chestnut cambronne
ATTORNEYS AT LAW

Gary K. Luloff, Esq.
Direct Dial: (612) 336-2931
gluloff@chestnutcambronne.com

Chestnut Cambronne PA
17 Washington Avenue North
Suite 300
Minneapolis, MN 55401-2048
T: 612.339.7300
F: 612.336.2940

www.chestnutcambronne.com

August 21, 2019

VIA HAND DELIVERY

Office of the Mayor of the City of St. Paul
390 City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102

Re: JC & MTM, Inc. v. City of Saint Paul
Appellate Court File No. A19-1311

Dear Mayor Carter:

Enclosed herewith and served upon you by hand delivery regarding the above-referenced matter, please find the following documents:

1. Writ of Certiorari;
2. Petition for Writ of Certiorari; and
3. Statement of the Case.

Very truly yours,

CHESTNUT CAMBRONNE PA

Gary K. Luloff

GKL:dp
Enclosures
cc: Theresa Skarda (VIA EMAIL)

FILED

August 20, 2019

OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

JC & MTM, Inc. d/b/a Johnny Baby's Petitioner, vs. The City of Saint Paul, Respondent.	WRIT OF CERTIORARI Court of Appeals No: A19-1311 Agency/Body No: City of Saint Paul Date of Decision: August 6, 2019, Notice of Saint Paul City Council Action Approving Adverse Action Liquor Licenses

TO: City of Saint Paul

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with Rule 115.04, subdivision 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits and proceedings in the above-entitled matter so that this court may review the July 24, 2019 decision of the City of Saint Paul, signed by the Mayor on July 31, 2019, and that became effective on August 20, 2019.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the clerk of appellate courts to deliver them in accordance with Rule 115.04, subdivision 5.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent City of Saint Paul and upon respondent or its attorney at:

CITY OF SAINT PAUL
CITY ATTORNEY'S OFFICE
Lyndsey Olson
City Attorney
Rachel Tierney
Deputy City Attorney
15 Kellogg Blvd. West
400 City Hall
Saint Paul, MN 55102

Proof of service of the writ and of the itemized list shall be filed with the clerk of appellate courts.

Dated: August 20, 2019

Clerk of Appellate Courts

By: Assistant Clerk

STATE OF MINNESOTA

IN COURT OF APPEALS

JC & MTM, Inc. d/b/a Johnny Baby's Petitioner, vs. The City of Saint Paul, Respondent.	**PETITION FOR WRIT OF CERTIORARI** Court of Appeals No: _____ Agency/Body No: City of Saint Paul Date and Description of Event Triggering Appeal Time: August 6, 2019, Notice of Saint Paul City Council Action Approving Adverse Action Liquor Licenses

TO: The Court of Appeals of the State of Minnesota:

The above-named Petitioner hereby petitions the Court of Appeals for a Writ of Certiorari to review a decision of the City of Saint Paul ("City"), by its City Council, issued on July 24, 2019 and signed by the Mayor of the City on July 31, 2019. The decision becomes effective on August 20, 2019. The Writ of Certiorari is needed to review the decision upon the grounds that the City's approval of additional suspension of Liquor On Sale – 101-180 seats, Liquor on Sale – Sunday, Liquor On Sale – 2AM Closing, and Gambling Location licenses to Jonathan Price and JC & MTM was patently arbitrary and capricious. *See Bainbridge v. City of Minneapolis*, 154 N.W. 964 (Minn. 1915); *Miller v. City of Saint*

Paul, 363 N.W.2d 806 (Minn. Ct. App. 1985). The City's Department of Safety and Inspections ("Department") of the Saint Paul City Council had determined that a suspension of said licenses from May 6, 2019 though May 15, 2019 ("May suspension") would serve as the required ten (10) consecutive day suspension. The Saint Paul City Council, however, arbitrarily and capriciously ordered an additional ten (10) consecutive day suspension for Petitioner's licenses.

