

ADMINISTRATIVE HEARINGS DIVISION

February 18, 2021

STIPULATED SETTLEMENT AGREEMENTS FOR MARIJUANA VIOLATION CASES

1. Nightwood Horticulture Limited
Allen Clark, Pres/Sec/Dir/Stkhldr
dba **NIGHTWOOD HORTICULTURE**

(Producer)

OAR 845-025-8540(1)(a) - On or about September 12, 2019 and/or October 2, 2019, Licensee's employees, agents, or representatives made false statements or representations to the Commission in order to induce or prevent action or investigation by the Commission when on September 12, 2019, Richard Kolterman and on October 2, 2019, Lindsay Kolterman told inspectors that the front room (an unapproved area of the premises) was not being used to dry or store marijuana, when in fact camera footage showed marijuana drying in that room on October 1, 2019 and when marijuana was found being stored in totes in that room during an inspection on October 10, 2019.

(1st Level Category II)

OAR 845-025-1175(1),(6) - On or before September 12, 2019, Licensee or Licensee's employees, agents, or representatives made physical changes to the licensed premises that materially or substantially altered the licensed premises or the usage of the licensed premises from the plans originally approved by the Commission without the Commission's prior written approval, when marijuana was found to be growing in the area next to the driveway, on the west side of the driveway and to the east of the house. None of these areas were approved canopy areas.

(1st Level Category III)

OAR 845-025-2090(1), (2) - On or before October 1, 2019, Licensee and/or Licensee's employees, agents, or representatives harvested usable marijuana from one or more mature marijuana plants in an outdoor canopy area on the licensed premises without submitting a

Note: Licensee was charged with these violations by Notice dated December 30, 2020. The staff proposed the standard sanction of a 30-day suspension for Violation One and a 10-day suspension or a \$1,650.00 civil penalty each for Violations Two, Three and Four.

AGGRAVATION

Staff proposed to aggravate the penalty by two days because Violation One was repeated.

(continue **NIGHTWOOD HORTICULTURE**) harvest notification in the form and manner prescribed by the Commission identifying the proposed harvest dates no later than by 9:00 AM on the day of the harvest activity.

(1st Level Category III)

OAR 845-025-1430(2)(c) - On or before October 10, 2019, Licensee failed to have a video surveillance system that was equipped with a failure notification system that provided, within one hour, notification to the Licensee, or an authorized representative of the Licensee, of any prolonged surveillance interruption or failure.

(1ST Level Category III)

SYNOPSIS: This is a small producer licensee that was found over the course of three inspections to have violations attributed to inattention to rules and non-intentional misrepresentation by employees. Licensee is a merchant marine who relies on hired personnel while he is at sea. The inspectors met with Licensee to emphasize the importance of competent managerial oversight, and Licensee appeared receptive to this guidance.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice.
2. These were Licensee's first Category II and first, second, and third Category III violations within two years. The Category III violations were charged at the first level. Any subsequent Category II or Category III violation within the same two years will be charged at the second level. These 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.
3. Commission staff originally proposed the standard sanction of a 30-day suspension for Violation One and a 10-day suspension or a \$1,650.00 civil penalty each for Violations Two, Three and Four. Commission staff proposed to aggravate the penalty by two days because Violation One was repeated.
4. The Commission will reduce the sanction for Violation One and impose a 23-day suspension.
5. The Commission will reduce the sanction for Violations Two, Three and Four and impose a seven-day suspension or \$1,155.00 civil penalty each.

