IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PROSPERITY FARM NY LLC and RAISINGCANE NY LLC, Plaintiffs, v. HORACE W. GRAHAM, JR., in his official capacity as Assistant Commissioner of the Virgin Islands Department of Licensing and Consumer Affairs, and HORACE W. GRAHAM, JR., individually, Defendant.	:	Case No. 3:26-cv-66 Complaint for Declaratory, Injunctive and Monetary Relief Jury Trial Demanded

COMPLAINT

Plaintiffs PROSPERITY FARM NY LLC and RAISINGCANE NY LLC, by their undersigned counsel, for their Complaint against Defendant HORACE W. GRAHAM, JR., allege as follows.

PRELIMINARY STATEMENT

1. This is an action under 42 U.S.C. § 1983 against HORACE W. GRAHAM, JR., the Assistant Commissioner of the Virgin Islands Department of Licensing and Consumer Affairs (the "DLCA"). On October 9, 2026, Plaintiffs sued the DLCA's Commissioner, its General Counsel, and the Coordinator of its Alcohol Control Unit, among others, in this Court. Between October 16 and October 21, 2026, each of those three officials was personally served with process at the DLCA's office at the Golden Rock Shopping Center, St. Croix. On October 26, 2026, GRAHAM signed a letter (the "Withdrawal Notice"), copied to each of them, withdrawing "[e]ffective immediately," without notice and without a hearing, the DLCA's written approval, then more than fourteen months old, of the labels

of Plaintiffs' six products and of their sale in the Virgin Islands. Plaintiffs' complaint and their motion for a preliminary injunction in that action had alleged that the DLCA's written approvals of those products had never been revoked.

2. GRAHAM is sued individually, for damages, and in his official capacity as Assistant Commissioner, for prospective declaratory and injunctive relief only. Count I alleges that the withdrawal was retaliation for Plaintiffs' petitioning of this Court, in violation of the First Amendment. Count II alleges that the withdrawal, with immediate effect and without notice or any opportunity to be heard, of a written approval the DLCA had issued and had left undisturbed for more than fourteen months violated the Due Process Clause of the Fourteenth Amendment. The Withdrawal Notice itself shows why notice and a hearing were required. It states its grounds for withdrawing the approval of August 12, 2025, by quoting the text of different labels: those RAISINGCANE submitted on July 1, 2025, which the DLCA approved on July 16, 2025, in a letter the Withdrawal Notice leaves standing. Statements the Withdrawal Notice quotes as the text of the labels, including "Sugar Cane Liqueur" and "Origin: St. Croix," and the proofs it attributes to the two gins, do not appear on the labels approved on August 12, 2025, as alleged in paragraph 40. A hearing would have exposed that error before the approval was withdrawn.

3. Plaintiffs do not ask this Court to decide whether any label of their products complies with territorial law, whether any approval of the labels was required, whether the approval was validly issued, or whether GRAHAM had authority under territorial law to withdraw it. Each claim in this Complaint is independent of the answers to those questions. Plaintiffs have presented their objections under territorial law to the DLCA and to the Superior

Court of the Virgin Islands, as alleged in paragraphs 9 and 10, and in each forum have reserved for determination by this Court every claim and question arising under the Constitution or laws of the United States.

4. The violation is ongoing. The withdrawal remains in effect. It directs that the approval "must not be relied upon as authorization to sell, resell, distribute, offer for sale, or otherwise place the identified products into commerce in the U.S. Virgin Islands, nor may it be represented as final DLCA approval of the labels, brands, or trade names." Ex. 1 at 1. That direction reaches every bar, restaurant, and retailer that buys Plaintiffs' products for resale.

JURISDICTION & VENUE

5. This action arises under the Constitution of the United States and 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), and under 48 U.S.C. § 1612(a), which vests the District Court of the Virgin Islands with the jurisdiction of a district court of the United States. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

6. The First and Fourteenth Amendments apply in the Virgin Islands by their own force and by operation of section 3 of the Revised Organic Act of 1954, 48 U.S.C. § 1561. Section 1983 provides a remedy against every person who, under color of any statute, ordinance, regulation, custom, or usage of any Territory, subjects a person within its jurisdiction to the deprivation of rights secured by the Constitution. GRAHAM acted at all relevant times under color of the law of the Virgin Islands.

7. Venue lies in this District under 28 U.S.C. § 1391(b)(1) and (2). On information and belief, GRAHAM resides in the Virgin Islands, and each of the events giving rise to the claims in this Complaint occurred in the Virgin Islands.

