

STATE OF NEW YORK
OFFICE OF CANNABIS MANAGEMENT
OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

**DECISION: PETITIONER'S
APPLICATION TO WITHDRAW
WITHOUT PREJUDICE**
Inspection No. TPB-25-00012

Omnium Health, Inc.

Respondent,

and

**Grön NY, LLC
Liberty Leaf NY, LLC**

Intervenor-Respondents.

On December 8, 2025, Petitioner stated in an email to this Tribunal, Respondent, and Intervenor-Respondents that it intended to withdraw the Notice of Pleading and Recall Order in this matter without prejudice. Petitioner's stated reason was that it needed to, "properly review information that has just come to our attention."¹ A conference was scheduled for December 9, 2025, at 11am. In advance of the conference, Respondent submitted a motion requesting this Tribunal deem Petitioner's withdrawal to be with prejudice.

A conference was held on December 9, 2025, with oral arguments from the parties as to whether Petitioner's withdraw should be with or without prejudice.

The Petitioner, The Office of Cannabis Management (hereinafter "OCM") is represented by Michael Waller, Esq., Kevin Brown, Esq., and Abir Ahmed, Esq.

The Respondent is represented by Jay Smith-Hill, Esq., and Patrick Hines, Esq. Outside Counsel.

Grön NY, LLC (1st Intervenor-Respondent) is represented by David Feuerstein, Esq., Matthew Schweber, Esq, and Justin B. Singer, Esq of Feuerstein Kulick LLP.

¹ Email dated Monday, December 8, 2025, 12:21 PM.

Liberty Leaf NY, LLC (2nd Intervenor-Respondent) is represented by Christopher M. Slowik, Esq. and Ruth Kraft, Esq. of Falcon, Rappaport, and Berkman LLP.

I. ISSUE

The two issues raised by Petitioner's position on withdrawal are whether the ability to withdrawal is determined by the ALJ or Petitioner, and whether the withdrawal should be with or without prejudice.

II. APPLICABLE LAW

9 NYCRR §133.17(e)(2) The administrative law judge shall not have the power to: dismiss a notice of charges.

9 NYCRR §133.17 (d)(11) The administrative law judge shall have the power to: take all measures necessary, but not otherwise prohibited by this Part, for the maintenance of order and the efficient conduct of the hearing and conduct the hearing in accordance with the requirements of due process.

SAPA §301(5) Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.

SAPA §301(3) Agencies shall adopt rules governing the procedures on adjudicatory proceedings and appeals, in accordance with provisions of article two of this chapter, and shall prepare a summary of such procedures in plain language. Agencies shall make such summaries available to the public upon request, and a copy of such summary shall be provided to any party cited by the agency for violation of the laws, rules or orders enforced by the agency

CPLR 3217(b) By order of court. Except as provided in subdivision (a), an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions, as the court deems proper. After the cause has been submitted to the court or jury to determine the facts the court may not order an action discontinued except upon the stipulation of all parties appearing in the action.

III. FINDINGS OF FACT

1. The following findings of fact are reproduced, in part, from the November 20, 2025, decision on the Respondent's motion to dissolve the recall order and motions to intervene.
2. Omnium holds an OCM Adult- Use Processor Type 1-Extracting license (June 17, 2024- June 17, 2026) and an OCM Adult-Use Distributor license (July 17, 2024- July 17, 2026). Petitioners for Intervention each hold Adult-Use Processor-Type 3 licenses. Grön's license

is valid from April 11, 2025, through April 11, 2027. Liberty Leaf's license is valid from October 18, 2024, through October 18, 2026.

