

DOCKET NO.: HHB-CV-22-6074406-S

LEAF CT LLC	:	SUPERIOR COURT
	:	
	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
	:	AT NEW BRITAIN
	:	
SOCIAL EQUITY COUNCIL	:	OCTOBER 11, 2022

AMENDED COMPLAINT FOR ADMINISTRATIVE APPEAL
PURSUANT TO COURT ORDER

Pursuant to the parties' Joint Stipulation of October 3, 2022 (Entry No. 106.00) and this Court's order of October 4, 2022 (Entry No. 106.10), Leaf CT LLC hereby submits its amended complaint for this administrative appeal, which is attached as Exhibit 1 (Amended Complaint). Pursuant to Practice Book § 10-60(b), a redlined version of the Amended Complaint is attached as Exhibit 2.

Leaf CT LLC will also contemporaneously file the exhibits to the Amended Complaint in a separate filing due to changes in those exhibits. As a clarification of those changes:

- Exhibit B to the Amended Complaint is a new exhibit not previously filed;
- Exhibit B to the original complaint is now Exhibit C to the Amended Complaint;
- The SEC's "Ownership and Control" guidelines (formerly Exhibit C) have been removed and replaced by the SEC's "Residency" guidelines (now Exhibit D);

- The Memorandum, attached to the original complaint as Exhibit D, has been removed.

**PLAINTIFF,
LEAF CT LLC**

By: /s/ Mary Mintel Miller
Mary Mintel Miller
Jeffrey N. Kaplan
Reid and Riege, P.C.
Juris No. 49362
One Financial Plaza, 21st Floor
Hartford, CT 06103
T: 860-240-1059
F: 860-240-1002
mmiller@rrlawpc.com
jkaplan@rrlawpc.com

CERTIFICATION

I hereby certify that the foregoing was sent this 11th day of October, 2022, to the defendant as follows:

Jonathan J. Blake
Rebecca Quinn
Assistant Attorneys General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
Phone: 860-808-5400
Fax: 808-808-5593
Jonathan.blake@ct.gov
Rebecca.quinn@ct.gov

/s/ Mary Mintel Miller
Mary Mintel Miller

EXHIBIT 1

DOCKET NO.: HHB-CV-22-6074406-S

LEAF CT LLC	:	SUPERIOR COURT
	:	
	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
	:	AT NEW BRITAIN
	:	
SOCIAL EQUITY COUNCIL	:	OCTOBER 11, 2022

AMENDED COMPLAINT FOR ADMINISTRATIVE APPEAL

1. This is an appeal by Leaf CT LLC (“Leaf”) of a final decision rendered by the Social Equity Council (the “SEC”) of the Connecticut Department of Economic and Community Development (“DECD”) dated July 13, 2022, in which the SEC held that Leaf did not qualify as a social equity applicant by way of its application for a cannabis cultivator license (the “Decision”). The Decision is attached hereto as **Exhibit A**.

Parties and Jurisdiction

2. Leaf is a domestic limited liability company with a principal place of business located at 436 Pine Street, Waterbury, Connecticut 06704.

3. The SEC is a Connecticut council established pursuant to General Statutes § 21a-420d(a). It is located within DECD for administrative purposes only. It is considered an agency within the meaning of General Statutes § 4-166(1) for purposes of appeal in accordance with General Statutes § 4-183(a).

4. DECD is a Connecticut department that derives its authority to act from General Statutes § 32-1 et seq. It is considered an agency within the meaning of General Statutes § 4-166(1) for purposes of appeal in accordance with General Statutes § 4-183(a).

5. The Connecticut Department of Consumer Protection (“DCP”) is a Connecticut department that derives its authority to act from General Statutes § 21a-1 et seq. It is considered

an agency within the meaning of General Statutes § 4-166(1) for purposes of appeal in accordance with General Statutes § 4-183(a).

6. The Responsible and Equitable Regulation of Adult-Use Cannabis Act governs, inter alia, the licensing of Connecticut cannabis cultivators and is set forth at General Statutes § 21a-420 et seq.

7. Pursuant to General Statutes § 21a-420g(a), DCP delegated its authority to the SEC to “review the ownership information and any other information necessary to confirm that an applicant qualifies as a social equity applicant for all license type applications submitted to the department and designated by the applicant as a social equity [application].”