RELATED PROCEEDINGS

8. On October 9, 2026, Plaintiffs filed in this Court *Prosperity Farm NY LLC v. Hodge*, No. 3:26-cv-57 (the "First Action"), under 42 U.S.C. § 1983, against officials of the Government of the Virgin Islands, including H. Nathalie Hodge, the Commissioner of the DLCA; Geraldine P. Vaval, its General Counsel; and Nicholas Francois, the Coordinator of its Alcohol Control Unit, each in an official capacity and individually. Ex. 2. GRAHAM is not a party to the First Action. The First Action concerns conduct that occurred before it was filed. This action concerns the Withdrawal Notice of October 26, 2026, which issued seventeen days after the First Action was filed and which is not the subject of any claim in it. Plaintiffs identify the First Action as a related case.

9. On November 5, 2026, Plaintiffs filed with the DLCA a petition for reconsideration of the Withdrawal Notice under 3 V.I.C. § 272(f)(1). As of the filing of this Complaint, the DLCA has not decided it.

10. On or about November 6, 2026, Plaintiffs filed in the Superior Court of the Virgin Islands a petition for writ of review of the Withdrawal Notice under 5 V.I.C. §§ 1421 and 1422 and Rule 91 of the Virgin Islands Rules of Civil Procedure, Case No. SX-2026-CV-00340. Plaintiffs filed it protectively and asked the Superior Court to hold it in abeyance pending the DLCA's decision on the petition for reconsideration.

11. In each of those proceedings Plaintiffs presented only questions of territorial law, and expressly reserved for determination by this Court every claim and question arising under the Constitution or laws of the United States. GRAHAM is not a party to either proceeding in his individual capacity, and no damages are sought in either. Plaintiffs do not ask this Court to review, reverse, or set aside any decision of the DLCA or of any court, and no relief sought in this Complaint would enjoin, stay, or interfere with either proceeding.

PARTIES

12. Plaintiff PROSPERITY FARM NY LLC ("PROSPERITY FARM") is a New York limited liability company. It owns approximately 183 acres of agricultural land at 180 Mahogany Road, Frederiksted, St. Croix (the "farm"), and leases the farm to RAISINGCANE. It holds DLCA License No. 2-59255-2L.

13. Plaintiff RAISINGCANE NY LLC ("RAISINGCANE") is a New York limited liability company. It leases the farm from PROSPERITY FARM and produces on it six alcoholic beverages: Allspice Dram, Banana Liqueur, Ginger Liqueur, Mauby Amaro, Sorrel Gin, and Tropical Gin (the "six products"). It holds DLCA License No. 2-59253-2L, and it transacts business under the trade names "Prosperity Farm" and "Prosperity Farm Distillery."

14. Robert Apfel is the Manager of each Plaintiff.

15. Defendant HORACE W. GRAHAM, JR. is the Assistant Commissioner of the DLCA, a position he has held since January 2024. From about 2016 or 2017 until then, he was the Director of the DLCA's Division of Licensing. As Assistant Commissioner he has, in his

words, "retained primary responsibility for the oversight of the licensing functions within the Department of Licensing and Consumer Affairs." Ex. 3, Tr. 16:16–17:14. He signed the Withdrawal Notice of October 26, 2026. He is sued individually, for damages, and in his official capacity as Assistant Commissioner, for prospective declaratory and injunctive relief only. No claim for money is made against him in his official capacity. Neither the Government of the Virgin Islands nor the DLCA is a defendant. GRAHAM acted at every time mentioned in this Complaint under color of the statutes, regulations, customs, and usages of the Virgin Islands.

FACTUAL ALLEGATIONS

A. The Alcohol Control Unit Solicits, Reviews, and Approves the Labels

16. On July 1, 2025, Nicholas Francois, the Coordinator of the DLCA's Alcohol Control Unit (the "Unit"), met Robert Apfel at the farm and asked that Plaintiffs submit the labels of the six products to him. That afternoon RAISINGCANE, through its Chief Revenue Officer, Mark Gelband, emailed the labels to Francois. Ex. 4 at 1–7. On the morning of July 2, 2025, Francois replied: "Got it Thanks." *Id.* at 8.

17. At 9:34 a.m. on July 2, 2025, the Unit's Alcohol Control Inspector, Shenelle Bartlett-Benjamin, wrote to RAISINGCANE under the subject "Label Approval," with copies to Francois and a third member of the Unit: "Please see approved labels. Attached is a registration form that should be filled out and submitted at your earliest convenience." Ex. 4 at 9. RAISINGCANE returned the completed form on July 15, 2025. *Id.* at 11.