The City acted erroneously in the following ways: (1) it ignored the Department's support of the May suspension as satisfactorily fulfilling the recommended suspension set forth by the licensing office; (2) it, without questioning or communicating with Petitioner's counsel at the hearing and without any further explanation as to its reasoning, arbitrarily decreed the previously sufficient and agreed upon May suspension meaningless for the sake of Petitioner's recommended suspension; (3) it burdened Petitioner by artificially doubling the number of days Petitioner is unable to conduct business despite no further incidents occurring from May until the time at which the decision became effective; and (4) it imposed this penalty without sufficient evidence of violations.

Under Minn. Stat. § 606.01, "no writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby." It also provides that the party "shall apply to the Court of Appeals for the writ." *Id.*

Petitioners respectfully request that the writ of certiorari issue.

Dated: August 19, 2019 **CHESTNUT CAMBRONNE PA**

By: /s/ Francis J. Rondoni

Francis J. Rondoni (#121903)
Jeffrey C. O'Brien (#0304852)
Gary K. Luloff (#0389057)
17 Washington Avenue North
Suite 300
Minneapolis, MN 55401-2048
(612) 339-7300
Fax: (612) 336-2940

Attorneys for Petitioners

INDEX TO ADDENDUM

Notice of City Council Action ADD-01

DEPARTMENT OF SAFETY AND INSPECTIONS
Ricardo X. Cervantes, Director

CITY OF SAINT PAUL
375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

August 6, 2019

NOTICE OF CITY COUNCIL ACTION

Jonathan Price
JC & MTM, Inc.
981 University Ave. W.
Saint Paul, MN 55104

Mr. Price:

Enclosed is a copy of City Council Resolution RES 19-963 which imposes a fine and suspends the Liquor On Sale – 101-180 seats, Liquor On Sale – Sunday, Liquor On Sale – 2AM Closing and Gambling Location licenses issued to you by the City of Saint Paul for the following:

Multiple license condition violations.

The fine and suspension were approved by the Saint Paul City Council at the Council's public hearing meeting on July 24, 2019.

The total fine amount of **$1000** is due to be paid no later than **Friday, September 6, 2019** and was reduced by Council on the condition that JC & MTM Inc. work with a business and/or retail association (such as the Minnesota Licensed Beverage Association) to put together training for the employees of licensed beverage retailers on proper wanding and security check techniques.

The suspension of all above licenses is for a period of **ten (10) consecutive days** and must start on August 20, 2019 or earlier as arranged through the Department of Safety and Inspections Licensing Manager. If an earlier start date is not arranged the effect of this notice is that you may not operate under the above licenses at 981 University Ave. W. beginning at **12:01 a.m. on Tuesday, August 20, 2019 and ending at 11:59 p.m. on Thursday, August 29, 2019**.

Questions regarding this matter and/or the arrangement of an earlier suspension start date can be directed to me at 651-266-9132.

Sincerely,

Eric Hudak, Licensing Manager
Department of Safety and Inspections

Enclosure

c: Western District Commander-SPPD
Shawn McDonald, Legal Assistant-CAO
Ricardo X. Cervantes, Director-DSI
Dan Niziolek, Deputy Director-DSI
Kris Schweinler, Senior License Inspector-DSI

STATE OF MINNESOTA

IN COURT OF APPEALS

JC & MTM, Inc. d/b/a Johnny Baby's Petitioner, vs. The City of Saint Paul, Respondent.	**STATEMENT OF THE CASE OF PETITIONER** Court of Appeals No: _____ Agency/Body No: City of Saint Paul Date of Decision: July 31, 2019, Notice of Saint Paul City Council Action Approving Adverse Action Liquor Licenses

Petitioner, JC & MTM, Inc., as for its Statement of the Case, states as follows:

1. **Court or agency of case origination and name of judge or hearing officer:**

   This case originated in the City of Saint Paul at a public hearing before the Saint Paul City Council and was approved by the Mayor on July 31, 2019, with notice sent to Petitioner on August 6, 2019. The order is effective as of August 20, 2019.

2. **Jurisdictional Statement:**

   a. **Appeal from the district court; pretrial appeal:**

      Not Applicable

   b. **Certiorari appeal.**

      Statute, rule or other authority authorizing certiorari appeal:

      Minn. R. Civ. App. P. 115.01.

