

# ADMINISTRATIVE HEARINGS DIVISION

May 18, 2023

## STIPULATED SETTLEMENT AGREEMENTS FOR MARIJUANA VIOLATION CASES

1. Dutches Corp., Licensee  
Aenoy Sengphong, Applicant,  
Stkhldr  
Patricia Robbins, Applicant  
Natasha Brown, Applicant  
Chun Lung Wan, Applicant  
Sui Kin Wan, Applicant  
dba **THE CANNABIS SHOP (RET)**

ORS 475C.265(1)(d) - On or about April 23, 2022, Licensee Aenoy Sengphong made a false representation or statement to the Commission regarding compliance with a provision of ORS 475C.005 – ORS 475C.525, or rule adopted thereunder, in order to induce or prevent action by the Commission, when Licensee submitted its Marijuana Retailer Application wherein Sengphong falsely represented to the Commission that Licensee had “legal right to occupy the premises” located at 1080 West Central Boulevard, Coquille, Oregon, in order to induce the Commission to approve Licensee’s Marijuana Retailer Application, but in fact Licensee had not entered into a lease agreement with the owner of that property or otherwise obtained a legal right to occupy that premises, as required for compliance with OAR 845-025-1115(2)(g) and OAR 845-025-8520(3)(c).

(1<sup>st</sup> Level Category I)

OAR 845-025-8520(3)(c) - From about May 5, 2022 to about July 10, 2022, Licensee failed to at all times retain control of, or the right of access to, all or any part of the licensed premises, when Licensee did not have right of access to the licensed premises located at 1080 West Central Boulevard, Coquille, Oregon, admitting to OLCC Regulatory Specialist A. Del Pizzo that Licensee knew around February of 2022 that the property owner “had decided to go another route” and leased the premises to another party. At this time, Licensee had no marijuana items on the premises or in its Cannabis Tracking System.

(1<sup>st</sup> Level Category II)

Note: Permittee was charged with these violations by Notice dated December 13, 2022. Staff originally proposed the standard sanction of license cancellation. Licensee requested a hearing and now wishes to enter into this settlement agreement.

### **AGGRAVATED**

Violation Number One was personally committed by Licensee Aenoy Sengphong. Commission precedent establishes that aggravation is warranted when a licensee personally commits the violation.

**SYNOPSIS:** – Licensee holds multiple OLCC licenses. In May of 2021, Licensee began the process of buying a marijuana retailer business that was originally licensed to a premises in Coquille, Oregon (Retailer #1). Once the change of business application was complete in October 2021, Retailer #1 was lawfully relocated to Keizer, Oregon. In July of 2021, Licensee began an application for a new marijuana retailer license (Retailer #2) and was approved to rent a building from the Landlord that previously rented to the prior owner of Retailer #1 in Coquille, Oregon, however, no lease agreement was executed. The application for Retailer #2 was submitted to OLCC in December of 2021 listing the Coquille building as the licensed premise. An OLCC license investigator was assigned in February 2022 and, around this time, Licensee learned the premises had been rented to another party. Licensee attempted to negotiate a deal with the new tenant, sought alternate locations, but no deal matriculated, and Licensee could not find a location where Licensee could also obtain LUCS approval within the 60-day license processing window. On April 4, 2022, HB 4016 created a moratorium on new licenses so Licensee could not submit a new application. On April 11, 2023, Licensee indicated to Commission staff that he believed he could proceed at the Coquille premises even though Licensee previously told the license investigator that Licensee was having issues with the location. On April 23, 2022, Licensee submitted the final application acknowledgment, listing the Coquille location as the premises and acknowledging that Licensee had a legal right to occupy the premises, even though Licensee did not have a lease agreement at the location, making a false statement. The day after the license was issued, Licensee submitted a change of location form for a different premises where he could operate a retail location. Licensee did not have inventory at, or otherwise operate at the Coquille location and Licensee has been operating at the new premises since September 2022.

### **TERMS OF AGREEMENT**

1. Licensee accepts responsibility for the violation as set out in the Notice. This was Licensee's first Category I and II violations. Any subsequent Category II violation within the same two years will be charged at the second level. The violations will become a permanent part of each licensee's Commission file and may be considered in any future application for any license or permit by that licensee.
2. The standard sanction for a Category I violation is license cancellation. The standard sanction for a Category II violation is a 30-day suspension.<sup>1</sup> Commission staff proposed aggravating the penalty because Violation Number One was personally committed by LicenseeSengphong.
3. Commission staff originally proposed for these violations the standard sanction of license cancellation.
4. The Commission will reduce the sanction for Violation Number One to a 32-day license suspension, with the option to pay a \$4,500.00 civil penalty in lieu of 18 days, and the remaining 14 days mandatory. The Commission will reduce the sanction for Violation Number Two to a 21-day license suspension with the option to pay a \$5,250.00 civil penalty in lieu of serving the 21-day suspension.
5. Licensee will either pay a \$9,750.00 civil penalty before 5:00 PM on June 15, 2023, and serve a 14-day license suspension beginning at 12:00 PM (noon) on June 22, 2023, and ending at 12:00 PM (noon) on July 6, 2023; OR serve a 53-day license suspension beginning at 12:00 PM (noon) June 22, 2023, and ending at 12:00 PM (noon) on August 14, 2023.
6. Licensee withdraws the request for hearing.