18. On July 16, 2025, RAISINGCANE, through Gelband, wrote to Francois and Bartlett-Benjamin: "We have retailers that want to stock and sell our products. Do you have an

official letter that permits us to sell as discussed?" Francois replied: "Yes, I do I will have it done." Ex. 4 at 13. That afternoon Francois sent RAISINGCANE a letter of that date on DLCA letterhead. The letter states that "[u]pon review of the following labels submitted by Prosperity Farm the Department of Licensing and Consumer Affairs Alcohol Unit hereby approves the following labels," lists the six products, and states that they "are approved for sale in the United States Virgin Islands." Ex. 5 at 1.

19. On August 1, 2025, RAISINGCANE sent Francois and Bartlett-Benjamin amended labels for the six products and asked: "Can we get these labels approved ASAP as well?" Ex. 4 at 14–26. After RAISINGCANE followed up on August 4, 6, and 8, 2025, Francois replied on August 11, 2025: "I will check on it." *Id.* at 27–31. On the afternoon of August 12, 2025, Bartlett-Benjamin sent RAISINGCANE a letter of that date, signed by Francois on DLCA letterhead, with the message: "Please see attached label approval." *Id.* at 32–34.

20. The letter of August 12, 2025, states that "[u]pon review of the following labels submitted by Prosperity Farm & Restaurant LLC the Department of Licensing and Consumer Affairs Alcohol Unit hereby approves the following labels," lists the six products, and states: "These items are approved for sale in the United States Virgin Islands." Ex. 5 at 2. No entity named Prosperity Farm & Restaurant LLC exists. The labels were RAISINGCANE's.

21. Plaintiffs refer to the letters of July 16 and August 12, 2025, together as the "approvals." Each was issued by the Unit that had asked for the labels, on DLCA letterhead, over the signature of the Unit's Coordinator, after the Unit's Alcohol Control Inspector had

communicated a "Label Approval" in writing and after RAISINGCANE had completed and returned the registration form the Inspector had asked it to submit.

B. RAISINGCANE Relies on the Approvals

22. RAISINGCANE began selling the six products through retail merchants in the Virgin Islands in September 2025. In 2026 it sold them to twenty-six accounts on St. Croix, including bars, restaurants, and six grocery retailers.

23. In mid-June 2026, after an officer of the Unit told personnel of three St. Croix supermarkets that they would be fined for carrying the six products, as alleged in the First Action, RAISINGCANE delivered a copy of the most recent of the approvals, the letter of August 12, 2025, to each of its accounts, between June 17 and June 20, 2026.

C. The Approvals Stand for More Than Fourteen Months

24. Between June 24 and November 14, 2025, the DLCA issued seven citations to Plaintiffs. It conducted a proceeding against them on December 2, 2025, entered an Amended Decision and Order on July 30, 2026, denied their motion for reconsideration on September 1, 2026, and served a further citation on September 12, 2026. No citation, notice, or order issued to either Plaintiff before October 26, 2026, identified any deficiency in the labels of the six products.

25. On August 8, 2026, Plaintiffs placed both approvals before the DLCA. The declaration of Robert Apfel supporting their motion for reconsideration of the Amended Decision and Order described both letters, stated that "these letters remain outstanding, valid and have neither been revoked nor amended," and referred to them as an exhibit. First Action, ECF No. 1-30 at 32–33.

D. Plaintiffs Petition This Court

26. On October 9, 2026, Plaintiffs filed the First Action and a motion for a preliminary injunction. First Action, ECF Nos. 1, 2. The First Action names Hodge, Vaval, and Francois as defendants, each in an official capacity and individually. Ex. 2.

27. The approvals were central to the First Action. Its complaint alleged that "[n]either letter has been revoked, withdrawn, superseded, suspended, or qualified," First Action, ECF No. 1 ¶ 37; that statements made to Plaintiffs' retail customers in June 2026 were false because the Unit had approved the six products for sale and "had never revoked, withdrawn, or qualified that approval," *id.* ¶ 101; and that the approvals were "a right or status previously recognized by the law of the Virgin Islands," *id.* ¶ 200. Plaintiffs' motion for a preliminary injunction argued that the approvals "remain unrevoked." First Action, ECF No. 2 at 13.

