

ADMINISTRATIVE HEARINGS DIVISION

August 19, 2021

STIPULATED SETTLEMENT AGREEMENTS FOR LIQUOR VIOLATION CASES

1. Tea Pot, Inc.
Dong Sheng Jing, Pres/Sec/Dir/Stkhldr
dba **HAPPY SING BAR (F-COM)**
11130 SE Powell Blvd
Portland, OR 97266

ORS 471.425(1) - On or about January 15, 2020, Licensee's employees, agents, or representatives, Keith Jing and/or HuaJian "Ken" Deng made false representations or statements to the Commission in order to induce or prevent agency action by the Commission when Keith Jing and/or Ken Deng stated that they were unaware of any unlawful drug activity on the premises.

(1st Level Category II)

OAR 845-006-0345(12) - From about October 4, 2019 to October 11, 2019, Licensee and/or Licensee's employees, agents, or representatives permitted patrons in the facility to dispense or serve cases of beer, and/or other alcoholic beverages to themselves for on-premises consumption.

(1st Level Category III)

ORS 471.360(1)(a) and (b) - From about October 4, 2019 to about November 19, 2019, Licensee permitted employee Ken Deng to mix, sell, or serve alcoholic beverages, or supervise those who do, without a valid service permit issued by the Commission.

(1st Level Category III)

OAR 845-009-0015(1)(2) – From about October 4, 2019 to about November 19, 2019, Licensee failed to verify that employee Ken Deng had a valid service permit or pending application, and/or that Ken Deng had transmitted a completed service permit

Note: Licensee was charged with these violations by Notice dated January 12, 2021. Staff originally proposed license cancellation for these violations. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Staff added aggravation because Violation Number Two, Violation Number Four, Violation Number Five, and Violation Number Six were repeated, and because Violation Number One, Violation Number Two, Violation Number Four, and Violation Number Five involved more than one patron or employee.

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application, with the appropriate fee, to the Commission by the end of the first work day following the first work shift, and/or that Ken Deng had taken and passed a Server Education course and been issued a service permit.

(1st Level Category III)

ORS 471.410(1) - From about October 4, 2019 to October 11, 2019, Licensee and/or Licensee's employees, agents, or representatives Ken Deng sold, gave, or otherwise made alcoholic liquor available to visibly intoxicated persons.

(1st Level Category III)

OAR 845-006-0425(1) - On or about October 8, 2019 and/or October 10, 2019, Licensee and/or Licensee's employees, agents, or representatives permitted alcoholic liquor to be sold, dispensed, served or consumed on the licensed premises between 2:30 am and 7:00 am.

(1st Level Category IV)

SYNOPSIS: In October and November 2019, Licensee permitted unlawful activity, after-hours operation, self-service, and a server working without a service permit, resulting in a charge letter with six violations. The inspector returned to the premises before the end of 2019 and did not find any additional violations. Since 2020, OLCC hasn't received further complaints or observed compliance issues at the premises. In light of the hardship suffered as a result of the pandemic, and the fact that the back room where the parties took place has been physically walled off from licensee, it was decided the matter should be settled with the imposition of a suspension, which could be offset by the number of days the licensee was prohibited from operating under Governor's Executive Orders, or a civil penalty, along with license restrictions aimed at preventing future compliance issues.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. This was Licensee's first Category II violation within two years. These were Licensee's first, second, third, and fourth Category III violations within two years. This was Licensee's first Category IV violation within two years. Any subsequent Category II, 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 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 first-level Category II violation is a 30-day license suspension. The standard sanction for a Category III violation is a 10-day suspension or a \$1,650.00 civil penalty for the first violation within two years, a 30-day suspension or \$4,950.00 civil penalty for the second,

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a 30-day suspension for the third, and license cancellation for the fourth. The standard sanction for a first-level Category IV violation is a seven-day suspension or a \$1,155.00 civil penalty.

