

ADMINISTRATIVE POLICY & PROCESS DIVISION

January 16, 2020

STIPULATED SETTLEMENT AGREEMENTS FOR MARIJUANA VIOLATION CASES

1. Nutritional High (Oregon), LLC
NH Operations, LLC, Member
Nutritional High (Colorado), Inc., Mbr
David Posner, President
Adam Szweras, Secretary/Treas
NHII Holdings Ltd., Stockholder
Nutritional High International, Inc.,
Stockholder
Vernon Frazier, President
dba **NUTRITIONAL HIGH**
(Processor)

OAR 845-025-3215(3)(b) and/or OAR 845-025-3260(3)(a)(A) - From about September 14, 2018 to about January 14, 2019, Licensee (a processor with an endorsement to make cannabinoid concentrates) and/or Licensee's employees, agents, or representatives operated other than the license permits when they used an unapproved process, to wit: use of denatured alcohol (710 Spirits High Purity Extraction Grade Solvent – Ethanol) to make cannabinoid concentrates.

(Category I)

Note: Licensee was charged with this violation by Notice dated September 17, 2019. Commission staff originally proposed the standard sanction of license cancellation and seizure and destruction of marijuana items. Licensee requested a hearing and now wishes to enter into this settlement agreement.

SYNOPSIS: Licensee, a processor, used a denatured alcohol (a non-food grade alcohol) to process marijuana items for the first several months of its licensure. Commission rules require the use of a non-denatured alcohol. Licensee corrected the issue and has “quarantined” about 11,000 units (mostly vape cartridges) generated from the improper processing. Licensee surrenders those units to the Commission for destruction, and will also serve a 30-day suspension or pay a \$4,950.00 civil penalty.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violation as set out in the Notice.
2. Commission staff originally proposed the standard sanction of license cancellation and seizure and destruction of marijuana items. The Commission will reduce the sanction to a 30-day license suspension or a \$4,950.00 civil penalty.
3. Licensee will either pay a \$4,950.00 civil penalty before 5:00 PM on February 18, 2020, **OR** serve a 30-day suspension beginning at 7:00 AM on February 23, 2020 and ending at 7:00 AM on March 24, 2020.
4. Licensee relinquishes any and all interest in marijuana items created from the use of denatured alcohol, including, but not limited to, those identified in Attachment 1 to the settlement agreement. Licensee agrees that the Commission may seize and destroy the marijuana items. Further, Licensee agrees to collect any other existing marijuana items made from its use of denatured alcohol from other licensees, and agrees that the Commission may seize and destroy those marijuana items as well. An OLCC employee will contact Licensee to arrange for surrender of marijuana items to OLCC.

(continue **NUTRITIONAL HIGH**)

5. Licensee withdraws the request for a hearing.
6. This agreement is conditional upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their January 2020 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. Oregon Cannabis Co Rec, LLC
Colin Andries, Receiver
Michelle Gold, Member
Bert Gold, Member
dba **OREGON CANNABIS CO**
1977 Santiam Hwy SE
Albany, OR 97322
(Retailer)

OAR 845-025-7580(4) - On or before April 10, 2019, Licensee and/or its employees, agents or representatives failed to record the price before tax and amount of each item sold to consumers and the date of each transaction in the METRC Cannabis Tracking System (CTS) for each individual transaction before the retailer opened the next business day, with respect to transactions carried out on one or more of the following dates in 2019: February 2, February 3, February 4, February 21 and/or February 24.

(1st Level Category III)

OAR 845-025-7580(4) - On or before May 7, 2019, Licensee and/or its employees, agents or representatives failed to record the price before tax and amount of each item sold to consumers and the date of each transaction in CTS for each individual transaction before the retailer opened the next business day, with respect to transactions carried out on one or more of the following dates in 2019: March 1, March 2, March 4, March 5, March 9, March 13, March 18 and/or March 30.

(1st Level Category III)

OAR 845-025-7580(4) - On or before June 3, 2019, Licensee and/or its employees, agents or representatives failed to record the price before tax and amount of each item sold to consumers and the date of each transaction in CTS for each individual transaction before the retailer opened the next business day, with respect to transactions carried out on one or more of the following dates in 2019: April 5, April 9, April 20, April 21, April 25 and/or April 28.