8. Leaf appeals the Decision pursuant to General Statutes §§ 4-183(a) and 21a-420g(d)(1), naming the SEC as the defendant because it is the entity that rendered the Decision.

9. The Decision is a final decision within the meaning of General Statutes § 4-166(5) for purposes of appeal in accordance with General Statutes §§ 4-183(a) and 21a-420g(d)(1).

Factual Background

10. General Statutes § 21a-420g provides that the SEC “shall prescribe the documentation necessary for applicants to submit to establish that ownership, residency and income requirements for social equity applicants are met. On or before September 1, 2021, the [SEC] shall post such necessary documentation requirements on its Internet web site to inform applicants of such requirements prior to the start of the application period.”

11. General Statutes § 21a-420e(f)(2) provides that license applications shall be accepted “no sooner than thirty days after the date the [SEC] posts the criteria and supporting

documentation necessary to qualify for consideration as a social equity applicant as set forth in section 21a-420g.”

12. General Statutes § 21a-420o(a) provides, in relevant part, “Thirty days after the [SEC] posts the criteria for social equity applicants on its Internet web site, [DCP] shall open a three-month application period for cultivators during which a social equity applicant may apply to [DCP] for a provisional cultivator license and final license for a cultivation facility located in a disproportionately impacted area without participating in a lottery or request for proposals.”

13. On December 8, 2021, the SEC posted a public announcement to its website wherein it provided an overview of the lottery process and further explained that, to qualify for social equity status, an applicant must establish, inter alia, that he or she either (1) “[w]as a resident of a disproportionately impacted area for at least 5 of the past 10 years; or [w]as a resident of a disproportionately impacted area for at least 9 years before the age of 18.” A copy of this public announcement is attached hereto as Exhibit B.

14. On January 4, 2022, DCP announced, by way of a press release, that it would “begin accepting applications for certain adult-use cannabis establishment license types in 30 days [on February 3, 2022], following the [SEC’s] final approval of technical assistance plans on Tuesday morning.” A copy of the press release is attached hereto as Exhibit C (the “Release”).

15. The Release went on to note that applications for these social equity cultivator licenses would “have a one-time 90-day application period beginning February 3, 2022, and ending May 4, 2022.”

16. The Release also explained that the SEC would confirm an applicant’s “social equity status” by confirming that the applicant meets the residency, income, and ownership and control requirements.

17. On or about January 14, 2022, the SEC posted guidelines indicating which documents “are required to establish residence” and the documents that are acceptable for verification of residency. A copy of these guidelines is attached hereto as Exhibit D (the “Guidelines”), and can be downloaded at: <https://portal.ct.gov/cannabis/-/media/Social-Equity-Council/Meeting-Files/Revised-Income-and-Residency.pdf>.

18. The DCP began accepting applications for social equity cultivator licenses on February 3, 2022.

19. On May 3, 2022, Leaf filed an application, numbered 0000048, for a social equity cultivator license (the “Application”).

20. On July 13, 2022, Leaf received the Decision, which was undated.

21. The Decision delineated its reasons for denying Leaf social equity applicant status.

22. The Decision determined that Leaf failed to establish social equity applicant status under both the Ownership and Residency requirements.

23. Leaf’s argument for social equity applicant status was based on the background of its majority member, Nicholle West.

24. The Decision determined, inter alia, that Ms. West did not provide enough documentation to establish that she lived in a disproportionately impacted area for at least 5 of the last 10 years, incorrectly stating that she provided documentation for only 3.1 of the previous 5 years.

25. The SEC did not afford Leaf with the opportunity to amend or supplement the Application to ameliorate the Decision’s incorrect determination that Ms. West did not reside in a disproportionately impacted area for 5 of the last 10 years.

26. In fact, Ms. West provided the following documentation establishing that she has resided in a disproportionately impacted area for at least 5 of the previous 10 years:

- a. A completed W-2 Wage and Tax Statement form for the year of 2018;
- b. Tax returns for the years of 2019, 2020, and 2021.
- c. A license issued on February 12, 2022.
- d. A license issued on February 1, 2019.
- e. A mortgage statement dated February 9, 2022.

27. Ms. West resides in a disproportionately impacted area and has resided there since 2005.

28. The Decision did not indicate whether Leaf's alleged failure to qualify as a social equity applicant would also disqualify it from the social equity lotteries it had already entered.

