

**BEFORE THE  
DEPARTMENT OF CANNABIS CONTROL  
STATE OF CALIFORNIA**

**In the Matter of the Notice of Violation Against:**

**805 AG HOLDINGS, LLC,**

**Respondent.**

**Agency Case No. ENF20-0002383**

**OAH No. 2021080367.1**

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Cannabis Control as its Decision in the above-entitled matter.

This Decision shall become effective on July 11, 2024

IT IS SO ORDERED this 11th day of June 2024.

By: 

Douglas Smurr  
Assistant General Counsel  
Department of Cannabis Control

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**PROPOSED DECISION**

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 30, February 1, and February 20, 2024.

Michael J. Yun, Deputy Attorney General, represented the Department of Cannabis Control (Department).

Thomas D. Green, Esq., and Megan Boneso, Esq., Adamski Moroski Madden Cumberland & Green LLP, represented respondent 805 Ag Holdings, LLC.

The parties presented witness testimony and documentary evidence, and the matter was taken under submission at the end of the hearing. In an order dated March 18, 2024, the administrative law judge reopened the record for briefing on several legal issues. The briefs were marked for identification as exhibit 53 (Department's

brief), exhibit AW (respondent's brief), and exhibit 54 (Department's reply brief).

Thereafter, the record was closed, and the matter was submitted for decision on April 29, 2024.

## **SUMMARY**

Respondent appeals a Notice of Violation from the Department's predecessor agency assessing a total of \$270,740 in proposed penalties for multiple counts of eight alleged violations of cannabis laws and regulations in 2020 and early 2021.

Respondent allegedly committed the violations when respondent moved cannabis products from two cultivation sites to a third site in Santa Barbara County. Respondent disputes the charges and the proposed penalties, contending it acted appropriately in response to difficult circumstances during the COVID-19 pandemic. A preponderance of the evidence proves four of the charged violations, and those violations support assessing a total of \$46,085 in penalties against respondent. The evidence presented does not support the remaining charges and proposed penalties; therefore, respondent's appeal is granted as to those matters.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. The Department is the state agency responsible for regulating the commercial medicinal and adult-use cannabis industry in California. (Bus. & Prof. Code, § 26000.) The Department was created on July 12, 2021. Before that, state regulation of the commercial cannabis industry was the responsibility of the Bureau of Cannabis Control, the State Department of Public Health, and the Department of Food and

Agriculture. (See former Bus. & Prof. Code, § 26012, subd. (a)(2), amended by Stats. 2021, ch. 70, (A.B. 141), § 11, eff. July 12, 2021.) The Department is the successor to the duties and powers of those agencies with respect to regulation of the commercial cannabis industry. (Bus. & Prof. Code, § 26010.7.)

2. Respondent was organized as a limited liability company on a date not established by the evidence. In June and July 2019, the Department of Food and Agriculture's CalCannabis Division (CalCannabis) issued seven "Provisional Medicinal - Small Mixed-Light Tier 1" licenses to respondent authorizing the company to cultivate cannabis at several properties in Tepusquet Canyon in Santa Barbara County. Three of the now-expired licenses (CCL18-0001191, CCL18-0001196, and CCL18-0001197) authorized cultivation on Assessor Parcel Number (APN) 131-090-027, which is vacant land without a physical address in Santa Maria, California (hereinafter "Tep 1"). Another three licenses (CCL18-0001222, CCL18-0001223, and CCL18-0001228) authorized cultivation on APN 131-200-021, which is land located at 1556 Tepusquet Road in Santa Maria (hereinafter "Tep 2"). The other license (CCL18-0001213) authorized cultivation on APN 131-100-017, which is also vacant land without a physical address in Santa Maria (hereinafter "Tep 3"). Tep 1 and Tep 2 are within an area of Santa Barbara County classified for zoning purposes as an Existing Developed Rural Neighborhood (EDRN); Tep 3 is more remote and not within an EDRN. Respondent was also licensed to cultivate cannabis on another non-EDRN parcel nearby (hereinafter "Tep 4"), but this case does not involve that parcel.

3. As authorized under the county's Land Use and Development Code and the licenses, respondent cultivated cannabis on the parcels while the county considered respondent's applications for permanent cultivation permits. On July 14, 2020, the Santa Barbara County Board of Supervisors adopted an ordinance amending

the county's Land Use and Development Code effective August 13, 2020, to prohibit commercial cannabis activities on lots within the inland area of the county and within EDRNs. Tep 1 and Tep 2 are within an area covered by the prohibition; Tep 3 (and Tep 4) are not.