(1st Level Category III)

Note: Licensee was charged with these violations by Notice dated October 1, 2019. The total proposed sanction was a 36-day license suspension or a civil penalty of \$5,940.00. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Commission staff proposed six days of aggravation because each violation was repeated.

(continue **OREGON CANNABIS CO**)

SYNOPSIS: Over a period of three months, this retailer premises under the control of a receiver failed to timely record daily sales information in CTS, despite warnings/reminders sent by the OLCC Financial Services Department.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. These were Licensee's first through third Category III violations. Because these violations were all discovered at the same time, they were charged at the first level. Any subsequent Category III 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 license suspension or a \$1,650.00 civil penalty for each violation. Commission staff proposed six days of aggravation because each violation was repeated. The total proposed sanction was a 36-day license suspension or a civil penalty of \$5,940.00.
3. Under the terms of this agreement, Licensee will pay a \$4,455.00 civil penalty before 5:00 PM on February 18, 2020 **OR** serve a 27-day suspension beginning at 7:00 AM on February 23, 2020 and ending at 7:00 AM on March 21, 2020.
4. Licensee withdraws its Request for Hearing in this matter.
5. If a licensee's interest in the license expires or is transferred before the Commission issues a final order, that licensee agrees to accept a Letter of Reprimand for these 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.
6. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their January 2020 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.

<p>3. Smart Choice Investments, LLC Thomas Beckley, Member David Grove, Member Kevin Claussen, Member Ryan Salas-Mitchell, Member dba WORLD FAMOUS TOP SHELF CANNABIS 704 Chetco Ave Suite A Brookings, OR 97415 (Retailer)</p>	<p>OAR 845-025-7520(1)(d) – On or before February 26, 2019, Licensee and/or Licensee’s employees, agents or representatives, failed to properly tag all inventory with a UID tag pursuant to system requirements of the METRC Cannabis Tracking System (CTS), when inspectors found that nearly all of the packages of marijuana items in Licensee’s inventory lacked UID tags.</p> <p>(1st Level Category III)</p> <p>OAR 845-025-7540(1) On or before February 26, 2019, Licensee and/or Licensee’s employees, agents or representatives, failed to enter data into CTS that fully and transparently accounted for all inventory tracking activity with respect to package 1A40103000110A9000000932 and/or package 1A40103000110A9000000933, which were scattered between various bags and marijuana pre-rolls without the separate packaging being recording in CTS, and which weighed on-site 474.1 grams when CTS showed 451 grams; and with respect to package 1A401030000A2E5000010184 which was reported to contain 46 edibles, but which in fact contained approximately 16 edibles.</p> <p>(1st Level Category III)</p> <p>OAR 845-025-7540(1) - On or before February 26, 2019, Licensee and/or Licensee’s employees, agents or representatives, failed to enter data into CTS that fully and transparently accounted for all inventory tracking activity with respect to 44 packages recorded in CTS with a negative quantity.</p> <p>(1st Level Category III)</p>	<p>Note: Licensee was charged with these violations by Notice dated September 17, 2019. Commission staff originally proposed the standard sanction of license cancellation and seizure and destruction of marijuana items for these violations. Licensee requested a hearing and now wishes to enter into this settlement agreement.</p>
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(continue **WORLD FAMOUS TOP SHELF CANNABIS**)

OAR 845-025-7540(1)(2)(4) - On or before July 11, 2019, Licensee and/or Licensee's employees, agents or representatives, intentionally misrepresented data entered into the CTS system when they accepted the listed packages in CTS prior to actually receiving them.

(Category I)

OAR 845-025-7540(1) - On or before July 11, 2019, Licensee and/or Licensee's employees, agents or representatives, failed to enter data into CTS that fully and transparently accounted for all inventory tracking activity with respect to approximately 649 packages of marijuana items in its CTS inventory that did not contain the weight or quantity shown in CTS, and/or that could not be located at the premises.

(1st Level Category III)

OAR 845-025-7540(1) - From about February 27, 2019 to about July 11, 2019, Licensee and/or Licensee's employees, agents or representatives, failed to enter data into CTS that fully and transparently accounted for all inventory tracking activity with respect to 24 packages recorded in CTS with a negative weight or quantity.