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<sup>1</sup> The standard sanctions set forth in Exhibit 1 to OAR 845-025-8590 were amended, effective January 1, 2023.

(continued **THE CANNABIS SHOP**)

7. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on the charge, the licensee agrees to accept a Letter of Reprimand for the violation. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license or permit by the licensee.
8. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their May 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.

2. Golden Jasmine, LLC  
Rustin Kluge, Member  
dba **GOLDEN JASMINE**<sup>[2]</sup>  
**(PROD)**

OAR 845-025-8520(10)(e)<sup>3</sup> - On or before May 5, 2020, Licensee and/or Licensee's employees, agents, or representatives permitted industrial hemp to be present on the licensed premises in a manner not permitted under OAR 845 ch. 25.

(1<sup>st</sup> Level Category I)

OAR 845-025-2020(1)(a), (2)(a) - On or before May 5, 2020, Licensee and/or Licensee's employees, agents, or representatives possessed, planted, cultivated, and/or grew marijuana in a manner other than its license permitted when numerous marijuana plants and clones were located in a greenhouse outside of the licensed premises.

(1<sup>st</sup> Level Category I)

OAR 845-025-5500(4) - On or about May 5, 2020, Licensee and/or Licensee's employees, agents, or representatives failed to verify that Licensee Rustin Kluge had a valid marijuana worker permit before allowing him to perform any work of the kind described in ORS 475C.269(1) and/or OAR 845-025-5500(1) on the licensed premises.

(1<sup>st</sup> Level Category III)

Note: Permittee was charged with this violation by Notice dated March 30, 2022. Staff originally proposed the standard sanction of license cancellation. Licensee requested a hearing and now wishes to enter into this settlement agreement.

**AGGRAVATED**

Violation Number Three was personally committed by Licensee Rustin Kluge. Commission precedent establishes that aggravation is warranted when a licensee personally commits the violation.

**SYNOPSIS:** – An OLCC investigation discovered Licensee improperly grew hemp plants in a greenhouse on the license premises. Marijuana plants were also found in a greenhouse that had previously been removed from the license premises for the purpose of hemp production. Licensee stated the reason hemp plants were stored in a greenhouse on the licensed premises and marijuana plants were stored in a greenhouse off the licensed premises was because of a bug infestation that required moving plants while spraying for bugs. It was also discovered that Licensee Rustin Kluge did not have a worker permit despite being the direct supervisor of employees involved in handling marijuana.

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<sup>2</sup> At the time of the incidents, the trade name of the business was Ruby Farms USA, Bend, OR.

<sup>3</sup> A scrivener's error led to charging this under OAR 845-025-8520(11)(e), when the correct citation for the conduct alleged in Violation Number One on May 5, 2020 is OAR 845-025-8520(10)(e). As subsection 11(e) did not exist on May 5, 2020, this error did not deprive Licensee of sufficient notice of what was charged.

(continued **GOLDEN JASMINE**)

### **TERMS OF AGREEMENT**

1. Licensees accept responsibility for the violations as set out in the Notice. These were Licensee's first and second Category I violations and first Category III violation within two years. Any subsequent Category III violation within the same two years will be charged at the second level.
2. The standard sanction for a Category I violation is license cancellation. The standard sanction for a first level Category III violation is a 10-day suspension or \$2,500.00 civil penalty. Violation Number Three was aggravated because License Rustin Kluge was personally involved in the violation. Commission staff proposes to aggravate this violation by 10% (one day) for this circumstance. Commission staff originally proposed the standard sanction of license cancellation.
3. The Commission will reduce the proposed sanctions for Violations Number One and Number Two and impose a 30-day license suspension or a \$4,950.00 civil penalty for each violation. The Commission will reduce the proposed sanction for Violation Number Three by three days.
4. Licensee will either pay an \$11,900.00 civil penalty before 5:00 PM on June 15, 2023 **OR** serve a 68-day license suspension beginning at 12:00 PM on June 22, 2023 and ending at 12:00 PM on August 30, 2023.
5. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on the allegations, the licensee agrees to accept a Letter of Reprimand for the violations. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for any license by that licensee.
6. Licensee withdraws the request for a hearing.
7. This agreement is conditional upon final approval of the Oregon Liquor and Cannabis Commission and will be reviewed by the Commissioners at their May 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Licensee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to a contested case hearing under the Administrative Procedures Act (ORS Chapter 183) and to judicial review, or to otherwise challenge this agreement and the final order.