(continue **NIGHTWOOD HORTICULTURE**)

6. Licensee will pay a \$3,465.00 civil penalty before 5:00 PM on March 15, 2021, and serve a 23-day suspension beginning at 12:00 PM (noon) on March 22, 2021 and ending at 12:00 PM (noon) on April 14, 2021 **OR** serve a 44-day suspension beginning at 12:00 PM (noon) on March 22, 2021 and ending at 12:00 PM (noon) on May 5, 2021.
7. 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 or permit by that licensee.
8. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their February 2021 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. Dicot Derby Farms, LLC
Alan Kamben, Member
dba **THE DISPENSARY ON 52ND**
4452 SE 52nd Avenue
Portland, OR 97206

(Retailer)

OAR 845-025-2800(4)(b)(B) For the months of March 2019, April 2019, and/or June 2019, Licensee or Licensee's employees, agents, or representatives knowingly exceeded the 32-ounce monthly sales limit for usable marijuana sold or transferred to a single purported Oregon Medical Marijuana Program (OMMP) cardholder or designated primary caregiver when it sold approximately 69.2 ounces of marijuana to one purported OMMP registry card number in March 2019, approximately 55.3 ounces of marijuana to one OMMP registry card number in April 2019, and approximately 34.2 ounces to one OMMP registry card number in June 2019.

(Category I)

OAR 845-025-2900(3)(d) - From about March 1, 2019 to about April 7, 2019, Licensee or its employees, agents, or representatives failed to use the METRC Cannabis Tracking System (CTS) to record the Oregon Health Authority (OHA) receipt or card number of every registry identification cardholder and/or designated primary care giver who received marijuana items for medical purposes when medical marijuana sales were made during that time period to an individual or individuals with an invalid OMMP card number and that invalid OMMP card number was recorded in CTS.

(1st Level Category III)

SYNOPSIS: A review of Licensee's CTS account revealed sales over the monthly limit to the same purported OMMP card. Further investigation showed that the card number entered into the system was not a real OMMP card number, and that there was an additional month where sales over the monthly limit were made to another cardholder. Licensee worked with the inspector to review the information in their point-of-sale system to keep track of medical sales and to prevent this from occurring again in the future.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice.
2. These were Licensee's first Category I and Category III violations within two years. Any subsequent Category III violation within the same two years will be charged at the second level. These 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.

Note: Licensee was charged with these violations by Notice dated September 23, 2020. The proposed sanction was license cancellation for these violations. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Staff proposed to aggravate the penalty because these violations were repeated.

(continue **THE DISPENSARY ON 52ND**)

3. Commission staff originally proposed the standard sanction of license cancellation for these violations. Commission staff proposed to aggravate the penalty because these violations were repeated.
4. The Commission will reduce the sanction for Violation Number One and impose a 32-day suspension. Licensee may pay a civil penalty of \$4,950.00 in lieu of 30 days, with the remaining two days mandatory.
5. The Commission will reduce the sanction for Violation Number Two and impose a nine-day suspension or \$1,485.00 civil penalty.
6. Licensee will pay a \$6,435.00 civil penalty before 5:00 PM on March 15, 2021, and serve a two-day suspension beginning at 12:00 PM (noon) on March 22, 2021 and ending at 12:00 PM (noon) on March 24, 2021 **OR** serve a 41-day suspension beginning at 12:00 PM (noon) on March 22, 2021 and ending at 12:00 PM (noon) on May 2, 2021.
7. Licensee withdraws its request for a hearing.
8. 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 or permit by that licensee.
9. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their February 2021 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.

3. Simplee Green, LLC
Janice Grossman, Member
dba **OREGON'S GREEN RUSH**
2644 River Road
Eugene, OR 97404

(Retailer)

OAR 845-025-2800(2)(a), (2)(b)(A), (4)(d), (4)(l).— On or about June 22, 2019, Licensee or Licensee's employees, agents, or representatives operated other than its license permitted when Licensee or Licensee's employees, agents, or representatives transferred or delivered free marijuana items to consumers outside of its licensed premises.

(Category I)

OAR 845-025-1450(2)(j) - On or about July 31, 2019, Licensee or Licensee's employees, agents, or representatives failed to make video surveillance footage immediately available upon request when video requested by an OLCC Regulatory Specialist on July 31, 2019 was not provided until August 13, 2019.

(1st Level Category II)

OAR 845-025-1460(1)(b) - On or about June 17, 2019, June 18, 2019, June 19, 2019, and/or July 31, 2019, Licensee or Licensee's employees, agents, or representatives failed to have surveillance recording equipment housed in a designated, locked, and secured room when the door to the room housing the security equipment was left open and unlocked while the room was unoccupied.