(1st Level Category III)

OAR 845-025-7520(1)(d) - From about February 27, 2019 to about July 11, 2019, Licensee and/or Licensee's employees, agents or representatives, failed to properly tag all inventory with a UID tag pursuant to system requirements of CTS, when on July 11, 2019 inspectors found seven untagged packages of Peppermint CBD edibles and three untagged Key Lime Pie pre-rolled marijuana cigarettes.

(1st Level Category III)

(continue WORLD FAMOUS TOP SHELF CANNABIS)	<p>ORS 475B.211 and OAR 845-025-8520(1) - On or about September 4, 2019, Licensee's employee, agent or representative Stefan Mihaliak sold, delivered, transferred or made available a marijuana item to a person under 21 years of age who did not hold a valid OMMP patient or caregiver card.</p> <p>(1st Level Category II(b))</p>	
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SYNOPSIS: This retailer has two shops, one in Salem, and one in Brookings (the subject here). Inspections conducted February 26, 2019 and July 11, 2019 found that the Brookings location had failed to affix unique identification (UID) tags to most marijuana items in its inventory, and failed to accurately track sales of some of its inventory. Licensee has attributed the failure to correct problems between the two inspections to receiving inaccurate assurances from its on-site manager that everything had been fixed. This seems credible, although of course Licensees are responsible for the actions of their employees. Licensee has replaced this manager and also hired a general manager to oversee compliance. In addition, the Brookings store was relying on a point of sale (POS) system that has since been replaced with a more accurate system. The July 11, 2019 inspection also disclosed an intentional CTS violation, which is a Category I violation, because the problem manager at the Brookings store intentionally accepted 21 items from 2 shipments before the shipments actually arrived. Staff was persuaded that this was not indicative of diversion, but was instead an improper shortcut in recordkeeping. The final violation was failing a minor decoy operation. Management has since installed age verification software at each POS and trained staff accordingly. Licensee has requested that it be given a chance to stay in business and Staff is persuaded that the agreed-upon penalty is an appropriate incentive towards future compliance.

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. These were Licensee's first Category I and Category II(b) violations, and first through sixth Category III violations within two years, charged at the first level. Any subsequent Category III violation within the same two years will be charged at the second level.
2. The standard sanction for the Category I violation is license cancellation. The standard sanction for the Category II(b) violation is a 30-day license suspension or a civil penalty of \$4,950.00. The standard sanction for the Category III violations is a 10-day suspension or a civil penalty of \$1,650.00 each. Staff added two days of aggravation for each Violation Number One through Number Seven (total 14 days) because these violations were repeated.
3. The Commission will reduce the sanction on Violation Number Four to a 32-day license suspension. Licensee agrees to the standard sanction plus standard aggravation for all other violations.
4. Licensee will pay a \$16,830.00 civil penalty before 5:00 PM on February 18, 2020 **and** serve a 32-day license suspension beginning at 7:00 AM on February 23, 2020 and ending at 7:00 AM on March 26, 2020, **OR** serve a 134-day license suspension beginning at 7:00 AM on February 23, 2020 and ending at 7:00 AM on July 6, 2020.
5. Licensee withdraws its Request for Hearing in this matter.

(continue **WORLD FAMOUS TOP SHELF CANNABIS**)

6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these allegations, that licensee agrees to accept a Letter of Reprimand for these violations. This reprimand will become a permanent part of the licensee's Commission file and may be considered in any future application for a license by the licensee.
7. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their January 2020 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. Black Market Distribution, LLC
Aaron Mitchell, Managing Member
dba **BLACK MARKET DISTRIBUTION**
(Wholesale)

OAR 845-025-1430(2)(a)(C), (E) – From about December 7, 2017 to February 7, 2018, Licensee and/or its employees, servants, agents or representatives failed to have surveillance equipment that was equipped with a video monitor, including at least one monitor on the premises capable of viewing video.

(1st Level Category III)

OAR 845-025-1430(3) and OAR 845-025-1460(1)(b) - On or about February 7, 2018, Licensee and/or its employees, servants, agents or representatives failed to keep surveillance equipment housed in a designated, locked, and secured room or other enclosure with limited access when the right-hand end door on the steel security container housing the surveillance equipment was found to be open.

