a cannabis dispensary, whereas most other mortgage lenders would not have been. Thus, at the

time of the sale, Retail, Exchange, Fulop and Nussbaum were all aware and intended to operate the Commercial Unit as a cannabis dispensary.

142. Alternatively, if that representation was not made, then the Defendants may have also misled BCB, a federally insured financial institution, as to their true intentions.

143. Given these facts, Retail does not operate as a going concern, and was formed for the sole purpose of effectuating this discrete transaction and leasing the Commercial unit.

144. Retail has no separate existence from Exchange, Nussbaum and Fulop.

145. Based on information and belief, Retail was thinly capitalized and created for the sole purpose of shielding Exchange, Nussbaum and Fulop from the consequences of their own improper conduct and thus, was erected to perpetuate a fraud and injustice.

146. Based on information and belief, Retail did not observe any corporate formalities; and, thus, permitting Exchange, Nussbaum and Fulop to shield themselves from liability for their own tortious conduct, effectuated through Retail, would only further this injustice.

147. It is clear that Exchange, Nussbaum and Fulop have abused the corporate form by exercising pervasive domination and control over Retail through common ownership, management, and assets; and have thinly capitalized this entity, which has no independent operations or existence of its own, in order to shield themselves from liability for their own tortious conduct such that the protections afforded by the corporate form should be disregarded and the corporate veils of these corporate entities should be pierced.

WHEREFORE, the Association demands judgment against defendants Exchange, Nussbaum and Fulop, jointly and severally, for damages, together with attorneys' fees, interest, costs of suit, and such other and further relief as the court deems proper.

PRAYER FOR RELIEF

WHEREFORE, the Association respectfully requests that the Court:

- (a) Declare that the proposed use of the Commercial Unit as a cannabis dispensary is not a permitted use under the Governing Documents;
- (b) Awarding injunctive relief;
- (c) Awarding compensatory and punitive damages;
- (d) Awarding reasonable attorney's fees, interest and costs; and
- (e) Awarding such other relief as the Court deems equitable, just and appropriate.

May 9, 2022

BECKER & POLIAKOFF LLP



Vincenzo M. Mogavero
Martin C. Cabalar

JURY DEMAND

The Association hereby demands a jury trial of all claims so triable, including, without limitation, Counts Four, Five and Six of the Complaint.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), Vincenzo M. Mogavero, Esq., is designated as trial counsel for the Association in the captioned matter.

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to R. 4:5-1(b)(2), it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also, to the best of our belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

May 9, 2022



Martin C. Cabalar**CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

May 9, 2022



Martin C. Cabalar