29. At the time of the Decision, Leaf had entered lotteries for adult use cannabis retailer, microcultivator, medical hybrid retailer and product manufacturer licenses.

30. The aforementioned lottery system permitted all applicants, including social equity applicants, to enter the lotteries an unlimited number of times, as long as a separate fee was paid for each entry.

31. To increase its likelihood of success, Leaf entered all of the lotteries multiple times, with the result that it paid \$300,375 in applicant fees.

32. As of the filing of this appeal, Leaf is unable to determine whether the SEC's conclusion, as set forth in the Decision, kept it from participating in the lotteries, despite paying \$300,375 for the right to do so.

Aggrievement

33. The Decision (specifically, the conclusion that Leaf failed to meet the SEC’s residency requirement) prejudiced Leaf’s substantial rights because it was: (a) in violation of constitutional and statutory provisions; (b) made upon unlawful procedure; (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and (d) arbitrary or capricious, or characterized by abuse of discretion.

34. Leaf has been aggrieved by the Decision, as the application period for social equity cultivator licenses located in disproportionately impacted areas was a one-time-only opportunity that ended on May 4, 2022.

35. Even if the State of Connecticut unexpectedly reopens this application opportunity next year and awards Leaf a license at that time, Leaf would have lost approximately eight million dollars in cultivation revenue in the meantime, and would be disadvantaged as to its opportunity to acquire one or more of its preferred choices of location.

The Decision Violated Constitutional And Statutory Provisions

36. General Statutes § 21a-421p(c) provides, in part, that “[u]pon the refusal to issue or renew a license or registration, the commissioner shall notify the applicant of the denial and of the applicant’s right to request a hearing within ten days from the date of receipt of the notice of denial.”

37. The Decision did not provide Leaf with notice that it had an opportunity to request a hearing within 10 days from the date of receipt of the Decision.

38. Thus, the Decision violated § 21a-421p(c).

39. Pursuant to General Statutes § 21a-420d(f), the SEC “shall promote and encourage full participation in the cannabis industry by persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement.”

40. Leaf has a legitimate claim to social equity applicant status that it can prove if permitted to do so, because Ms. West (1) met the income requirements as confirmed by the Decision, (2) has resided in a disproportionately impacted area for at least 5 of the previous 10 years, and (3) owns and controls at least 65% of Leaf in a manner that is consistent with the SEC's requirements.

41. However, instead of adhering to § 21a-420d(f) by communicating with Leaf and encouraging supplementation or clarification of the Application in order to encourage Ms. West to fully participate in this new industry, the SEC chose instead to violate the statute.

42. The SEC is not prohibited by any of the enabling statutes from contacting applicants, including Leaf, for clarification on documents provided or perceived missing.

43. Leaf would have been able to establish its qualification for social equity applicant status—because as a factual matter it does qualify for social equity status—if the SEC afforded Leaf with a meaningful opportunity to be heard; specifically, the SEC could have permitted Leaf to supplement the Application for any perceived deficiencies in the documents it provided to establish, in relevant part, Ms. West's residence in a disproportionately impacted area.

44. The SEC's conduct, by issuing the Decision and denying the Application for the reasons stated in the Decision, contravened Leaf's right to procedural due process as guaranteed by Article 1, § 8 of the Connecticut Constitution and the Fourteenth Amendment of the United States Constitution.

45. The failure by the SEC to afford Leaf an opportunity to supplement or amend the Application to address the reasons for denial set forth in the Decision deprived Leaf of notice and a meaningful opportunity to be heard.

46. The aforementioned conduct of the SEC thus violated § 4-183(j)(1).

The Decision Was Made Upon Unlawful Procedure

47. The Decision was made upon unlawful procedure, in violation of General Statutes § 4-183(j)(3), because the SEC failed to properly inform applicants of the criteria for residency as the Guidelines failed to explain how residency was to be measured, thus obfuscating the precise time period that an applicant would be required to show.

48. The Decision was made upon unlawful procedure, in violation of General Statutes § 4-183(j)(3), because the SEC's procedure failed to properly evaluate, or ask for reasonable supplemental documents in order to evaluate, Leaf's social equity applicant status, specifically relating to Ms. West's residence.

