

ADMINISTRATIVE HEARINGS DIVISION

January 19, 2023

STIPULATED SETTLEMENT AGREEMENT - LIQUOR VIOLATION CASES

1. All-In-One Market, LLC
Nabin Rayamajhi, Managing Member
Bidhya Kunwar, Member
dba **ALL IN ONE MARKET (O)**
5095 Main St.
Springfield, OR 97478

OAR 845-006-0335(1)(a)(b)(c) – On or about September 8, 2022, Licensee’s employee, agent, or representative Nabin Rayamajhi failed to verify the age of the minor, before allowing her to buy or be served an alcoholic beverage when she reasonably appeared to be under 26 years of age.

(1st Level Category IIb)

Note: Licensee was charged with this violation by Notice dated November 9, 2022. The total proposed sanction for this violation is a 10-day license suspension or a civil penalty of \$2,500.00. Licensee requested a hearing, but now wishes to enter into this settlement agreement.

AGGRAVATION

Commission staff added two days of aggravation because the violation was personally committed by a licensee.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violation as set out in the Notice. This was Licensee’s first Category II(b) violation within two years. Any subsequent Category II(b) violation within the same two years will be charged at the second level.
2. Commission staff originally proposed the standard sanction of a 10-day suspension or a civil penalty of \$2,500.00 for this violation. Staff added two days of aggravation because the violation was personally committed by a licensee. The total proposed sanction was a 12-day suspension or a \$3,000.00 civil penalty.
3. Licensee will have the option to install age verification equipment (AVE) by February 1, 2023. In the event Licensee installs AVE, Licensee will utilize the equipment to verify the age of every patron who reasonably appears to be under 26 years of age. All alcohol sales will be run through registers at which age verification equipment is installed. Installation of age verification equipment that meet all standards set forth in this agreement and in OAR 845-009-0140(2) is done in lieu of 10 days of the suspension or \$2,500.00 of the civil penalty.
4. If AVE is installed by February 1, 2023 and certified by Commission staff to meet all the standards identified in OAR 845-009-0140(2) by February 10, 2023, Licensee will pay a \$500.00 civil penalty before 5:00 PM on February 15, 2023 **or** serve a two-day suspension beginning at 7:00 AM on February 22, 2023 and ending at 7:00 AM on February 24, 2023.
5. If AVE is not installed by February 1, 2023, or AVE that meets all the standards identified in OAR 845-009-0140(2) is not in use by February 10, 2023, Licensee will pay a \$3,000.00 civil penalty before 5:00 PM on February 15, 2023 **or** serve a 12-day suspension beginning at 7:00 AM on February 22, 2023 and ending at 7:00 AM on March 6, 2023.

(continue **ALL IN ONE MARKET**)

6. Licensee understands that it is eligible for a credit for installation of AVE only one time, that the equipment is expected to remain in good order, and that the equipment must be used for as long as Licensee has a liquor license at this premises. Licensee understands that failure to use the equipment, whether by human error or malfunction, in future violations may result in increased penalties and, if applicable, removal from the Responsible Vendor Program.
7. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on this allegation, that licensee agrees to accept a Letter of Reprimand for this 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 that licensee.
8. This agreement is conditioned upon final approval of the Commission and will be reviewed by the Commissioners at their January 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. Peggy Sue, Inc.
David Diehm, Pres/Dir/Stkhldr
Peggy Diehm, Sec/Dir/Stkhldr
Randolph Adams, Stkhldr
dba **MAXWELL'S PUB &
GRILL (F-COM)**
737 SW 185TH
Aloha, OR 97006

OAR 845-006-0347(1)(c), (2)(a) – On or about November 15, 2021, Licensee and/or Licensee's employees, agents, or representatives permitted disorderly activities on the licensed premises or in areas the Licensee controls that are adjacent to or outside the premises, when premises general manager Samuel Diack got into a verbal and physical altercation with patron Tyler Birkes while inside the premises that continued outside the premises.

(1st Level Category III)

OAR 845-006-0345(1)(a)(b)(c) - On or about November 15, 2021, Licensee and/or Licensee's employee, agent, or representative Samuel Diack drank one or more alcoholic beverage(s) while on duty, when Samuel Diack confronted premises patron Tyler Birkes in an effort to control conduct inside the premises.