28. Each of the three DLCA officials named in the First Action was personally served with the summons and complaint at the DLCA's office at the Golden Rock Shopping Center, St. Croix: Vaval on October 16, 2026; Hodge on October 19, 2026; and Francois on October 21, 2026. Ex. 6 at 2–3, 5–6, 8–9. The Golden Rock Shopping Center office is the first office listed on the DLCA letterhead on which GRAHAM signed the Withdrawal Notice. Ex. 1 at 1.

E. GRAHAM's Knowledge of Plaintiffs' Dispute With the DLCA

29. GRAHAM knew of Plaintiffs' dispute with the DLCA long before he signed the Withdrawal Notice. On November 10, 2025, Robert Apfel emailed GRAHAM, Hodge, Francois, and the DLCA's citations address, asking that the hearing then set on the citations against Plaintiffs be postponed while he recovered from surgery. Ex. 7.

30. On December 2, 2025, the DLCA, through Vaval, called GRAHAM as its first witness in the proceeding against Plaintiffs on those citations. Ex. 3, Tr. 3:7–8, 15:24–16:9. GRAHAM testified that he was familiar with PROSPERITY FARM and had reviewed its license file, *id.* at 17:24–18:4, and that he had had "various and sundry opportunities to sort of have conversations on these matters" with Plaintiffs, *id.* at 27:13–19.

31. On cross-examination, Plaintiffs' counsel asked GRAHAM whether it was "an exercise of bad faith on the part of . . . Prosperity Farm, or is it simply a different interpretation of the law," for PROSPERITY FARM, holding a commercial agriculture license, to have music at a farm food event. GRAHAM answered: "I believe that it is bad faith, if that's the definition that you're using," and "persisting in doing this would be a consideration of bad faith." Ex. 3, Tr. 35:24–36:21.

32. The Amended Decision and Order of July 30, 2026, rests its conclusions of law on GRAHAM's testimony, stating: "As Graham, Oriol, and Petersen testified, the statute does not eliminate, expand, supersede, or exempt Respondents from compliance with other applicable licensing laws regarding commercial activities . . . ." First Action, ECF No. 1-28 at 14. Plaintiffs' appeal of that order to the Superior Court, Case No. SX-2026-CV-00310, served on Hodge and Vaval on September 11, 2026, was pending when GRAHAM signed the Withdrawal Notice.

33. Plaintiffs plead GRAHAM's testimony of December 2, 2025, solely as a fact bearing on his knowledge of Plaintiffs' dispute with the DLCA and on his motive, and assert no claim arising from it.

34. On information and belief, GRAHAM knew of the First Action when he signed the Withdrawal Notice. He signed it seventeen days after the First Action was filed, and five, seven, and ten days, respectively, after Francois, Hodge, and Vaval were personally served at the DLCA's Golden Rock Shopping Center office. He copied it to each of them. He is the DLCA official with primary responsibility for the oversight of its licensing functions. And the First Action alleged, as alleged in paragraph 27, that the approvals had never been revoked.

F. The Withdrawal Notice

35. On October 26, 2026, GRAHAM signed and sent to Plaintiffs, by email, a seven-page letter on DLCA letterhead captioned "NOTICE OF WITHDRAWAL OF INADVERTENT APPROVAL; ALCOHOLIC BEVERAGE BRAND REGISTRATION AND LABEL COMPLIANCE REVIEW - CORRECTIONS AND ADDITIONAL INFORMATION REQUIRED". Ex. 1. It is addressed to PROSPERITY FARM, to the attention of RAISINGCANE. *Id.* at 1. It is copied to Hodge, as Commissioner; to Vaval, as General Counsel; and to Francois, as Coordinator of the Alcohol Control Unit. *Id.* at 7. It states that the DLCA writes "through its Alcohol Control Unit." *Id.* at 1.

36. The Withdrawal Notice states that the DLCA "hereby withdraws and rescinds in full any purported approval conveyed by the August 12, 2025 communication"; that "[e]ffective immediately, no approval arising from that communication is in effect"; and that the letter of August 12, 2025, "must not be relied upon as authorization to sell, resell, distribute, offer for sale, or otherwise place the identified products into commerce in the U.S. Virgin Islands, nor may it be represented as final DLCA approval of the labels, brands, or trade

names." Ex. 1 at 1. It records the status of each product's brand registration as "NO APPROVAL CURRENTLY IN EFFECT." *Id.* at 6.

37. The Withdrawal Notice states that the statements in the letter of August 12, 2025, "were made inadvertently and prematurely," and that the letter "was not issued or distributed through the Department's established review and authorization channels for final agency action." Ex. 1 at 1. It does not state when, how, or by whom either determination was made, or why the withdrawal was made on October 26, 2026. It does not identify the "established review and authorization channels" or state where they are set out.