The Decision Was Clearly Erroneous

49. The Application provided sufficient documentation to establish that Ms. West satisfied the residency requirements in the years 2022, 2021, 2020, 2019 and 2018.

50. Ms. West could have provided similar documentation for the years preceding 2018, had it been requested.

51. The SEC did not draw a reasonable conclusion based on the residency documentation submitted, and did not give Leaf the opportunity to clarify the fact that Ms. West had resided in a disproportionately impacted area for close to two decades. Leaf actually had prior tax returns of Ms. West on-hand, and could have quickly supplied them, if asked.

52. The Decision was therefore clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record within the meaning of General Statutes § 4-183(j)(5).

The Decision Was Arbitrary Or Capricious Or Is Characterized By An Abuse of Discretion

53. The Decision was an arbitrary or capricious exercise of discretion, and/or was an abuse of the SEC's discretion, in that the SEC had sufficient information to conclude that Leaf would likely qualify for social equity applicant status, and could have easily confirmed that if it afforded Leaf the opportunity to provide supplemental documentation to establish that Ms. West resided in a disproportionately impacted area for 5 of the previous 10 years.

54. The Decision, and the SEC's denial of the Application, violated General Statutes § 4-183(j)(6).

PRAYER FOR RELIEF

WHEREFORE, Leaf respectfully requests that this Court enter an order:

1. Sustaining this appeal;
2. Vacating the Decision on the ground that Leaf's substantial rights have been prejudiced because the SEC's administrative findings, inferences, conclusions and decisions were: (a) in violation of constitutional and statutory provisions; (b) made upon unlawful procedure; (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and/or (d) arbitrary or capricious or characterized by an abuse of discretion;
3. Directing the SEC to qualify Leaf as a social equity applicant for a cultivator license and to give Leaf a fair consideration for that license, and in any other lotteries that may have been impacted by the Decision;
4. Awarding Leaf reasonable fees and expenses, including but not limited to attorney's fees, witness fees, and costs associated with the administrative and court proceedings, pursuant to § 4-184a of the Connecticut General Statutes; and
5. Awarding such other and further legal or equitable relief as this Court may deem just and proper.

**PLAINTIFF,
LEAF CT LLC**

By: /s/ Mary Intel Miller
Mary Intel Miller
Jeffrey N. Kaplan
Reid and Riege, P.C.
Juris No. 49362
One Financial Plaza, 21st Floor
Hartford, CT 06103
T: 860-240-1059
F: 860-240-1002
mmiller@rrlawpc.com
jkaplan@rrlawpc.com

EXHIBIT 2

DOCKET NO.: HHB-CV-22-6074406-S

RETURN DATE: SEPTEMBER 6, 2022 LEAF CT LLC

COURT

: SUPERIOR

:

~~LEAF CT LLC~~: JUDICIAL

DISTRICT OF

v.

:

NEW BRITAIN

~~v.~~

:

AT NEW BRITAIN

:

:

SOCIAL EQUITY COUNCIL

:

~~CONNECTICUT DEPARTMENT OF~~

:

~~ECONOMIC AND COMMUNITY~~

:

~~DEVELOPMENT, AND CONNECTICUT~~

:

~~DEPARTMENT OF CONSUMER~~

:

~~PROTECTION: AUGUST~~ OCTOBER 11, 2022

AMENDED COMPLAINT FOR ADMINISTRATIVE APPEAL

1. This is an appeal by Leaf CT LLC (“Leaf”) of a final decision rendered by the Social Equity Council (the “SEC”) of the Connecticut Department of Economic and Community Development (“DECD”) dated July 13, 2022, in which the SEC held that Leaf did not qualify as a social equity applicant by way of its application for a cannabis cultivator license (the “Decision”). The Decision is attached hereto as **Exhibit A**.

Parties and Jurisdiction

2. Leaf is a domestic limited liability company with a principal place of business located at 436 Pine Street, Waterbury, Connecticut 06704.

3. The SEC is a Connecticut council established pursuant to General Statutes § 21a-420d(a). It is located within DECD for administrative purposes only. It is considered an agency within the meaning of General Statutes § 4-166(1) for purposes of appeal in accordance with General Statutes § 4-183(a).

4. DECD is a Connecticut department that derives ~~it~~its authority to act from General Statutes § 32-1 et seq. It is considered an agency within the meaning of General Statutes § 4-166(1) for purposes of appeal in accordance with General Statutes § 4-183(a).

