

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

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**SCS CREATIONS, LLC, d/b/a REGIME VAPE  
AND SMOKE,**

Respondent.  
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**DECISION**  
**Inspection No. - 114202512030029**

The Office of Cannabis Management requested a hearing for an inspection which occurred on December 3, 2025. The hearing was held on March 11, 2026.

The Respondent did not appear and was not represented by counsel at the hearing.

The Office of Cannabis Management was represented by Kevin Marek, Esq.

Senior Investigative Specialist 1 Eva Chumsky (hereinafter “Chumsky”) testified on behalf of OCM.

Joshua Pennel, Esq. Administrative Law Judge (the Presiding Judge)

**I. ISSUE**

The allegations set forth in the Notice of Violation/Order to Cease Unlicensed Activity (hereinafter “NOV”) asserts that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. These allegations are based upon observations made during an inspection conducted at 278 N. Winton Rd., Rochester, NY 14610.

The scope of the hearing involves determination of whether OCM, by a preponderance of the evidence, was justified in issuing to Respondent the NOV and what penalty under Cannabis Law Article 6 §132 is justified.

## **II. APPLICABLE LAW**

Cannabis Law Article 6 §125(1) states that “[n]o person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, within the state without obtaining the appropriate registration, license, or permit therefor required....”

Cannabis Law Article 6 §138-A provides that “The board or the Office of Cannabis Management shall, in accordance with the authority otherwise conferred in this chapter, have the authority to: 1. order any person who is unlawfully cultivating, processing, distributing or selling cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such in this state without obtaining the appropriate registration, license, or permit therefor, or engaging in an indirect retail sale to cease such prohibited conduct. 2. seize any cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, found in the possession of a person engaged in the conduct described in subdivision one of this section.”

Cannabis Law Article 6 §132(1)(a) provides that any person who sells cannabis, or cannabis products, or any product marketed or labeled as such, without having an appropriate registration, license or permit therefor, may be subject to a civil penalty of not more than ten thousand dollars for each day during which such violation continues.

Cannabis Law Article 6 §132 (1)(c) requires that any civil penalties assessed “shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation....”

## **III. FINDINGS OF FACT**

1. On December 3, 2025, OCM conducted an inspection of SCS Creations, LLC, d/b/a Regime Vape and Smoke (hereinafter “SCS”), located at 278 N. Winton Rd., Rochester, NY 14610. OCM requested a hearing to determine the validity of the Notice of Violation (hereinafter “NOV”). The hearing was held on March 11, 2026.

2. OCM effected service upon Respondent by mailing a hearing notice to the business address via certified mail. This letter was delivered, and a signature documented on the certified letter return receipt, at the business location. The mailing provided the date of the hearing, which occurred more than 45 days after the mailing as required by law and gave the necessary information regarding the violations alleged and the potential penalty. Further, at the conclusion of the inspection, one of the owners of SCS was served with the NOV including applicable laws and procedures. Service was completed in a timely manner and Respondent’s failure to respond to the hearing notice or appear at the hearing resulted in a default hearing being conducted.

3. The testimony and evidence support a finding that Respondent was actively selling cannabis. Testimony presented detailed a publicly facing store with products on display in a manner consistent with a showroom and possessing accoutrements typical of a shop conducting business. Many of the products contained price tags leading to the conclusion that the items on display were for sale.

4. The testimony and evidence support the finding that the products recovered from SCS were illicit. SCS did not possess an adult use cannabis license and did not possess proper authorization for its conduct.

5. The Office of Cannabis Management conducted a proper search of the location. Much of the product recovered was in plain view and the storefront was open at the time they were entered.

#### **IV. ANALYSIS AND CONCLUSIONS OF LAW**

I find the notice OCM provided Respondent constituted adequate notice for the hearing held on March 11, 2026, and concerning the NOV issued on December 3, 2025. OCM mailed a copy of the Notice of Hearing more than forty-five (45) days prior to the date of the hearing (see 9 NYCRR §133.10(f)) and the notice provided the date of the alleged offense, the inspection number associated with the NOV, the pertinent sections of the law, specifically Cannabis Law Article 6, §138-a, and the penalty which may be assessed (\$10,000). Service by mail was made to the store's location and delivered – verified with a signature on the return receipt.<sup>1</sup> Respondent's non-appearance occurred despite OCM's efforts to serve notice. This hearing, therefore, proceeded in Respondent's absence, as a default hearing. The hearing nonetheless comports with the applicable requirements delineated in the New York Cannabis Law, 9 NYCRR §133, and the New York State Administrative Procedures Act. While adequate service allows the hearing to proceed, it does not remove OCM's burden to provide sufficient evidence that a violation occurred and that a penalty is warranted.