(1st Level Category III)

Note: Licensee was charged with this violation by Notice dated October 5, 2022. The total proposed penalty was a 10-day license suspension or a \$1,650.00 civil penalty. Licensee requested a hearing, but now wishes to enter into this settlement agreement.

AGGRAVATION

Staff added two days aggravation because the violation resulted in an injury.

SYNOPSIS: – When a patron began banging a video poker machine, the premises' general manager, who was off duty and drinking, ordered the patron to stop. A verbal altercation ensued when the general manager told the patron to leave and made efforts to remove the patron. The situation escalated into a physical altercation outside the premises, during which time the patron was reportedly elbowed in the head. OLCC rules provide that when an employee performs acts on behalf of a licensee, which involves controlling conduct on the premises, they place themselves on duty. So, despite the general manager being "off duty" just prior to the incident, he placed himself "on duty" by taking action to control the patron's conduct.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. Violations Number One and Number Two were Licensee's first and second Category III violations within two years and were charged at the first level. 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.
2. The standard sanction for Violations Number One and Number Two is a 10-day suspension or a \$1,650.00 civil penalty each. Staff added two days of aggravation to Violation Number One because it resulted in injury to a patron.
3. The Commission will reduce the sanction for Violations Number One and Number Two by six days.

(continue **MAXWELL'S PUB & GRILL (F-COM)**)

4. Licensee will either pay a \$2,640.00 civil penalty before 5:00 PM on February 15, 2023, **OR** serve a 16-day suspension beginning at 7:00 AM on February 22, 2023 and ending at 7:00 AM on March 10, 2023.
5. Licensee withdraws the request for hearing.
6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these incidents, 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 the licensee.
7. This agreement is conditional upon final approval of the Commission and will be reviewed by the Commissioners at their January 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.

3. Northwest Taverns, Inc.
Gregory Hermens, Pres/Dir/Stkhdr
Barbara Hermens, VP /Dir/Stkhdr
dba **NOB HILL BAR &
GRILL (F-COM)**
973 NW 23rd
Portland, OR 97210

OAR 845-006-0347(1)(c), (2)(a) – On or about February 10 to February 11, 2022, from shortly before midnight until approximately 1:00am, Licensee and/or Licensee's employees, agents, or representatives permitted disorderly activities on the licensed premises or in areas the Licensee controls that are adjacent to or outside the premises, when Licensee and Licensee's employee Casey Foley permitted off-duty employee Gabriel Vargas, who was known to them to inappropriately touch women when intoxicated, to be at the premises while intoxicated despite prior verbal warning from OLCC Inspector R. Long, where he sexually harassed a female patron.

(1st Level Category III)

OAR 845-006-0347(4) - On or about February 10 to February 11, 2022, from shortly before midnight until approximately 1:00am, Licensee and/or Licensee's employees, agents, or representatives failed to evict patrons from the premises for at least 24 hours who were known to them to have engaged in noisy, disorderly, or unlawful activities, when Licensee's employee Casey Foley confronted Gabriel Vargas about subjecting patron A. Baker to unwanted sexual contact at the premises that night, but failed to evict Vargas.

(1st Level Category IV)

Note: Licensee was charged with this violation by Notice dated October 25, 2022. The total proposed penalty was a 17-day license suspension or a \$2,805.00 civil penalty. Licensee requested a hearing, but now wishes to enter into this settlement agreement.

AGGRAVATION

Staff added 4 days aggravation because Violations Number One and Number Two involved multiple patrons or employees.

SYNOPSIS: –On the night of February 10, 2022, an off-duty employee (Gabriel Vargas) was intoxicated on the premises when he sexually harassed a patron. When the on-duty bartender learned of the harassment, she asked Vargas to leave, but he did not leave. Premises staff did not call police. Vargas remained on the premises for about thirty minutes longer where he continued interacting with the patron. The on-duty bartender (Permittee) was also issued a notice in connection with these charges. Licensee and premises staff had some knowledge that Vargas had touched women inappropriately when intoxicated and licensee received prior verbal warning from OLCC inspectors about this behavior. Vargas's employment was terminated after this incident.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for Violations Number One and Number Two, as set out in the Notice. Violation Number One was Licensee's first Category III violation within two years. Violation Number Two was Licensee's first Category IV violation within two years. Any subsequent Category III violation, and/or Category IV 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.