3. On April 23, 2025, Petitioner issued a Statement of Findings and Quarantine Order related to some of Respondent's products. Two preliminary conferences were held, and a Corrective Action Plan was formed, but not fully approved by Petitioner. Petitioner asserted that Respondent was not entitled to a hearing on a Quarantine Order, and that Respondent's only avenue for relief was through filing an Article 78 proceeding.
4. This Tribunal found that Quarantine Orders were not merely investigatory tools, but sanctions which entitled Respondent to a hearing. Emphasizing, "an indefinite quarantine of perishable product is essentially a destruction order, as the product depreciates in quality and value until it is valueless." *OCM v. Omnium Health, Inc.* Ins. No. 20250423-ALB FABR (2025).
5. This Tribunal thus issued a decision on July 31, 2025, granting Respondent's right to a hearing. Between August 11, 2025, and August 13, 2025, Petitioner stated that they were considering exercising their right to file an exception to the Tribunal's ruling before August 29, 2025.
6. On August 25, 2025, Petitioner informed the Tribunal that they did not intend to file an exception, and a conference was held on August 28, 2025, to schedule hearing dates. During that conference the parties agreed that communication regarding the Corrective Action Plan had broken down, and Petitioner asserted with Respondent's assent that it would be, "prudent to schedule the hearing." The Parties discussed many items vital to scheduling a hearing, the number of potential witnesses, and agreements regarding disclosure.
7. A hearing was set for October 20, 21, and 22, 2025.
8. On September 15, 2025, Respondent sent a letter requesting clarification on the paragraphs from the Statement of Findings to be decided and stating that Findings 1 through 4 imposed a quarantine based on, "Category 3 violations—indicating that they 'create a potential threat to public health, safety, or welfare.' 9 N.Y.C.R.R. § 133.4(a)(3)."
9. A conference was scheduled for September 19, 2025, adjourned at the request of Petitioner to September 23, 2025. At that conference Petitioner asserted that Respondent should have the burden of proof and be the Petitioner for purposes of that proceeding per 9 N.Y.C.R.R. § 133.18(d)(6).
10. On October 6, 2025, this Tribunal issued an order clarifying the burden of proof for the Quarantine Order hearing, and stating OCM would be the Respondent and Omnium the Petitioner with the initial burden of proof.
11. On October 14, 2025, Respondent requested an adjournment and reconsideration of the October 6th order, Petitioner did not object.

12. On October 16th, this Tribunal denied Respondent's request for reconsideration and granted its adjournment request.
13. On October 20, 2025, OCM issued a Recall Order and Notice of Pleadings (hereinafter "NOP") under case number TPB-25-00012 to Omnium related to both of its license numbers. The Recall Order directed Omnium to among other things initiate recall protocols, quarantine and segregate product, issue refunds for recalled products, and stated that the quarantine, "will remain in effect until the Office provides additional written instructions and approval of Corrective Action Plan and product return procedure." The Recall Order directly named Grön and Liberty Leaf and stated that there was evidence that Omnium "hypothecated its license to Grön and Liberty Leaf....[and] aided and abetted the unlicensed processing of cannabis products by... Grön and Liberty Leaf." Finally, the Recall Order laid out directions for the submission and implementation, upon OCM approval, of a Corrective Action Plan.
14. The Recall Order did not lay out findings or evidence to support the order, nor did it specify with any detail violations or instances of noncompliance leading to the Recall Order.
15. The NOP, issued on the same day as the Recall Order listed the alleged violations and instances of noncompliance with specificity, including the provisions of the Cannabis Law and regulations that OCM asserted Omnium has violated.
16. The NOP delineated the process by which Omnium can request a hearing and enter a plea. It also listed potential penalties and a proposed penalty, should Respondent enter a no contest plea; both the category of potential and proposed penalty, contains the penalty of recall and destruction.
17. On October 28, 2025, Grön filed a verified petition seeking to intervene in the proceeding. Grön requested that it be able to participate in the proceeding to advocate for: the rejection of pleadings which relate to Grön, a removal of Grön products from the Recall Order, as well an award of costs and attorney's fees.
18. On October 31, 2025, Liberty Leaf filed a verified petition seeking to intervene in the proceeding.
19. On November 7, 2025, a conference was held between the Parties and Petitioners for Intervention. The Parties were directed to submit papers regarding Omnium's right to a hearing as to the Recall Order as well as the motion to intervene. OCM's motion was submitted, timely on November 12, 2025. Omnium's motion was submitted timely on November 14, 2025. Petitioners for Intervention were directed to submit motions in support of a right to a hearing by November 14, 2025, which were to be considered only if they were determined to be eligible to intervene. Their motions were also received in a timely manner.

20. On November 20th this Tribunal issued a decision granting the Intervenor-Respondents' right to Intervene, and ordering a full hearing on December 9, 10, and 11, 2025, per 9 NYCRR § 133.10 (a) regarding the charges listed in the NOP, sanctions levied in the form of a Recall Order, and penalties and sanctions requested by Petitioner.
21. On December 8, 2025, Petitioner stated via email to this Tribunal, Respondent, and the Intervenor-Respondents that they were withdrawing without prejudice.
22. On December 9, 2025, Respondent sent a letter in support of its application to have Petitioner's withdrawal be deemed with prejudice. Following this submission oral argument, on the record, during which Petitioner again expressed its intention to withdraw the Notice of Pleadings and Recall Order without prejudice.
23. Respondent and the Intervenor-Respondents requested an immediate lifting of the Recall Order. Petitioner stated that it had no objection to vacatur of the Recall Order.
24. An interim order dated December 9, 2025, vacated the Recall Order in its entirety and expressly reserved the right to determine whether withdrawal should be with or without prejudice. The parties were invited to enter written submissions in support of their applications.
25. Petitioner submitted a motion in support of its application to withdraw without prejudice.
26. On December 17, 2025, Respondent entered an additional submission in support of its application.
27. On December 18, 2025, Intervenor-Respondents Liberty Leaf and Grön joined in Respondent's application and asked that Petitioner's request for the withdrawal be granted, but with prejudice.
28. This Tribunal interprets Petitioner's statement as an application to withdraw from this proceeding without prejudice.