38. The Withdrawal Notice does not mention the letter of July 16, 2025, which approved the same six products in substantially the same words and over the same signature. Ex. 5 at 1. It neither withdraws nor qualifies that letter.

39. No notice preceded the Withdrawal Notice. No hearing was held or offered before it, and none has been held or offered since. The Withdrawal Notice identifies no procedure by which Plaintiffs may contest the withdrawal. It describes itself as "an administrative correction" and as "not a final denial of the pending submissions," Ex. 1 at 1, and invites Plaintiffs to submit revised labels and supporting documentation to the Unit "for further review," *id.* at 7, on no stated schedule. The withdrawal itself took effect immediately and is not conditioned on the outcome of any further review.

40. The Withdrawal Notice states its grounds by reference to the labels that RAISINGCANE sent to Francois on July 1, 2025, and that the letter of July 16, 2025, approved, and not by reference to the amended labels that the letter of August 12, 2025, approved. It quotes, as the text of the labels, the maker's statement "RaisingCane NY LLC, St. Croix, USVI," Ex.

1 at 2; identifies the four liqueurs by the designation "Sugar Cane Liqueur," *id.* at 1, 4–5, and the two gins as "Distilled from Cane Spirit," *id.* at 5; quotes the statement "Origin: St. Croix," *id.* at 3; and states the proof of Sorrel Gin as 90 and of Tropical Gin as 96, *id.* at 5. Each of those statements appears on the labels sent on July 1, 2025. Ex. 4 at 2–7. None appears on the amended labels sent on August 1, 2025, and approved on August 12, 2025, which state the proof of Sorrel Gin as 94 and of Tropical Gin as 90. *Id.* at 15–26. The Withdrawal Notice thus states the grounds for withdrawing the approval of August 12, 2025, by reference to the text of labels approved on July 16, 2025, an approval it leaves standing. To the extent any ground it states also bears on the labels approved on August 12, 2025, the Withdrawal Notice does not say so.

41. The Withdrawal Notice identifies no event between August 12, 2025, and October 26, 2026, that prompted the withdrawal. The approval it withdrew had stood for more than fourteen months, through the proceedings alleged in paragraph 24, and both approvals had been before the DLCA since August 8, 2026, as alleged in paragraph 25. The Withdrawal Notice asserts no exigency and identifies no risk to any consumer.

G. Injury

42. The Withdrawal Notice forbids any person to rely on the letter of August 12, 2025, to "resell" the six products, and forbids any person to represent that letter as final DLCA approval. Ex. 1 at 1. That letter is the one RAISINGCANE delivered to each of its accounts in June 2026, as alleged in paragraph 23. Since October 26, 2026, neither Plaintiff can represent to any customer that the approval conveyed by that letter is in effect.

43. The withdrawal has caused and continues to cause Plaintiffs injury, including lost sales and orders of the six products; the loss of the written approval on which RAISINGCANE relied in dealing with the bars, restaurants, and retailers that buy the products for resale; injury to Plaintiffs' reputation in the trade; and the costs of relabeling, of resubmitting labels and supporting documentation to the Unit, and of contesting the withdrawal before the DLCA and the Superior Court, in amounts to be proven at trial.

CLAIMS FOR RELIEF

COUNT I
Retaliation for Petitioning This Court
First Amendment, Petition Clause and Speech Clause; 42 U.S.C. § 1983
Against Defendant GRAHAM individually, for damages; and in his official capacity, for prospective declaratory and injunctive relief

44. Plaintiffs incorporate paragraphs 1 through 43. This count is pleaded under the Petition Clause and, in the alternative, the Speech Clause of the First Amendment. Plaintiffs allege (1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising constitutional rights, and (3) a causal link between the protected conduct and the retaliatory action.

45. **Protected activity.** The filing of the First Action and of Plaintiffs' motion for a preliminary injunction on October 9, 2026, and the service of process in the First Action on Vaval, Hodge, and Francois between October 16 and October 21, 2026, were constitutionally protected activity. Plaintiffs further allege, as protected activity bearing on GRAHAM's motive, their appeal to the Superior Court of the Amended Decision and Order, served on September 11, 2026; their motion for reconsideration of August 8, 2026, which placed the

approvals before the DLCA; and their litigation of the citations before the DLCA on December 2, 2025, at which GRAHAM testified against them.