5. The Connecticut Department of Consumer Protection (“DCP”) is a Connecticut department that derives its authority to act from General Statutes § 21a-1 et seq. It is considered an agency within the meaning of General Statutes § 4-166(1) for purposes of appeal in accordance with General Statutes § 4-183(a).

6. The Responsible and Equitable Regulation of Adult-Use Cannabis Act governs, inter alia, the licensing of Connecticut cannabis cultivators and is set forth at General Statutes § 21a-420 et seq.

7. Pursuant to General Statutes § 21a-420g(a), DCP delegated its authority to the SEC to “review the ownership information and any other information necessary to confirm that an applicant qualifies as a social equity applicant for all license type applications submitted to the department and designated by the applicant as a social equity [application].”

8. Leaf appeals the Decision pursuant to General Statutes §§ 4-183(a) and 21a-420g(d)(1), naming ~~all three of the aforementioned parties as defendants, because the Decision was issued by the SEC, an administrative part of DECD that was exercising authority delegated to it by DCP~~the SEC as the defendant because it is the entity that rendered the Decision.

9. The Decision is a final decision within the meaning of General Statutes § 4-166(5) for purposes of appeal in accordance with General Statutes §§ 4-183(a) and 21a-420g(d)(1).

Factual Background

10. General Statutes § 21a-420g provides that the SEC “shall prescribe the documentation necessary for applicants to submit to establish that ownership, residency and income requirements for social equity applicants are met. On or before September 1, 2021, the [SEC] shall post such necessary documentation requirements on its Internet web site to inform applicants of such requirements prior to the start of the application period.”

11. General Statutes § 21a-420e(f)(2) provides that license applications shall be accepted “no sooner than thirty days after the date the [SEC] posts the criteria and supporting documentation necessary to qualify for consideration as a social equity applicant as set forth in section 21a-420g.”

12. General Statutes § 21a-420o(a) provides, in relevant part, “Thirty days after the [SEC] posts the criteria for social equity applicants on its Internet web site, [DCP] shall open a three-month application period for cultivators during which a social equity applicant may apply to [DCP] for a provisional cultivator license and final license for a cultivation facility located in a disproportionately impacted area without participating in a lottery or request for proposals.”

13. On December 8, 2021, the SEC posted a public announcement to its website wherein it provided an overview of the lottery process and further explained that, to qualify for social equity status, an applicant must establish, inter alia, that he or she either (1) “[w]as a resident of a disproportionately impacted area for at least 5 of the past 10 years; or [w]as a resident of a disproportionately impacted area for at least 9 years before the age of 18.” A copy of this public announcement is attached hereto as Exhibit B.

~~13~~14. On January 4, 2022, DCP announced, by way of a press release, that it would “begin accepting applications for certain adult-use cannabis establishment license types in 30

days [on February 3, 2022], following the [SEC's] final approval of technical assistance plans on Tuesday morning." A copy of the press release is attached hereto as Exhibit ~~B-C~~ (the "Release").

~~14~~15. The Release went on to note that applications for these social equity cultivator licenses ~~located in disproportionately impacted areas~~ would "have a one-time 90-day application period beginning February 3, 2022, and ending May 4, 2022."

~~15~~16. The Release also explained that the SEC would confirm an applicant's "social equity status" ~~and that to "qualify as a social equity applicant, at least 65 percent of the ownership or control of the business must be held by individuals who meet the income and residency requirements for a social equity applicant outlined in the law." (Emphasis added.)~~ by confirming that the applicant meets the residency, income, and ownership and control requirements.

~~16~~17. On or about January 14, 2022, the SEC posted guidelines indicating which ~~documentation documents~~ "is are required to establish ~~ownership and control of a social equity venture."~~ residence" and the documents that are acceptable for verification of residency. A copy of these guidelines is attached hereto as Exhibit ~~C-D~~ (the "Guidelines"), and can be downloaded at: ~~<https://portal.ct.gov/cannabis/-/media/Social-Equity-Council/Meeting-Files/SEA-Ownership-and-Control-rev11422.pdf>~~ <https://portal.ct.gov/cannabis/-/media/Social-Equity-Council/Meeting-Files/Revised-Income-and-Residency.pdf>.