(2nd Level Category III)

OAR 845-025-1450(2)(d)(A) - From about January 6, 2018 to February 13, 2018, Licensee, whose license was issued or renewed after August 31, 2016, and/or its employees, servants, agents or representatives, failed to keep surveillance recordings, except for back-up off-site recordings of the surveillance area, for a minimum of 90 days.

(Category I)

OAR 845-025-1450(2)(k) - From about January 6, 2018 to February 7, 2018, Licensee and/or its employees, servants, agents or representatives failed to immediately notify the Commission of any surveillance system equipment failure or system outage lasting 30 minutes or more.

(3rd Level Category III)

Note: Licensee was charged with these violations by Third Amended Notice dated March 5, 2019. Commission staff originally proposed the standard sanction of license cancellation, seizure and destruction of marijuana items, and refusal to renew license. Licensee requested a hearing and now wishes to withdraw its request for hearing and dispose of the Notices by settlement in order to achieve an equitable result and to avoid the risk of a final order of cancellation.

(continue **BLACK MARKET DISTRIBUTION**)

OAR 845-025-1450(2)(d)(A) - On or about December 17, 2018, Licensee, whose license was issued or renewed after August 31, 2016, and/or its employees, servants, agents or representatives, failed to keep surveillance recordings, except for back-up off-site recordings of the surveillance area, for a minimum of 90 days.

(Category I)

OAR 845-025-1450(2)(k) - On or about September 20, 2018, Licensee and/or its agents, employees or representatives, failed to immediately notify the Commission of any surveillance equipment failure or system outage lasting 30 minutes or more when cameras throughout the facility ceased operating from September 20, 2018 to November 6, 2018, which was not reported to the Commission until October 25, 2018.

(4th Level Category III)

TERMS OF AGREEMENT

1. Licensee Black Market Distribution, LLC and Aaron Mitchell accept responsibility for the violations as found in the Proposed Order as set out above. Violations Number Six and Number Eleven were Licensee's first and second Category I violations. The other four violations were Licensee's first through fourth Category III violations under this license within two years. These violations will become a permanent part of each licensee's Commission file and may be considered in any future application for any license by the licensee.
2. Commission staff originally proposed the standard sanction of license cancellation. The Commission will reduce the sanction to a 99-day license suspension **or** payment of a civil penalty of \$16,335.00.
3. Licensee will pay a \$16,335.00 civil penalty before 5:00 PM on February 18, 2020 **or** serve a 99-day license suspension beginning at 7:00 AM on February 23, 2020 and ending at 7:00 AM on May 27, 2020.
4. Commission staff proposed in the Notices seizure and destruction of 49 boxes of marijuana found at the premises with a stipulated net weight of approximately 163 pounds. Licensee hereby surrenders all right, title and interest to this 163 pounds of marijuana, and agrees that the Commission may seize and destroy these items.
5. Licensee withdraws its request for a hearing, its exceptions to the proposed order, and any right it may have had to entry of a final order in this matter based on anything other than this Settlement Agreement.

(continue **BLACK MARKET DISTRIBUTION**)

6. If a licensee's interest in the license expires or is transferred before the Commission issues a final order on these allegations, the licensee agrees to accept a Letter of Reprimand for these violations. This Letter of 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. In consideration of the forbearance stated herein, Licensee agrees to release and waive any and all claims of any kind, known or unknown, past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or agents arising out of the matters set forth in the Notices, the Proposed Order, or this Settlement Agreement and the final order based hereon, including but not limited to any claim under federal or state law for damages, declaratory or equitable relief, under 42 USC §1983 *et. seq.*, and for attorneys' fees or costs.
8. The terms of this Settlement Agreement and the Final Order entered based on this Agreement are binding on Licensee and any of its agents, employees, representatives, successors or assigns, including without limitation its CEO, Rosa Cazares.
9. This Agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their January 2020 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 and appeal rights, and the Commission's deliberations on the proposed order, will be restored and resumed. If the agreement is accepted and approved in its entirety by the Commission, Licensee waives any and all rights to any further 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.