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, *e.g.*, mailing of decision, receipt of decision, or receipt of other notice):

Minn. Stat. § 606.01 (2019); August 6, 2019 – Receipt of Decision.

c. **Other appellate proceedings:** N/A

Not Applicable

d. **Finality of order or judgment:**

Not Applicable

e. **Criminal only:**

Not Applicable.

3. **State type of litigation and designate any statutes at issue:**

This writ of certiorari appeal challenges the City of Saint Paul's resolution suspending three separate licenses.

4. **Brief descriptions of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.**

On or about May 5, 2019, after several incidents at Petitioner's bar, Johnny Baby's, Petitioner notified the Department of Safety and Inspections ("Department") that Petitioner would be closing its bar for ten (10) days. This closing was part of a negotiated agreement between Petitioner and the Department. Petitioner contested the existence of any grounds for suspension and any admissions related to the underlying facts of any license violation were made in the context of a negotiated agreement. This business hiatus took place between May 6, 2019 and May 15, 2019. The Department recommended to the City that such a closure and suspension of Petitioner's Liquor On Sale – 101-180 seats, Liquor on Sale – Sunday, Liquor On Sale – 2AM Closing, and Gambling Location licenses to Respondent, and further recommended the May closure satisfied this recommendation.

Despite the Department's recommendation, on July 24, 2019, Respondent held a separate public hearing in which it rejected the Department's recommendation, ordering a second ten (10) day suspension of the licenses. Respondent acted arbitrarily and capriciously by declaring the May closure insufficient because it ignored the Department's recommendation without reason, without discussion or communication with Petitioner or Petitioner's counsel during the public hearing, thereby depriving Petitioner a meaningful opportunity to present a defense. This greatly burdened Petitioner by doubling the number of days Petitioner was unable to conduct business. Respondent was also arbitrary and capricious as it acted despite no further incidents occurring at Petitioner's bar since the May closure.

5. **List specific issues proposed to be raised on appeal:**

Whether Respondent acted arbitrarily and capriciously in ordering a second period of suspension of Petitioner's licensed activities despite its original acceptance of the Department's recommendation that the May closure was satisfactory.

6. **Related appeals:**

Not Applicable

7. **Content of record:**

Is a transcript necessary to review the issues on appeal? Yes ☐ No **X**

If yes, full or partial transcript? Full ☐ Partial ☐

Has the transcript already been delivered to the parties and filed with the district court administrator? Yes ☐ No ☐

If not, has it been ordered from the court reporter? Yes ☐ No ☐

8. **Is oral argument requested?** Yes **X** No ☐

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes ☐ No **X**

9. **Identify the type of brief to be filed:**

Formal brief under Rule 128.02

10. **Name, addresses, zip codes, and telephone numbers for attorney for Petitioner and Respondent:**

ATTORNEYS FOR PETITIONER
Chestnut Cambronne PA
Francis J. Rondoni (#121903)
Jeffrey C. O'Brien (#0304852)
Gary K. Luloff (#0389057)
17 Washington Avenue North
Suite 300
Minneapolis, MN 55401-2048
(612) 339-7300

ATTORNEYS FOR RESPONDENT
City of Saint Paul City Attorney's Office
Lyndsey Olson
City Attorney
Rachel Tierney
Deputy City Attorney
15 Kellogg Blvd. West
400 City Hall
Saint Paul, MN 55102
(651) 266-8710

Respectfully submitted,

Dated: August 19, 2019

CHESTNUT CAMBRONNE PA

/s/ Francis J. Rondoni
Francis J. Rondoni (#121903)
Jeffrey C. O'Brien (#0304852)
Gary K. Luloff (#0389057)
17 Washington Avenue North
Suite 300
Minneapolis, MN 55401-2048
Phone: (612) 339-7300

Email:
frondoni@chestnutcambronne.com
jobrien@chestnutcambronne.com
gluloff@chestnutcambronne.com

ATTORNEYS FOR PETITIONER