~~17~~18. The DCP began accepting applications for social equity cultivator licenses on February 3, 2022.

~~18. On or about March 17, 2022, a meeting was held by the Policy Committee of the SEC.~~

~~19. During that meeting, an SEC Staff Attorney, Komla Matrevi, presented a memorandum dated March 14, 2022. A copy of that memorandum is attached hereto as Exhibit D (the “Memo”).~~

~~20. The Memo proposed the adoption of a new set of criteria by which a social equity applicant must be judged.~~

~~21. Later that day, the SEC Executive Director Ginnie Ray Clay stated that the SEC did not intend to make any amendments to the Guidelines.~~

~~22. Nevertheless, the Policy Committee appears to have adopted some or all of the criteria in the Memo.~~

~~23. Such an adoption of the Memo criteria by the Policy Committee would effectively change the criteria for establishing social equity applicant status in contravention of rule-making procedure and General Statutes §§ 21a-420e and 21a-420g.~~

~~24. Neither the SEC, nor any representative or member of the SEC, provided any notice of any kind to Leaf or prospective applicants that the SEC adopted some or all of the criteria in the Memo.~~

~~25~~19. On May 3, 2022, Leaf filed an application-, numbered 0000048-, for a social equity cultivator license (the “Application”).

~~26~~20. On July 13, 2022, Leaf received the Decision, which was undated.

~~27~~21. The Decision delineated its reasons for denying Leaf social equity applicant status.

~~28~~22. The Decision determined that Leaf failed to establish social equity applicant status under both the Ownership and Residency requirements.

~~29~~23. Leaf’s argument for social equity applicant status was based on the background of its majority member, Nicholle West.

~~30.—The Decision acknowledged that Ms. West is Leaf’s Chief Executive Officer and owns 65% of Leaf, but then concluded that she “does not have the voting power to direct the management, agents, or policies” because even though she is “charged with ‘executing the strategic direction of [Leaf]’” she is not listed as the Manager of the LLC and only has one vote.~~

~~31.—The Decision’s reasoning that Ms. West did not have control mirrored the new criteria that the SEC adopted from the Memo and implemented in evaluating the ownership requirement for social equity applicant status, which were criteria that were not made known to Leaf before the application period began.~~

~~32.—The SEC used these new criteria to evaluate whether Leaf qualified for social equity applicant status.~~

~~33.—Had Leaf properly understood that these new criteria were in place, it would have made changes to its formation documents to reflect the control it intended Ms. West to have.~~

~~34.~~24. The Decision determined -, inter alia, that Ms. West did not provide enough documentation to establish that she lived in a disproportionately impacted area for at least 5 of the last 10 years, incorrectly stating that she provided documentation for only 3.1 of the previous 5 years.

~~35~~25. The SEC did not afford Leaf with the opportunity to amend or supplement the Application to ameliorate the Decision’s incorrect determination that Ms. West did not **have control of Leaf and that she did not** reside in a disproportionately impacted area for 5 of the last 10 years.

~~36. — Leaf’s operating agreement does reflect Ms. West’s power to exercise the requisite control of day-to-day operations so as to satisfy the SEC, but Leaf remains willing to make any amendments deemed necessary by the SEC or this Court.~~

26. In fact, Ms. West provided the following documentation establishing that she has resided in a disproportionately impacted area for at least 5 of the previous 10 years:

- a. A completed W-2 Wage and Tax Statement form for the year of 2018;
- b. Tax returns for the years of 2019, 2020, and 2021.
- c. A license issued on February 12, 2022.
- d. A license issued on February 1, 2019.
- e. A mortgage statement dated February 9, 2022.

~~37.~~27. Ms. West resides in a disproportionately impacted area and has resided there since 2005.

~~38.~~28. The Decision did not indicate whether Leaf’s alleged failure to qualify as a social equity applicant would also disqualify it from the social equity lotteries it had already entered.

~~39.~~29. At the time of the Decision, Leaf had entered lotteries for adult use cannabis retailer, microcultivator, medical hybrid retailer and product manufacturer licenses.

~~40.~~30. The aforementioned lottery system permitted all applicants, including social equity applicants, to enter the lotteries an unlimited number of times, as long as a separate fee was paid for each entry.