5. Butte Creek Ranch Farm 1801, LLC
Stephen Day, Jr., Member
dba **BUTTE CREEK FARMS**
(Producer)

OAR 845-025-7580(1)(a), (d) – From about October 1, 2018 to about November 8, 2018, Licensee and/or its employees, agents or representatives failed to use the METRC Cannabis Tracking System (CTS) to record the wet weight of all harvested marijuana plants immediately after harvest with respect to approximately 4,146 whole marijuana plants harvested between October 1, 2018 and November 3, 2018.

(1st Level Category III)

OAR 845-025-1175(1) - On or before October 27, 2018, Licensee and/or its 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 when they added and/or put into use at least two conexas that were used to store post-harvest marijuana.

(2nd Level Category III)

OAR 845-025-1440(1)(b) - On or before October 27, 2018, Licensee and/or its employees, agents or representatives failed to have camera coverage for all limited access areas, when one of the two unapproved conexas in use to store post-harvest marijuana was not equipped with a surveillance camera.

(3rd Level Category III)

OAR 845-025-1420(1), (2)(a) - On or before October 27, 2018, Licensee and/or its employees, agents or representatives failed to have an alarm system capable of detecting unauthorized activity within any limited access area during times that the licensed premises was closed for business, when one or both of the two unapproved conexas in use to store post-harvest marijuana were not equipped with an alarm system.

(4th Level Category III)

Note: Licensee was charged with these violations by Notice dated August 6, 2019. Commission staff proposed to cancel the license for these violations and seize and destroy any remaining marijuana items. Licensee requested a hearing and now wishes to enter into this settlement agreement.

AGGRAVATION

Violations Number One, Number Two, Number Four, Number Five and Number Six were aggravated for repeated misconduct.

(continue **BUTTE CREEK FARMS**)

OAR 845-025-2090(1), (2), (5)(a) - On or about October 4, 2018, October 11, 2018, October 18, 2018, October 23, 2018, October 28, 2018, and November 1, 2018, Licensee and/or its 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 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.

(5th Level Category III)

OAR 845-025-2090(1), (3), (5)(b) - On or about October 2, 2018, October 5, 2018, October 6, 2018, October 7, 2018, October 10, 2018, October 13, 2018, October 20, 2018, October 22, 2018, October 26, 2018, and October 27, 2018, Licensee and/or its employees, agents or representatives, notified the Commission of its intent to harvest marijuana but did not in fact harvest marijuana on those dates, and failed to properly amend these harvest notifications to show that it was not harvesting on the dates indicated.

(1st Level Category IV)

OAR 845-025-1450(2)(d) - On or about July 3, 2019, Licensee and/or its employees, agents or representatives failed to keep on-site surveillance recordings for a minimum of 90 days, when they were found to have only 51 days of on-site video surveillance recordings, dating back to May 14, 2019.

(6th Level Category III)

SYNOPSIS: This producer licensee was found to have numerous violations at a harvest inspection conducted October 27, 2018. An on-site employee admitted to harvesting more than 2,000 mature marijuana plants, which had not been entered into CTS. Explanations were provided, but Staff suspected diversion. Licensee requested a hearing, and now wishes to surrender the license.

(continue **BUTTE CREEK FARMS**)

TERMS OF AGREEMENT

1. Licensee accepts responsibility for the violations as set out in the Notice. These were Licensee's first through sixth Category III violations, and first Category IV violation, within two years. Violations Number One, Number Two, Number Four, Number Five and Number Six were aggravated for repeated misconduct.
2. The standard sanction for these violations is license cancellation. Licensee hereby tenders the surrender of its license and the Commission accepts surrender of Marijuana Producer License No. 10071571776, effective as of the date of ratification of this agreement.
3. Each licensee agrees to accept a letter of reprimand for the violations specified in paragraph (1) above. This letter of 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.
4. Licensee hereby relinquishes any and all interest in any marijuana items left at the licensed premises after the effective date of license surrender, and agrees that the Commission may seize and destroy any such marijuana items.
5. Licensee withdraws its Request for Hearing in this matter.
6. This agreement is conditioned upon final approval of the Oregon Liquor Control Commission and will be reviewed by the Commissioners at their January 2020 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.