Chumsky testified that upon arrival at SCS, she observed a neon "OPEN" sign outside the store welcoming people to SCS (Ex. C-1). Other signs, including an additional neon sign, were present in the window, advertising products available inside the store (Ex. C-1). Chumsky testified that the store was open at the time of the inspection and that she entered the store through the unlocked front door. The evidence supports the finding that the store sold items to the public and was open at the time of the inspection. In addition to the store front's markings, SCS contained multiple display cabinets containing products, many of which had price tags (Ex. D-1-2). The store also had a point-of-sale system, a menu listing the prices for products, and security cameras which further support the assertion that SCS functioned as a publicly facing store (Ex. C-2, D-7).

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<sup>1</sup> At the hearing, OCM submitted a proof of service for a different case. This mistake was noticed during the hearing and OCM later delivered the correct exhibit, which I accepted into evidence.

While OCM recovered a relatively small number of cannabis products from SCS, the items they did recover were displayed, some in the cabinets alongside other non-illicit products, others more prominently displayed on shelves (Ex. D-1-2 & 7). The manner in which these products were displayed lead to the conclusion that they were available for purchase. Chumsky testified that she recognized some of the products on display and suspected them of being cannabis products based on her training and experience. This suspicion, she confirmed by inspecting some of the products and finding that they advertised on the packaging as being cannabis products and illicit under New York law (Ex. D-7-8 & 14-15). Other products had words, phrasings, or brand names which led Chumsky to suspect that they contained cannabis. She confirmed the contents of the products by using a QR code located on the product and recording the findings (Ex. D-3-6 & 9-13). These products were later itemized on vouchers prepared by Chumsky (see Ex. B). Finally, documentation of these findings was provided to an employee of the store, who identified himself as a co-owner of the business, in the form of the NOV which was handed to Nathanael Cruz (Ex. A-2) and posted on the store front (Ex. E-2).

In total, thirty-five (35) illicit products were recovered from SCS. These products were on display and in plain view of Chumsky when she entered the store. The products were either labeled as containing cannabis or suspected by Chumsky of containing cannabis, a suspicion she later confirmed using information on the products. Chumsky stated that SCS did not possess an adult use cannabis license, a fact she confirmed before visiting the store. The products which she recovered containing cannabis were, therefore, illicit and SCS did not have the proper authorization to sell these products. The manner in which they displayed these products lead to the conclusion that SCS was attempting to sell them in violation of New York law. I find that OCM's inspection of SCS was valid and that they legally seized illicit products discovered on site. Further, SCS was provided adequate notice of the violations charged by OCM when Chumsky delivered a copy of the NOV to an employee and posted the NOV on the storefront. While the total number of products may be relatively small, this does not relieve SCS of responsibility for possessing and attempting to sell these products.

### ***Penalty***

OCM showed by a preponderance of the evidence that SCS possessed and attempted to sell products containing cannabis. I am compelled to impose penalty, however, due to the small number of items recovered, such a penalty should be limited. Cannabis law requires a "proportional" penalty, and I believe the evidence supports a small penalty due to the small size of the illicit product recovered. Regardless of the size of recovery, SCS still presented a danger to its customers and the public due to the fact that it is unlikely that any of the products were tested for safety or quality assurance.

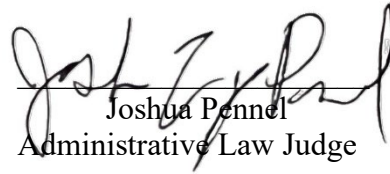
## **V. DECISION**

The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 278 N. Winton Rd., Rochester, NY 14610. In so doing, Respondent violated Cannabis Law Article 6 and is ordered to pay a fine of \$1,500.

**WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6, RESPONDENT IS HEREBY ORDERED TO PAY A \$1,500 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON DECEMBER 3, 2025.**

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

Dated: March 25, 2026

  
Joshua Pennel  
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 NYCRR §§ 133.23(g)(5) and 133.25(k).

This decision was sent via e-mail on March 25, 2026, to the following:

Kevin Marek, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.

This decision was sent via certified mail on March 25, 2026, to the following:

SCS Creations, LLC. Regime Vape  
Regime Vape and Smoke  
278 N. Winton Rd.  
Rochester, NY 14610