~~41.~~31. To increase its likelihood of success, Leaf entered all of the lotteries multiple times, with the result that it paid \$300,375 in applicant fees.

~~42~~³². As of the filing of this appeal, Leaf is unable to determine whether the SEC's conclusion, as set forth in the Decision, kept it from participating in the lotteries, despite paying \$300,375 for the right to do so.

Aggrievement

~~43~~³³. The Decision (specifically, the conclusion that Leaf failed to meet the SEC's residency ~~and control requirements~~^{requirement}) prejudiced Leaf's substantial rights because it was: (a) in violation of constitutional and statutory provisions; (b) made upon unlawful procedure; (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and (d) arbitrary or capricious, or characterized by abuse of discretion.

~~44~~³⁴. Leaf has been aggrieved by the Decision, as the application period for social equity cultivator licenses located in disproportionately impacted areas was a one-time-only opportunity that ended on May 4, 2022.

~~45~~³⁵. Even if the State of Connecticut unexpectedly reopens this application opportunity next year and awards Leaf a license at that time, Leaf would have lost approximately eight million dollars in cultivation revenue in the meantime, and would be disadvantaged as to its opportunity to acquire one or more of its preferred choices of location.

The Decision Violated Constitutional And Statutory Provisions

~~46~~³⁶. General Statutes § 21a-421p(c) provides, in part, that "[u]pon the refusal to issue or renew a license or registration, the commissioner shall notify the applicant of the denial and of the applicant's right to request a hearing within ten days from the date of receipt of the notice of denial."

~~47~~³⁷. The Decision did not provide Leaf with notice that it had an opportunity to request a hearing within 10 days from the date of receipt of the Decision.

~~48~~38. Thus, the Decision violated § 21a-421p(c).

~~49~~39. Pursuant to General Statutes § 21a-420d(f), the SEC “shall promote and encourage full participation in the cannabis industry by persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement.”

~~50~~40. Leaf has a legitimate claim to social equity applicant status that it can prove if permitted to do so, because Ms. West (1) met the income requirements as confirmed by the Decision, (2) has resided in a disproportionately impacted area for at least 5 of the previous 10 years, and (3) owns and controls at least 65% of Leaf in a manner that is consistent with the SEC’s requirements.

~~51~~41. However, instead of adhering to § 21a-420d(f) by communicating with Leaf and encouraging supplementation or clarification of the Application in order to encourage Ms. West to fully participate in this new industry, the SEC chose instead to violate the statute.

~~52.—The SEC amended the Guidelines after the DCP opened the cultivator license application period on February 3, 2022, thus violating General Statutes §§ 21a-420e and 21a-420g(a).~~

~~53.—The Decision therefore violates General Statutes § 4-183(j)(1) because the SEC failed to inform applicants, including Leaf, of the criteria and necessary documents required for establishing social equity applicant status, namely, whether a business “is at least 65% owned and controlled by an individual (or individual) who meet the residency and income requirements for SEA status.”~~

~~54. Neither the SEC nor the DCP is~~ 42. The SEC is not prohibited by any of the enabling statutes from contacting applicants, including Leaf, for clarification on documents provided or perceived missing.

~~5543~~. Leaf would have ~~qualified~~ been able to establish its qualification for social equity applicant ~~status if (a) it was aware of the criteria that the SEC actually applied in evaluating the Application and (b) status—because as a factual matter it does qualify for social equity status—if~~ the SEC afforded Leaf with ~~any a meaningful~~ opportunity to be heard; specifically, the SEC could have permitted Leaf to supplement the Application for any perceived deficiencies in the documents it provided to establish, in relevant part, Ms. West’s residence in a disproportionately impacted area.

~~5644~~. The SEC’s conduct, by issuing the Decision and denying the Application for the reasons stated in the Decision, contravened Leaf’s right to procedural due process as guaranteed by Article 1, § 8 of the Connecticut Constitution and the Fourteenth Amendment of the United States Constitution.

~~5745~~. The failure by the SEC ~~and/or the DCP~~ to afford Leaf an opportunity to supplement or amend the Application to address the reasons for denial set forth in the Decision deprived Leaf of notice and a meaningful opportunity to be heard.

~~5846~~. The aforementioned conduct of the SEC ~~and/or DCP~~ thus violated § 4-183(j)(1).