46. **Clearly established law.** The right GRAHAM violated was clearly established long before October 26, 2026. In a case arising in this District, the Third Circuit held that a plaintiff's "filing of his EEOC complaint and his employment discrimination suit against the Virgin Islands Police Department constituted protected activity under the First Amendment," because "[t]he right of access to the courts is indeed but one aspect of the right of petition." *Anderson v. Davila*, 125 F.3d 148, 161 (3d Cir. 1997) (quoting *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)). The court applied the rule that "[a]n action that would otherwise be permissible is unconstitutional if it is taken in retaliation for the exercise of the right of access to the courts," *id.* at 162 (quoting *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1177 (3d Cir. 1990)), and explained that, were it otherwise, "[o]fficials could simply engage in harassment any time an individual filed, or announced his intention to file, a lawsuit against them," *id.* at 162–63. Among the forms such retaliation takes, it identified the denial of a site permit and the suspension of permits, in each of which "the plaintiff was denied a benefit simply because he exercised his First Amendment rights." *Id.* at 163. A reasonable official in GRAHAM's position on October 26, 2026, would have understood that withdrawing a written governmental approval to sell a business's products because the business had sued his colleagues in this Court violated the First Amendment.

47. **Retaliatory action.** On October 26, 2026, GRAHAM withdrew, effective immediately, the DLCA's written approval of the labels of the six products and of their sale in the Virgin

Islands; directed that the approval not be relied upon by any person to sell or resell the products, or be represented as DLCA approval; and recorded that no approval of the products' brand registration is in effect. The withdrawal, with immediate effect, of a written governmental approval to sell a business's products, directed to the business's customers as well as to the business, would deter a person of ordinary firmness from petitioning a court. The inquiry is objective, and whether either Plaintiff was in fact deterred is not the measure of this element.

48. **Causation.** Plaintiffs' protected activity was a substantial or motivating factor in the withdrawal. Plaintiffs plead the following facts. (a) The withdrawal came seventeen days after the First Action was filed and five to ten days after the three DLCA officials named in it were personally served at the DLCA's Golden Rock Shopping Center office, as alleged in paragraph 28. (b) GRAHAM copied the Withdrawal Notice to each of those three officials. (c) The approval he withdrew had stood for more than fourteen months, without objection by the DLCA, through the proceedings alleged in paragraph 24, and both approvals had been before the DLCA since August 8, 2026. (d) The withdrawal removed the premise, alleged in the First Action's complaint and argued in its motion for a preliminary injunction, that the approvals had never been revoked, as alleged in paragraph 27. (e) GRAHAM had testified against Plaintiffs on December 2, 2025, that "persisting in doing this would be a consideration of bad faith," as alleged in paragraph 31. (f) GRAHAM knew of Plaintiffs' dispute with the DLCA, and on information and belief knew of the First Action, as alleged in paragraphs 29 through 34.

49. **Pretext.** Plaintiffs plead, as evidence of pretext and of causation, that the Withdrawal Notice characterizes as made "inadvertently and prematurely" an approval the DLCA had left undisturbed for more than fourteen months; that it characterizes as not issued through the Department's "established review and authorization channels" an approval that the Unit's Coordinator solicited, that the Unit's Alcohol Control Inspector communicated in writing as a "Label Approval," that followed RAISINGCANE's completion and return of the registration form the Inspector had asked it to submit, and that the Coordinator issued on DLCA letterhead in answer to a request for an official letter permitting sale, as alleged in paragraphs 16 through 21; that it withdraws one of two substantially identical approvals and leaves the other standing; that it identifies no event that prompted the withdrawal, as alleged in paragraph 41; and that it states the grounds for withdrawing the approval of August 12, 2025, by reference to the text of labels approved on July 16, 2025, as alleged in paragraph 40.

50. The withdrawal is not an arrest, a charge, or a prosecution, and no charging decision preceded it. This count requires no allegation concerning probable cause, and Plaintiffs make none.

51. GRAHAM acted intentionally, and with reckless or callous indifference to Plaintiffs' rights under the First Amendment. What GRAHAM knew of the First Action, and when, and with whom he consulted before signing the Withdrawal Notice, is recorded in the files of the DLCA, is not available to Plaintiffs, and requires discovery.

52. Plaintiffs are entitled to compensatory damages against GRAHAM individually in an amount to be proven at trial; in the alternative, and to the extent any element of

compensatory damages on this count is not proven, to nominal damages against him individually; to punitive damages against him individually; and to a declaration and injunction against GRAHAM in his official capacity, as prayed below.

