

ADMINISTRATIVE HEARINGS DIVISION

June 15, 2023

STIPULATED SETTLEMENT AGREEMENT FOR MARIJUANA VIOLATION CASES

1. Cardholder Care, Limited
Liability Company
Wade Hall, Member
Michelle Hall, Member
dba **TOP SHELF WELLNESS CENTER**
205 N Phoenix Rd, Suite C
Phoenix, OR 97535

ORS 475C.213 and OAR 845-025-8520(1) - On or about August 18, 2022, Licensee's employee, agent, or representative Holly Zieman sold, delivered, transferred or made available a marijuana item to a minor decoy, a person under 21 years of age who did not hold a valid OMMP patient or caregiver card.

Note: Licensee was charged with these violations by Notice dated January 10, 2023. The total proposed penalty was a 37-day license suspension or a civil penalty of \$7,005.00. Licensee requested a hearing and now wishes to enter into this settlement agreement.

(1st Level Category II(b))

AGGRAVATED

Staff recommended aggravation because Violation Number Two involved more than one employee. Staff aggravated the penalty for Violation Number Two upward by \$50.00.

(Retailer)

ORS 475C.269(2), OAR 845-025-5500(4)- On or about August 18, 2022, Licensee and/or its employees, agents, or representatives failed to verify that workers Holly Zieman and Zachry Clark had a valid marijuana worker permit before allowing them to perform any work of the kind described in ORS 475C.269(1) and/or OAR 845-025-5500(1) on the licensed premises.

MITIGATION

Staff determined that the Licensee was not personally involved in or aware of Violation Number One occurring. Accordingly, the Commission mitigated the penalty for Violation Number One downward by three days or \$495.00.

(1st Level Category III)

SYNOPSIS: – During a minor decoy operation at this retailer premises, budtender Holly Zieman completed the sale of a marijuana pre-roll to a minor after budtender Zachry Clark reviewed the minor's ID and confirmed (incorrectly) that the minor was 21 years of age. Although both selling marijuana items and verification of age require a worker permit, neither employee held such a permit at the time of this sale.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. This was Licensee's first Category II(b) violation within two years, and first Category III violation within two years. Any subsequent Category II(b) 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.
2. The standard sanction for Violation Number One is a 30-day suspension or a \$4,950.00 civil penalty. However, Commission staff determined that the Licensee was not personally involved in or aware of the violation occurring. OAR 845-025-8590(5)(d)(F). Accordingly, the Commission mitigated the penalty for Violation Number One downward by three days or \$495.00.

(continue **TOP SHELF WELLNESS CENTER**)

3. The standard sanction for Violation Number Two is a 10-day suspension or a \$2,500.00 civil penalty. However, it is an aggravating circumstance that a violation involves more than one consumer or employee. OAR 845-025-8590(5)(e)(F). Violation Number Two involved more than one employee. Accordingly, the Commission aggravated the penalty for Violation Number Two upward by \$50.00.
4. The total proposed penalty was a 37-day license suspension or a civil penalty of \$7,005.00. The Commission will reduce the sanction for Violation Number One by eight days and for Violation Number Two by three days.
5. Licensee will either pay a \$4,935.00 civil penalty before 5:00 PM on July 17, 2023 **OR** serve a 26-day license suspension beginning at 12:00 PM (noon) on July 24, 2023 and ending at 12:00 PM (noon) on August 19, 2023.
6. Licensee withdraws the request for hearing.
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 June 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. Ground Up Farms, LLC
Clay Pearson, Member
Carrie Czajkowski, Member
dba **GROUND UP FARMS**
429 S Central Avenue
Medford, OR 97501

(Retailer)

OAR 845-025-2800(4)(b)(B) - From about April 1, 2022 to April 30, 2022, Licensee or Licensee's employees, agents, or representatives knowingly exceeded the 32-ounce monthly sales limit for useable marijuana sold or transferred to a single Oregon Medical Marijuana Program (OMMP) cardholder ("cardholder") or designated primary caregiver ("caregiver") when it sold 35.55 ounces of marijuana to OMMP cardholder No 1574538.

(1st Level Category II)

ORS 475C.213 and OAR 845-025-8520- On or about January 25, 2023, Licensee's employee, agent, or representative Lily Baugh sold, delivered, transferred, or made available a marijuana item to a minor decoy, a person under 21 years of age who did not hold a valid OMMP patient or caregiver card.

(1st Level Category II(b))

Note: Licensee was charged with these violations by Amended Notice dated April 18, 2023. The total proposed sanction for this violation was a 53-day license suspension or a civil penalty of \$10,955.00. Licensee requested a hearing and now wishes to enter into this settlement agreement.

MITIGATION

Staff mitigated Violation Number One to a Category II violation because the violation was reclassified from a Category I to a Category II violation on January 1, 2023. Staff mitigated the penalty for Violation Number One downward by three days or \$750.00 because Licensee was not personally involved in or aware of the violation occurring. In addition, staff determined that Licensee made a good faith effort to prevent Violation Number One by upgrading their POS system and working with OLCC CTS Team prior to the time of the violation. Accordingly, staff mitigated the penalty for Violation Number One downward by one day or \$250.00.

Staff mitigated the penalty for Violation Number Two downward by three days or \$495.00 because Licensee was not personally involved in or aware of the violation occurring.

SYNOPSIS: – In April 2022, Ground Up Farms, LLC sold more than the 32-ounce monthly marijuana product limit for a single OMPP cardholder or caregiver. The Inspector had previously provided Licensee with verbal instruction for the same violation occurring in August, September, October, and November of 2021. On January 25, 2023, the premises completed a sale to a minor during an OLCC Minor Decoy Operation.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. These were Licensee's first Category II and first Category II(b) violations. Any subsequent Category II or Category II(b) 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 **GROUND UP FARMS**)

2. The standard sanction for Violation Number One is a 30-day suspension or a \$7,500.00 civil penalty. However, Commission staff determined that the Licensee was not personally involved in or aware of the violation occurring. OAR 845-025-8590(5)(d)(F). Accordingly, the Commission mitigated the penalty for Violation Number One downward by three days or \$750.00. Additionally, Commission staff determined that Licensee made a good faith effort to prevent the violation by upgrading their POS system and working with OLCC CTS Team prior to the time of the violation. OAR 845-025-8590(5)(d)(A). Accordingly, the Commission mitigated the penalty for Violation Number One downward by one day or \$250.00.
3. The standard sanction for Violation Number Two is a 30-day suspension or a \$4,950.00 civil penalty. However, Commission staff determined that the Licensee was not personally involved in or aware of the violation occurring. OAR 845-025-8590(5)(d)(F). Accordingly, the Commission mitigated the penalty for Violation Number Two downward by three days or \$495.00.
4. The total proposed penalty was a 53-day license suspension or a civil penalty of \$10,955.00. The Commission will reduce the sanction for Violation Number One by eight days and for Violation Number Two by eight days.
5. Licensee will either pay a \$7,635.00 civil penalty before 5:00 PM on July 17, 2023 **OR** serve a 37-day license suspension beginning at 12:00 PM (noon) on July 24, 2023 and ending at 12:00 PM (noon) on August 30, 2023.
6. Licensee withdraws the request for hearing.
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 June 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.