The Decision Was Made Upon Unlawful Procedure

~~5947~~. The Decision was made upon unlawful procedure, in violation of General Statutes § 4-183(j)(3), because the SEC failed to properly inform applicants of the criteria for ~~ownership and control of the business entity and because the SEC applied different criteria not made known to prospective applicants prior to the beginning of application period.~~ residency as the Guidelines failed to explain how residency was to be measured, thus obfuscating the precise time period that an applicant would be required to show.

~~60~~48. The Decision was made upon unlawful procedure, in violation of General Statutes § 4-183(j)(3), because the SEC's procedure failed to properly evaluate, or ask for reasonable supplemental documents in order to evaluate, Leaf's social equity applicant status, ~~whether~~ specifically relating to Ms. West's ~~ownership and control of Leaf or to her~~ residence.

The Decision Was Clearly Erroneous

~~61. The Application provided sufficient documentation to establish that Ms. West exercised the requisite control of Leaf because she owns 65% of Leaf and dictated the terms of the Operating Agreement for it to reflect her own desires and wishes as a majority owner of Leaf; to the extent that this was insufficient to show "control" pursuant to the SEC's post-hoc criteria, there was sufficient evidence to establish that Ms. West could have satisfied the criteria had the SEC informed Leaf of such criteria and solicited from Leaf the necessary documentation to satisfy the criteria.~~

~~62. The Application also~~ 49. The Application provided sufficient documentation to establish that Ms. West satisfied the residency requirements in the years 2022, 2021, 2020, 2019 and 2018.

~~63~~50. Ms. West could have provided similar documentation for the years preceding 2018, had it been requested.

~~64~~51. The SEC did not draw a reasonable conclusion based on the residency documentation submitted, and did not give Leaf the opportunity to clarify the fact that Ms. West had resided in a disproportionately impacted area for close to two decades. Leaf actually had prior tax returns of Ms. West on-hand, and could have quickly supplied them, if asked.

~~65~~52. The Decision was therefore clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record within the meaning of General Statutes § 4-183(j)(5).

The Decision Was Arbitrary Or Capricious Or Is Characterized By An Abuse of Discretion

~~66. The Decision was an arbitrary or capricious exercise of discretion, and/or was an abuse of the SEC's discretion, in that the SEC had sufficient information to conclude that Leaf would qualify for social equity applicant status if the SEC afforded Leaf the opportunity to provide supplemental documentation to establish that Ms. West had sufficient "control" of Leaf under its newly adopted, post-hoc criteria.~~

~~67~~53. The Decision was an arbitrary or capricious exercise of discretion, and/or was an abuse of the SEC's discretion, in that the SEC had sufficient information to conclude that Leaf would likely qualify for ~~SEA~~ social equity applicant status, and could have easily confirmed that if it afforded Leaf the opportunity to provide supplemental documentation to establish that Ms. West resided in a disproportionately impacted area for 5 of the previous 10 years.

~~68~~54. The Decision, and the SEC's denial of the Application, violated General Statutes § 4-183(j)(6).

PRAYER FOR RELIEF

WHEREFORE, Leaf respectfully requests that this Court enter an order:

1. Sustaining this appeal;
2. Vacating the Decision on the ground that Leaf's substantial rights have been prejudiced because the SEC's administrative findings, inferences, conclusions and decisions were: (a) in violation of constitutional and statutory provisions; (b) made upon unlawful procedure; (c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and/or (d) arbitrary or capricious or characterized by an abuse of discretion;
3. Directing the SEC to qualify Leaf as a social equity applicant for a cultivator license and to give Leaf a fair consideration for that license, and in any other lotteries that may have been impacted by the Decision;
4. Awarding Leaf reasonable fees and expenses, including but not limited to attorney's fees, witness fees, and costs associated with the administrative and court proceedings, pursuant to § 4-184a of the Connecticut General Statutes; and
5. Awarding such other and further legal or equitable relief as this Court may deem just and proper.

**PLAINTIFF,
LEAF CT LLC**

By: /s/ Mary Mintel Miller
Mary Mintel Miller
Jeffrey N. Kaplan
Reid and Riege, P.C.
Juris No. 49362
One Financial Plaza, 21st Floor
Hartford, CT 06103
T: 860-240-1059
F: 860-240-1002
mmiller@rrlawpc.com

jkaplan@rrlawpc.com