COUNT II
Withdrawal of the Approval of Plaintiffs' Products Without Notice or Hearing
Fourteenth Amendment, Procedural Due Process; 42 U.S.C. § 1983
Against Defendant GRAHAM individually, for damages; and in his official capacity, for prospective declaratory and injunctive relief

53. Plaintiffs incorporate paragraphs 1 through 43.

54. Plaintiffs, and in particular RAISINGCANE, which produces and sells the six products, held a property interest in the approval conveyed by the DLCA's letter of August 12, 2025, which the Unit issued on DLCA letterhead over the signature of its Coordinator, stating that the Unit "hereby approves" the labels of the six products and that those products "are approved for sale in the United States Virgin Islands," and on which Plaintiffs relied for more than fourteen months in selling the products. The approval was the outcome of a review the DLCA initiated and conducted through the Unit, as alleged in paragraphs 16 through 21. The Withdrawal Notice itself treats the letter of August 12, 2025, as having conveyed an approval that remained in effect until the Withdrawal Notice rescinded it "in full." In the alternative, and independently of any property interest in the approval itself, whatever Title 8 of the Virgin Islands Code and the regulations under it provide, and whether or not any approval was required, Plaintiffs were entitled to notice of the grounds and an opportunity to be heard before the DLCA withdrew, with immediate effect, an approval it had itself issued in writing and had left undisturbed for more than fourteen months. Plaintiffs plead the issuance and contents of the letter as facts, and do not ask this

Court to determine whether the approval was required, whether it was validly issued, or whether any label complies with territorial law.

55. On October 26, 2026, GRAHAM withdrew that approval by the Withdrawal Notice. No notice preceded the withdrawal, no hearing was held or offered before or after it, and the Withdrawal Notice identifies no procedure by which Plaintiffs may contest it. An invitation to submit corrected labels to the same Unit for further review, on no stated schedule, is not an opportunity to be heard on a withdrawal that took effect immediately.

56. The withdrawal was not the product of a random or unauthorized act. It was made in writing, on DLCA letterhead, by the DLCA's Assistant Commissioner, in the name of the Department acting "through its Alcohol Control Unit," with copies to the Department's Commissioner, its General Counsel, and the Coordinator of the Unit, none of whom has withdrawn it. The approval it withdrew was likewise the product of the Unit's own procedure: a request for the labels by the Unit's Coordinator, a written "Label Approval" by its Alcohol Control Inspector, the Inspector's request that RAISINGCANE complete and submit the Unit's registration form, RAISINGCANE's completion and return of that form, and a letter on DLCA letterhead signed by the Unit's Coordinator, as alleged in paragraphs 16 through 21. A hearing before the withdrawal was feasible: the approval had stood for more than fourteen months, the Withdrawal Notice asserts no exigency and identifies no risk to any consumer, and throughout that period the DLCA maintained, and used against Plaintiffs, a citation-and-hearing procedure.

57. If GRAHAM contends that he lacked authority under territorial law to withdraw the approval, Plaintiffs allege that he acted in his capacity as Assistant Commissioner, in

writing, on DLCA letterhead, and in the name of the Department; that the officials to whom he copied the Withdrawal Notice have not disavowed it; and that the deprivation complained of was a deliberate decision of the Department's Assistant Commissioner, made after the DLCA had had more than fourteen months in which to address the approval through its own procedures, and not a random act whose occurrence the Territory could not anticipate.

58. The risk of an erroneous deprivation was not hypothetical. The Withdrawal Notice states the grounds for the withdrawal by reference to the text of labels other than those that the approval it withdrew had approved, as alleged in paragraph 40, and as to its first objection it invites "legal/regulatory support establishing that the proposed metric-only designation satisfies the current applicable requirement." Ex. 1 at 2. Had notice and a hearing been afforded, Plaintiffs would have produced both approvals, the labels each approved, and evidence concerning each objection stated, and the approval would not have been withdrawn or would have been withdrawn on narrower terms. Plaintiffs refer to 8 V.I.C. §§ 4 and 152, and to the provisions of Title 8 of the Virgin Islands Rules and Regulations cited in the Withdrawal Notice, only to identify the grounds the Withdrawal Notice states. Plaintiffs assert no claim under any of those provisions and do not ask this Court to decide what any of them requires. This count asserts a claim for denial of procedural due process only; Plaintiffs assert no claim for denial of substantive due process.

59. GRAHAM signed the Withdrawal Notice and acted intentionally. The deprivation is ongoing: the Withdrawal Notice remains in effect. Plaintiffs are entitled to compensatory damages against GRAHAM individually in an amount to be proven at trial; in the

alternative, and to the extent any element of compensatory damages on this count is not proven, to nominal damages against him individually; and to a declaration and injunction against GRAHAM in his official capacity, as prayed below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment as follows.