3. Commission staff proposed to aggravate the penalty because Violation Number Two, Violation Number Four, Violation Number Five, and Violation Number Six were repeated, and because Violation Number One, Violation Number Two, Violation Number Four, and Violation Number Five involved more than one patron or employee.
4. Commission staff originally proposed license cancellation for these violations.
5. The Commission will reduce the sanction for Violation Number One by nine days. The Commission will charge Violations Number Two, Number Three, Number Four and Violation Five at the first level and reduce the sanction by three days each. The Commission will reduce the sanction for Violation Number Six by two days.
6. Licensee will either pay a \$7,755.00 civil penalty before 5:00 PM on September 15, 2021 and serve a 23-day suspension beginning at 7:00 AM on September 22, 2021 and ending at 7:00 AM on October 15, 2021 **OR** serve a 70-day suspension beginning at 7:00 AM on September 22, 2021 and ending at 7:00 AM on December 1, 2021.
7. Licensee may off-set the number of days it was prohibited from exercising its on-premises license privileges pursuant to the Governor's Executive Order 20-07, or any successor that extends that order, against the suspension referenced in Paragraph 6.
8. The Commission will impose restrictions on the license. Licensee accepts the imposition of the following license restrictions without condition or reservation:
 - (1) After 8:00 pm, a patron will possess no more than one container of alcohol at one time and each container of alcohol will contain no more than 16 ounces of malt beverage, 16 ounces of cider, 6 ounces of wine, or 2 ounces of distilled spirits. Despite this requirement, a patron may possess one bottle containing no more than 750 ml of wine (including champagne).
 - (2) Licensee will maintain a security video surveillance system with digital video recording capabilities sufficient to capture clear and specific images of all areas controlled by the licensee where patrons are or may be present, including, but not limited to, the entirety of the licensed premises accessible to patrons (with the exception of the restrooms), all points of ingress and egress to the licensed premises, and the alleyway behind the licensed premises. The areas must be sufficiently lit as to have the surveillance video visible. The licensee must keep all recordings for a minimum of 30 calendar days, with the date and time embedded on all surveillance recordings without significantly obscuring the picture.
 - (3) Licensee will ensure any violent or illegal activity observed within the licensed premises or in the immediate vicinity of the licensed premises, including but not limited to drug use, fighting, or public intoxication, is immediately reported to Portland Police Bureau via telephone call to 911 or the non-emergency line as necessitated by the circumstances.
 - (4) Patron access, alcohol sale, service and consumption, and entertainment are prohibited in the backroom of the premises. Under Happy Sing Bar's revised floor plan, submitted on June 21, 2021, this area is not part of the licensed premises and is physically walled off from the premises. The blocked off area is adjacent to an ADA restroom and a seating area.
 - (5) Licensee is prohibited from using the rear entrance for patron entry and exit.

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9. Licensee withdraws the request for a hearing.
10. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on this allegation, the 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 the licensee.
11. This agreement is conditional upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their August 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. Eclipse Business Services, Inc.
Brent Hoover, Pres/Treas/Sec/
Dir/Stockholder
6 Quincy Avenue
Cottage Grove, OR 97424
dba **THE GROVE CAFÉ
& LOUNGE (F-COM)**
521 E Main Street
Cottage Grove, OR 97424

ORS 471.315(1)(c) - There is a history of serious and persistent problems involving disturbances, unlawful activities, or noise either in the licensed premises at 521 E Main Street, Cottage Grove, Oregon, or involving patrons of the establishment in the immediate vicinity of the premises.

(Category I)

OAR 845-006-0497(3) - On or about February 16, 2020, Licensee and/or Licensee's employees, agents, or representatives failed to follow the ECP when, after a patron of the premises called CGPD to report being assaulted on the premises, the premises bartender told the responding CGPD officer during his investigation that the patron had punched another patron in the licensed premises, but she had not reported it to CGPD, as required in Paragraph 1 of the ECP.

(1st Level Category III)

OAR 845-006-0497(3) - On or about February 21, 2020, Licensee and/or Licensee's employees, agents, or representatives failed to follow the ECP when the premises bar log showed multiple fights occurring at the licensed premises, but were not reported to CGPD, as required in Paragraph 1 of the ECP.

(1st Level Category III)

Note: Licensee was charged with these violations by Notice dated November 4, 2020. Staff originally proposed for these violations the sanction of license cancellation. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Commission staff recommended aggravation because the number of violations indicated a disregard for the law or failure to control the premises, and because Violation Number One resulted in injury to patrons.

SYNOPSIS: Licensee was charged for a History of Serious and Persistent Problems based on 23 serious incidents occurring in a period of about 18 months, most of which involved intoxicated patrons, and many of which consisted of fighting and violence in the premises or in the immediate vicinity. Licensee had previously been operating under an Enforceable Compliance Plan (ECP). In light of the hardship suffered as a result of the pandemic, circumstances surrounding the Licensees' health and ability to effectively operate the premises, and a representation from the Licensee's regarding efforts to shift patron's expectations about the licensed premises and stop alcohol service at 11:15pm, it was decided the matter should be settled with the imposition of a suspension, which could be offset by the number of days the licensee was prohibited from operating under Governor's Executive Orders, or a civil penalty, along with license restrictions aimed at preventing future compliance issues. Licensee was also charged with two violations for violating the ECP.