(2nd Level Category III)

OAR 845-025-8520(2) - On or about June 22, 2019, Licensee or Licensee's employees, agents, or representatives failed to require a person to produce identification as required by ORS 475B.216 before selling or providing a marijuana item to that person when they provided marijuana items to attendees at an event called BudFest without asking for or checking the attendees' identification.

(1st Level Category IV)

Note: Licensee was charged with these violations by Seconded Amended Notice dated December 16, 2020. The proposed sanction was license cancellation for these violations. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Staff proposed aggravation because Violation Number Three was repeated, and because the number of violations indicated a disregard for the law or failure to control the premises.

(continue **OREGON'S GREEN RUSH**)

OAR 845-025-1300(1)(b) and/or OAR 845-025-8520(8) -
On or about June 22, 2019, Licensee or Licensee's
employees, agents, or representatives gave marijuana
items as a prize, premium, or consideration for a lottery,
contest, game of chance or game of skill, or competition
when individuals were given marijuana items as a prize
after spinning a roulette wheel.

(1st Level Category V)

SYNOPSIS: Licensee was one of several marijuana businesses to take part in an unapproved promotional event called Budfest that took place at an unlicensed location. Several businesses participated as vendors, with tents and branded merchandise to promote their business to people who had purchased tickets to attend the event. Licensee was one of those vendors, and was observed handing out samples of marijuana items and using a spinning wheel type game where marijuana was given out as a prize. Following the report on Licensee's involvement in the Budfest event, a site inspection was conducted where other violations were discovered.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice.
2. These were Licensee's first Category I, Category II, Category IV, and Category V violations within two years. Any subsequent Category II, Category IV, or Category V violation within the same two years will be charged at the second level. This was Licensee's second Category III violation within two years. Any subsequent Category III violation within the same two years will be charged at the third level. These 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.
3. Commission staff originally proposed for these violations the standard sanction of license cancellation. Staff proposed to aggravate the penalty because Violation Number Three was repeated, and because the number of violations indicated a disregard for the law or failure to control the premises.
4. The Commission will reduce the sanction for Violation Number One and Violation Number Two, and impose a 30-day suspension or \$4,950.00 civil penalty for each.
5. The Commission will reduce the sanction for Violation Number Three, and impose a 23-day suspension or \$3,795.00 civil penalty.
6. The Commission will impose the standard sanction of a seven-day suspension or \$1,155.00 civil penalty for Violation Number Four, and a three-day suspension or \$495.00 civil penalty for Violation Number Five.
7. Licensee will pay a \$15,345.00 civil penalty before 5:00 PM on March 15, 2021 **OR** serve a 93-day suspension beginning at 12:00 PM (noon) on March 22, 2021 and ending at 12:00 PM (noon) on June 23, 2021.

(continue **OREGON'S GREEN RUSH**)

8. Licensee withdraws its request for a hearing.
9. Licensee has been operating under a Conditional Letter of Authority during the pendency of this compliance action. Upon the effective date of the Final Order incorporating this Agreement, Licensee may proceed with the renewal process to bring its license current and may continue to exercise its license privileges while the renewal process is ongoing.
10. 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 or permit by that licensee.
11. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their February 2021 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.

4. Eugenius, LLC
Trey Willison, Managing Member
dba **EUGENIUS**

(Producer)

OAR 845-025-1450(1)(a) - On or about February 18, 2020, Licensee, and/or its employees, agents, or representatives failed to have cameras that continuously recorded, 24 hours a day, in all areas where mature marijuana plants, immature marijuana plants, usable marijuana, cannabinoid concentrates, extracts, products or waste may be present on the licensed premises, including an area by the trim room, in a storage room, the upstairs of the premises, and an area behind tarp covered marijuana where bags of usable marijuana were stored.

(Category I)

OAR 845-025-1115(6) - On or about February 18, 2020, Licensee allowed an Oregon Department of Agriculture registered industrial hemp grow to be located on the same tax lot as the licensed premises. This is a violation of OAR 845-025-1115(1)(e). The Commission may revoke a license for any of the reasons that it may deny a license.