A. Against GRAHAM in his official capacity: prospective declaratory and injunctive relief only

1. A declaration that giving continuing effect to the Withdrawal Notice, which withdrew the approval of August 12, 2025, without notice or an opportunity to be heard and in retaliation for Plaintiffs' petitioning of this Court, violates the First and Fourteenth Amendments to the Constitution of the United States.
2. A preliminary and permanent injunction restraining GRAHAM, in his official capacity, and his successors, his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of the order, from giving any effect to the Withdrawal Notice, including by communicating it, or the withdrawal it announces, to any purchaser, distributor, or retailer of Plaintiffs' products; and from withdrawing, rescinding, suspending, or qualifying any approval of Plaintiffs' labels or products, unless and until Plaintiffs have been given written notice of the grounds and an opportunity to be heard on them before an impartial decision-maker.
3. A preliminary and permanent injunction restraining GRAHAM, in his official capacity, and the persons described in the preceding paragraph, from taking any action against Plaintiffs because of Plaintiffs' litigation in this Court or in any other forum.

B. Against GRAHAM individually: damages

4. On each of Counts I and II, compensatory damages against GRAHAM individually, in amounts to be determined at trial, including lost sales and orders of the six products, injury to Plaintiffs' reputation in the trade, and the costs of relabeling, of resubmission of labels and supporting documentation, and of contesting the withdrawal before the DLCA and the Superior Court; and, in the alternative and to the extent any element of compensatory damages on a count is not proven, nominal damages against GRAHAM individually on that count. No damages of any kind are sought from GRAHAM in his official capacity.
5. On Count I, punitive damages against GRAHAM individually, in an amount to be determined by the jury.

C. Fees, costs, and further relief

6. Reasonable attorney's fees and costs under 42 U.S.C. § 1988(b).
7. Pre-judgment and post-judgment interest as allowed by law.
8. Such other and further relief as the Court deems just.

DEMAND FOR JURY TRIAL

Pursuant to the Seventh Amendment and Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury on all issues so triable.

//

//

//

Respectfully submitted, Nov. 13, 2026

/s/ Joseph A. DiRuzzo, III
Joseph A. DiRuzzo, III
USVI Bar # 1114
MARGULIS GELFAND DIRUZZO & LAMBSON
500 East Broward Blvd., Suite 900
Ft. Lauderdale, FL 33394
954.615.1676 (o)
954.827.0340 (f)
jd@margulisgelfand.com

and

/s/ Kevin A. Rames
Kevin A. Rames, Esq.
V.I. Bar No. 193
LAW OFFICES OF K. A. RAMES, P.C.
Suite 3, 2111 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
Tel: (340) 773-7284
Fax: (340) 773-7282
kevin.rames@rameslaw.com

Counsel for Plaintiffs

INDEX OF EXHIBITS

Exhibit 1. Notice of Withdrawal of Inadvertent Approval; Alcoholic Beverage Brand Registration and Label Compliance Review, signed by Horace W. Graham, Jr., Assistant Commissioner, October 26, 2026

Exhibit 2. Complaint, *Prosperity Farm NY LLC v. Hodge*, No. 3:26-cv-57, ECF No. 1 (caption pages)

Exhibit 3. Transcript of the proceeding of December 2, 2025, before the DLCA (excerpts: caption, appearances, index, testimony of Horace W. Graham, Jr., and certificate of reporter)

Exhibit 4. Emails between RAISINGCANE and the Alcohol Control Unit, July 1 to August 12, 2025, with the labels sent on July 1 and August 1, 2025 (excerpts; internal correspondence of Plaintiffs' consultants quoted beneath the transmittal of July 1, 2025, omitted)

Exhibit 5. Letters of the Alcohol Control Unit, signed by Nicholas Francois, Coordinator, approving the labels of six products, July 16 and August 12, 2025 (PF 000109 to 000110)

Exhibit 6. Proofs of service of the summons and complaint on Geraldine P. Vaval, H. Nathalie Hodge, and Nicholas Francois, *Prosperity Farm NY LLC v. Hodge*, No. 3:26-cv-57, ECF No. 26-1 (excerpts)

Exhibit 7. Email of Robert Apfel, November 10, 2025, to Horace W. Graham, Jr., and others, requesting a medical continuance, with reply of November 12, 2025 (PF 000063)