(continue **NOB HILL BAR & GRILL**)

2. Commission staff originally proposed the standard sanction of a 17-day license suspension or \$2,805.00 civil penalty. Staff added four days of aggravation to the penalty because Violations Number One and Number Two involved multiple patrons or employees. Commission staff recommended a 21-day license suspension or a \$3,465.00 civil penalty for these violations.
3. The Commission will reduce the sanction by five days.
4. Licensee will either pay a \$2,640.00 civil penalty before 5:00 PM on February 15, 2023, **OR** serve a 16-day suspension beginning at 7:00 AM on February 22, 2023 and ending at 7:00 AM on March 10, 2023.
5. Licensee withdraws the request for hearing.
6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these incidents, 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 the licensee.
7. This agreement is conditional upon final approval of the Commission and will be reviewed by the Commissioners at their January 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.

4. **CASEY FOLEY** (SP # 4L57W1)
(Service Permittee)

OAR 845-006-0347(1)(c), (2)(a) – On or about February 10 to February 11, 2022, from shortly before midnight until approximately 1:00am, Permittee permitted disorderly activities on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises, when Permittee permitted off-duty employee Gabriel Vargas, who was known to Permittee to inappropriately touch women when intoxicated, to be at the premises while intoxicated, where he sexually harassed a female patron.

(1st Level Category III)

OAR 845-006-0347(4) - On or about February 10 to February 11, 2022, from shortly before midnight until approximately 1:00am, Permittee failed to evict patrons from the premises for at least 24 hours who were known to Permittee to have engaged in noisy, disorderly, or unlawful activities, when Permittee confronted Gabriel Vargas about subjecting patron A. Baker to unwanted sexual contact at the premises that night, but failed to evict Vargas.

(1st Level Category IV)

Note: Licensee was charged with this violation by Notice dated November 1, 2022. The total proposed penalty was a 17-day license suspension or a \$425.00 civil penalty. Permittee requested a hearing, but now wishes to enter into this settlement agreement.

AGGRAVATION

Staff added 2 days aggravation because Violations Number One involved multiple patrons or employees.

SYNOPSIS: – On the night of February 10, 2022, an off-duty employee (Gabriel Vargas) was intoxicated on the premises when he sexually harassed a patron. When Permittee learned of the harassment, she asked Vargas to leave, but he did not leave. Permittee did not call police. Vargas remained on the premises for about thirty minutes longer where he continued interacting with the patron. The licensee was also issued a notice in connection with these charges. Permittee had some knowledge that Vargas had touched women inappropriately when intoxicated.

TERMS OF AGREEMENT

1. Permittee accepts responsibility for Violations Number One and Number Two, as set out in the Notice. Violation Number One was Permittee's first Category III violation within two years. Violation Number Two was Permittee's first Category IV violation within two years. Any subsequent Category III or Category IV violation within the same two years will be charged at the second level. These violations will become a permanent part of Permittee's Commission file and may be considered in any future application for any license or permit by Permittee.
2. Commission staff originally proposed the standard sanction of a 17-day permit suspension or \$425.00 civil penalty. Staff added two days of aggravation to the penalty because Violation Number One involved multiple patrons or employees. Commission staff recommended a 19-day permit suspension or a \$475.00 civil penalty for these violations.
3. The Commission will reduce the sanction by five days.

(continue **CASEY FOLEY SP#4L57W1**)

4. Licensee will either pay a \$350.00 civil penalty before 5:00 PM on February 15, 2023, **OR** serve a 14-day suspension beginning at 7:00 AM on February 22, 2023 and ending at 7:00 AM on March 8, 2023.
5. Permittee withdraws the request for hearing.
6. If Permittee's permit expires or is surrendered before the Commission issues a final order on these incidents, Permittee agrees to accept a Letter of Reprimand for the violations. This reprimand will become a permanent part of the Permittee's Commission file and may be considered in any future application for any license or permit by Permittee.
7. This agreement is conditional upon final approval of the Commission and will be reviewed by the Commissioners at their January 2023 Commission Meeting. If the agreement is not accepted and approved in its entirety by the Commission it is deemed null and void and Permittee's hearing rights, if any, will be restored. If the agreement is accepted and approved in its entirety by the Commission, Permittee 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.