IV. ANALYSIS AND CONCLUSIONS OF LAW

The decision of whether to withdraw from a proceeding is not a decision that can be made unilaterally by Petitioner, on the eve of a hearing. Once an adjudicatory proceeding has been initiated under § 133.8 (a), issue has been joined, motion practice has ensued, and a hearing date has been scheduled, withdrawal is no longer a unilateral decision. It is a determination which rests within the sound discretion of the Tribunal. "The determination of a motion for leave to voluntarily discontinue an action without prejudice pursuant to CPLR 3217(b) rests within the sound discretion of the court ..." (*Parraguirre v. 27th St. Holding, LLC*, 831 N.Y.S.2d 460, 461 (2007) citing *Tucker v. Tucker*, 55 N.Y.2d 378, 383, 449 N.Y.S.2d 683, 434 N.E.2d 1050). In

this case, there is no reason to deny Petitioner's application to withdraw the Notice of Pleadings and Recall Order. However, it is important to remember that this is an application and not a decision within the unlimited purview of the agency. The Recall Order, at Petitioner's consent, and based on the instant application to withdraw, has been deemed vacated pursuant to a December 9, 2024, order. The terms of withdrawal are thus left to the Tribunal. The Cannabis Law and Regulations are silent regarding the withdrawal of proceedings. Petitioner argues that 9 NYCRR §133.17(e)(2) prevents this Tribunal from deeming the withdrawal with prejudice. Petitioner asserts that a withdraw with prejudice is akin to a sua sponte dismissal of a notice of charges. This however is not the case. Petitioner initiated the withdrawal and ultimate dismissal in this matter by requesting to withdraw the Notice of Pleadings and Recall Order and by taking no position with respect to Respondent's voluntary quarantine. Furthermore, Petitioner has stated in no uncertain terms that it is not prepared to proceed on the charges against Respondent due to a need to properly review information that has recently come to their attention. Petitioner could have requested an adjournment to review new information, but evidently the volume, complexity, or need for further investigation makes an adjournment impractical. While the Regulations do not allow for the presiding ALJ to dismiss a Notice of Charges sua sponte, Petitioner's reading of 9 NYCRR §133.17(e)(2) would deprive the ALJ of the ability to enforce hearing and adjournment timetables, or issue decisions on motions. Petitioner was unable or unwilling to proceed and the withdrawal and dismissal of the proceeding is of the Petitioner's making.

SAPA §301(5) allows for the disposition of an adjudicatory proceeding by stipulation, consent order, or other informal means. It is silent as to withdrawal, but CPLR§ 3217(b) is not. It vests the power in discontinuing proceedings, and the associated conditions, in the judge. Despite this power discontinuances are regularly granted without prejudice, unless it would result in prejudice to the rights of the defendant. *Deutsche Bank National Trust Company v. Holcomb*, 178 A.D.3d 773 at 774. While the case law is not definite on what is considered prejudice, there is some guidance on what is not. "Delay, frustration and expense in preparation of a contemplated defense do not constitute prejudice warranting denial of a motion for a voluntary discontinuance under CPLR 3217(b)." *Michael v. Michael*, 209 A.D.2d 1055, 619 N.Y.S.2d 1012 (1994). The incurrence of attorney's fees alone does not equate to prejudice. *Eugenia VI Venture Holdings, Ltd. v Maplewood Equity Partners, L.P.*, 38 A.D.2d 264, 2007. However, prejudice may be found where the Petitioner's litigation strategy was to commence and then discontinue the action in order to cause the opposing party to incur expense. *Michael v. Michael*, 209 A.D.2d 1055, 619 N.Y.S.2d 1012 (1994). Prejudice may be established where a party is seeking discontinuance to circumvent a court order. Omnium and the Intervenor-Respondents have alleged that they have incurred large expense defending this action, and that the recall and previous quarantine has significantly harmed its business relationships. However, neither Omnium nor Liberty Leaf, have presented evidence establishing that the Petitioner's litigation strategy was to initiate proceedings against Respondent and delay adjudication to exploit Respondent's or Intervenor-Respondents' financial condition or force them into insolvency. They have also not alleged a prejudice other than frustration, delay, or expense, which are not grounds for deeming the withdrawal to be with prejudice.