(Category I)

OAR 845-025-2090(1), (2) - On or before February 17, 2020, Licensee failed to file a harvest notice before harvesting usable marijuana from any mature plant located in an outdoor canopy area when up to 600 pounds of marijuana was harvested.

(1st Level Category III)

Note: Licensee was charged with these violations by Notice dated June 30, 2020. The total proposed sanction was license cancellation and refusal to renew license. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Commission staff recommended aggravation because Violation Number One was repeated.

(continue **EUGENIUS**)

OAR 845-025-7520(1)(d)(A)(B) - On or before February 18, 2020, Licensee, and/or its employees, agents, or representatives failed to assign and affix a UID tag to all other marijuana items, or receptacles containing marijuana items, in a manner that establishes an accurate record from one marijuana item to another, and failed to use a new UID tag each time a marijuana item was added to or placed in a receptacle, when bags and packages throughout the licensed premises were untagged.

(withdrawn 1st Level Category III)

OAR 845-025-7580(1)(a)-(e) - On or before February 18, 2020, Licensee, and/or its employees, agents, or representatives failed to use CTS for all inventory tracking activities, by 8:00 AM local time of the next calendar day, reconcile all marijuana item inventories and weights in CTS; record all required information for seeds, usable marijuana, cannabinoid concentrates and extracts by weight; record the wet weight of each harvested marijuana plants immediately after harvest; and record all required information for cannabinoid products by unit count and also record the weight per unit of a product when approximately 600 pounds of cannabis was not recorded in CTS.

(withdrawn 1st Level Category III)

OAR 845-025-7750(1)(b) - On or about February 18, 2020, Licensee, and/or its employees, agents, or representatives failed to store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee when waste was stored on a floor.

(1st Level Category III)

(continue **EUGENIUS**)

SYNOPSIS: During an inspection, Inspectors found approximately 600 pounds of untagged marijuana in bags. The marijuana was throughout the premises and not under camera. There was also a pile of untagged and unlabeled waste marijuana stored on the floor under a tarp. Licensee did not maintain accurate CTS records for the untagged marijuana and had an inadequate supply of METRC tags.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. Violation One and Violation Two were Licensee's first and second Category I violations. Violation Number One was aggravated for repeated misconduct. Violations Three and Six were Licensee's first and second Category III violations. Any subsequent Category III violation will be charged at the third level. These violations 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 that Licensee.
2. The Commission withdraws Violation Numbers Four and Five because the violations have been determined to be eligible for the Violation of Compliance (VOC) program. The Commission hereby issues a warning for Violation Numbers Four and Five.
3. Commission staff proposed to cancel the license and seize and destroy any remaining marijuana items on the licensed premises for these violations.
4. Licensee has begun the process of selling the business. Licensee hereby surrenders its marijuana producer license effective on the date the transfer of ownership of the business is completed or at 7:00 AM on March 31, 2021, whichever is earlier. If Licensee's regular license expiration date is prior to March 31, 2021, and Licensee chooses to keep its license active beyond its regular expiration date, Licensee understands and agrees that it will have to renew its license. Renewal will not grant Licensee any rights to operate under or hold the license beyond the final surrender date.
5. Licensee understands and agrees that the Commission is not representing or guaranteeing that a new owner will be licenseable or will have an approved license on or before the date of surrender. Licensee understands and agrees that any purchaser will have to fully complete the application process, and the application has to receive final approval by the Commission, prior to a license being issued.
6. Each licensee will receive a Letter of Reprimand for Violations Number One, Number Two, Number Three, and Number Six. This Letter of Reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for a license or permit by the licensee.
7. Licensee hereby relinquishes any and all interest in any marijuana items left at the licensed premises which has not been properly transferred to another licensee as of the effective date of license surrender, and agrees that the Commission may seize and destroy any such marijuana items.
8. Licensee withdraws its Request for Hearing in this matter.
9. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their February 2021 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.