(continue **THE GROVE CAFÉ & LOUNGE**)

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. This was Licensee's first Category I violation, and second and third Category III violations within two years. Violations Number Two and Number Three were discovered concurrently and are charged at the second level. Any subsequent Category III 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.
2. The standard penalty for a Category I violation is license cancellation, and the standard penalty for second-level Category III violations is a 30-day suspension or a \$4,950.00 civil penalty each. Commission staff originally proposed for these violations the sanction of license cancellation. Commission staff recommended aggravation because the number of violations indicated a disregard for the law or failure to control the premises, and because Violation Number One resulted in injury to patrons.
3. The Commission will reduce the sanction for Violation Number One to a 32-day license suspension **OR** a two-day suspension and a \$4,950.00 civil penalty.
4. Subject to the COVID offset stated in paragraph 5 below, the Commission will impose a \$9,900.00 civil penalty **OR** a 60-day suspension for the two second-level Category III violations.
5. Licensee may off-set the number of days it was prohibited from exercising its on-premises license privileges pursuant to the Governor's Executive Order 20-07, or any successor that extends that order, against the 60-day suspension for the two Category III violations referenced in Paragraph 4. Applying this COVID off-set against the penalty for the two Category III violations, Licensee shall either pay a \$4,950.00 civil penalty and serve a two-day suspension beginning at 7:00 AM on September 22, 2021 and ending at 7:00 AM on September 24, 2021 **OR** serve a 32-day suspension beginning at 7:00 AM on September 22, 2021 and ending at 7:00 AM on October 24, 2021.
6. The Commission will impose restrictions on the license. Licensee accepts the imposition of the following license restrictions without conditions or reservations:
 - (1) The sale and service of alcohol is prohibited from 11:15 PM to 7:00 AM. Patron possession and consumption of alcohol is prohibited from 12:00 AM to 7:00 AM.
 - (2) After 8:00 pm, a patron will possess no more than one container of alcohol at one time and each container of alcohol will contain no more than 16 ounces of malt beverage, 16 ounces of cider, 6 ounces of wine, or 2 ounces of distilled spirits. Despite this requirement, a patron may possess one bottle containing no more than 750 ml of wine (including champagne).
 - (3) Licensee's permittees will use a measuring device to measure pours of distilled spirits.

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- (4) Licensee will maintain a security video surveillance system with digital video recording capabilities sufficient to capture clear and specific images of all areas controlled by the licensee where patrons are or may be present, including, but not limited to, the entirety of the licensed premises accessible to patrons (with the exception of the restrooms), all points of ingress and egress to the licensed premises, and the alleyway behind the licensed premises. The areas must be sufficiently lit as to have the surveillance video visible. The licensee must keep all recordings for a minimum of 30 calendar days, with the date and time embedded on all surveillance recordings without significantly obscuring the picture.
 - (5) Licensee must make unaltered video surveillance footage available, upon request, to any OLCC inspector or law enforcement officer. Licensee will ensure there is always at least one staff member who is trained to produce and supply video surveillance footage to the OLCC or law enforcement upon request on duty at all times the business is open.
 - (6) Licensee will have at least one DPSST certified security guard on duty from 9pm until the last patron leaves the premises on Friday and Saturday nights, posted at a location with clear sight lines to all points of entry or egress to the premises. This staff member may not assist or participate in the sale or service of alcohol while on duty on this role. This DPSST certified security will patrol the premises and the alleyway every 30 minutes to monitor activity and to discourage loitering. Licensee will ensure any violent or illegal activity observed within the licensed premises or in the immediate vicinity of the licensed premises, including but not limited to loitering, fighting, or public intoxication, is immediately reported to Cottage Grove Police Department via telephone call to 911 or the non-emergency line as necessitated by the circumstances. This staff person will be in addition to the security staff required in Restriction No. 7.
 - (7) At all other times when the business is operating, Licensee will have at least one DPSST certified security guard on duty. This DPSST certified security will patrol the premises and the alleyway every hour, starting at 5pm and continuing until the last patron leaves the premises, to monitor activity and to discourage loitering. The patrols conducted pursuant to this paragraph may be done by a visual check of the security camera monitors. Licensee will ensure any violent or illegal activity observed within the licensed premises or in the immediate vicinity of the licensed premises, including but not limited to loitering, fighting, or public intoxication, is immediately reported to Cottage Grove Police Department via telephone call to 911 or the non-emergency line as necessitated by the circumstances.
 - (8) Licensee will ensure all DPSST certified security guards who conduct security are wearing distinctive apparel marked conspicuously with the word "Security" at all times they are on duty, in a manner that is clearly visible to patrons and not obscured or covered in any way.
7. Licensee withdraws the 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 this allegation, the 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 by the licensee.
 9. This agreement is conditional upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their August 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.