Petitioner asserts that granting a withdrawal with prejudice would frustrate the intent of the MRTA by obstructing its goal of ensuring individuals and communities historically impacted by prohibition have the opportunity in the lawful market. Petitioner frames the issue in an unnecessarily vague manner. The purpose of the Cannabis Law is made plain in Article 1, § 2, to “regulate, control, and tax marihuana, heretofore known as cannabis...” The allegations at issue concern conduct occurring over an extended regulatory period and implicate ongoing compliance obligations under the Cannabis Law. A withdrawal with prejudice would foreclose the agency from responding to future violations arising from materially similar facts during the same time period, thereby impairing Petitioner’s statutory oversight function and undermining the Legislature’s directive that OCM maintain continuing enforcement authority over licensed operators in the market. It would also give Respondent and Intervenor-Respondents an unfair and inequitable benefit in the market. Therefore, ordering the withdrawal in this matter to be with prejudice, absent a hearing, risks unduly constraining Petitioner’s ability to fulfill its statutory mandate. As such, the withdrawal in the case should be without prejudice.

V. DECISION

This Tribunal, upon full consideration of the facts, arguments, and applicable law, determines and orders as follows:

1. The interim order issued December 9, 2025, vacating the Recall Order dated October 20, 2025, is incorporated into this Order and remains in full force and effect.
2. The Notice of Pleadings is hereby deemed withdrawn and dismissed without prejudice.
3. Petitioner is not precluded from initiating future enforcement proceedings based on newly discovered facts regarding the time periods in the Notice of Pleadings, which shall be deemed to conclude as of the date of this decision, where no end date is provided.
4. Conduct on the part of Respondents, occurring after the period at issue, shall be subject to all applicable statutory and constitutional protections guaranteed to the Respondents.
5. This order does not determine the substantive validity of the allegation contained in the Notice of Pleading or Recall Order, and does not preclude Respondents from asserting procedural, constitutional, or other defenses in any future enforcement action.
6. This order does not preclude Petitioner from taking enforcement actions arising from new investigations or future conduct under the Cannabis Law or Office of Cannabis Management Regulations.
7. The Lexachrom quarantine is outside the scope of this adjudicatory proceeding. As a matter of law, SAPA § 301(2) requires that an adjudicatory tribunal act only upon matters for which parties have been given notice of the issues to be adjudicated, the factual allegations, and the legal authority invoked. None of those requirements

appears to have been satisfied with respect to the Lexachrom quarantine in this matter as it relates to the NOP and Recall Order. Although the Lexachrom quarantine cannot be adjudicated as part of this proceeding, the continued existence of the Lexachrom quarantine has procedural relevance to the Respondent's ability to effectuate an orderly wind-down of operations and to comply with OCM's existing regulatory framework. Therefore, to prevent unnecessary uncertainty and to promote orderly regulatory administration, limited clarification is appropriate. Accordingly, and without adjudicating the Lexachrom quarantine, Petitioner is directed to provide written clarification to Respondent within fourteen (14) days of the date of the Final Order addressing:


- a. Whether Respondent may transfer Lexachrom-quarantined product, by manifest, to other licensed processors or brands for purposes of retesting, relabeling, and resale under OCM's established Lexachrom compliance protocol; and
- b. Any conditions, limitations, or procedural requirements applicable to such transfers under current OCM policy.

This directive is issued solely to facilitate regulatory clarity and does not constitute a determination on the merits of the Lexachrom quarantine. In this regard, all other matters relating to the Lexachrom quarantine are reserved for potential future action or adjudication, if and when a proceeding is initiated.

WHEREFORE, THE PETITIONER'S REQUEST TO WITHDRAW WITHOUT PREJUDICE IS GRANTED.

This constitutes the final decision of the Office of Administrative Hearings. A copy of this decision shall be served upon the parties.

Dated: January 7, 2026


Laurie J. Cartwright
Administrative Law Judge

PLEASE BE ADVISED: Either party may appeal this decision within 30 calendar days of receipt, according to the specific manner described in Regulations at 9 §§ 133.23(g)(5) and 133.25(k).

This decision was sent via email on January 7, 2026 to the following:

Nickolas Perry
Celena Ditchev, Esq.
Kevin Brown, Esq.
Ruth Kraft, Esq.
Matthew Schweber, Esq.
Michael Waller, Esq.
David Feuerstein, Esq.

Sheila Wagner
Abir Ahmed, Esq.
Justin B. Singer, Esq.
Jay Smith-Hill, Esq.,
Christopher M. Slowik, Esq.
Patrick Hines, Esq.