4. On August 7, 2020, the County of Santa Barbara Planning and Development Department emailed letters about the zoning change to Helios Dayspring, respondent's managing member, and Stacey Wooten, its compliance manager. The letters stated respondent's applications for permanent cultivation permits for Tep 1 and Tep 2 could not be completed due to the change and would be returned. The letters also stated respondent's legal nonconforming status for cannabis cultivation on Tep 1 and Tep 2 would be terminated upon the effective date of the ordinance amendment on August 13, 2020, but "[i]n order to provide for an orderly transition, you will have until December 15, 2020 to cease all cannabis activities on the site[s] and remove any cannabis from the site[s]." (Exhibits 25, 26.) The letters also advised that "any cannabis activities occurring on the site after August 13th may be subject to a Notice of Violation with abatement required by December 15, 2020." (*Ibid.*)

5. On November 13, 2020, a County of Santa Barbara Planning and Development Department official issued Notices of Violation to Dayspring with respect to respondent's cannabis activities at Tep 1 and Tep 2. The notices stated cannabis activities "are now prohibited" on the parcels, and "[i]mmediate steps must be taken" to correct the violation. (Exhibits 22, 23.) However, like the earlier letters from the county, the notices also stated, "to provide for an orderly transition . . . the Planning & Development Director has extended the required abatement date to December 15,

2020. [¶] You MUST cease cannabis cultivation and remove all cannabis from the property on or before December 15, 2020." (*Ibid.*)

6. At or about the same time, another county official sent CalCannabis a list of "non-compliant operators" affected by the new ordinance, stating the county provided a four-month grace period to cease operations that would expire on December 14, 2020. (Exhibit 38.) CalCannabis asked for more information from the county official, who submitted a "Notification of Local Non-Compliance" form to CalCannabis regarding Tep 1 and Tep 2. (*Id.*, p. A204.) On the notification, the county official checked boxes indicating the county "Denied" and "Revoked" the local permit associated with those parcels, stating the reason for non-compliance was the ordinance amending the Land Use and Development Code. (*Ibid.*)

7. On December 3, 2020, the Acting State Public Health Officer of the California Department of Public Health issued a Regional Stay at Home Order due to the COVID-19 pandemic. The order required persons in Santa Barbara County, San Luis Obispo County (where respondent also did business), and other areas of the state to stay at home as much as possible, except as necessary to conduct activities associated with critical infrastructure, as required by law, or as specifically permitted in the order. The terms of the order were to remain in place for at least three weeks from the date the order took effect in a region of the state.

8. On December 17, 2020, CalCannabis received a disaster relief request signed by Dayspring with respect to respondent's cultivation licenses associated with Tep 1 and Tep 2. Citing the stay-at-home order and the pandemic, the request stated the cannabis goods associated with the licenses were physically moved "as of today" to the Tep 3 parcel to prevent loss, theft, and product degradation. (Exhibit 7, p. A129.) The request also stated, "METRC records [i.e., records of the transfers] will be kept and

submitted within 24 hours after the transfer is completed," and "[w]ithin 10 days . . . we will contact you in writing as to the specific statutory and regulatory section relief is requested from, the time period for which the relief is requested, and the reasons relief is needed for the specified amount of time." (*Ibid.*) METRC, or Marijuana Enforcement Tracking Reporting Compliance, is a state-mandated track-and-trace software platform for the cannabis industry.

9. Jane Kineva, an Environmental Scientist at CalCannabis, emailed Wooten and Dayspring later that day asking for more details about the disaster relief request. Wooten replied that respondent was specifically seeking relief from the cultivation plan requirements of former California Code of Regulations, title 3, section 8106, which was in effect at the time; the relief was requested for 30-45 days depending on the stay-at-home order; and the receiving license was CCL18-0001213 (i.e., the Tep 3 license). Wooten's response also included an inventory list of packages of cannabis products associated with four of the six licenses referenced in the disaster relief request.

10. Kineva forwarded the request to the CalCannabis Compliance and Enforcement Branch. On December 23, 2020, three CalCannabis investigators inspected Tep 3 with Wooten and Dayspring regarding the request. Wooten provided an updated inventory list of 81 cannabis packages that had been moved to Tep 3, and the investigators physically verified each package on the list, which included 951.6 pounds of flower in 73 packages and 8 packages of seeds. According to Wooten and Dayspring, respondent moved the packages to Tep 3 using a U-Haul truck under a distributor license (C13-0000085-LIC) that respondent received from the Bureau of Cannabis Control. When discussing the need for the disaster relief request, Dayspring and Wooten explained to the investigators that respondent was not going to have

staff onsite at Tep 1 and Tep 2 due to the stay-at-home order, and therefore the product would have sat unattended unless it was moved to Tep 3.

11. CalCannabis Special Investigator Tristani Gutierrez filled out an inspection form that included a notice of non-compliance identifying three violations: failing to report transfers prior to movement off the premises; failure to record product transferred or received from another licensed premises; and failure to record all transfers/sales pursuant to former California Code of Regulations, title 3, sections 8401 and 8405. (Exhibit 11.) The notice also directed respondent not to remove any of the inventoried product until further advised by CalCannabis, and stated respondent needed to remedy the violations to avoid the possible assessment of penalties and/or license suspension. (*Ibid.*)

12. On January 4, 2021, Gutierrez sent Wooten an email stating respondent's disaster relief request was denied, and that respondent had to comply with all regulations applicable to the six licenses. In a follow-up email on January 7, 2021, Gutierrez directed respondent to create electronic transfers of the inventoried product in METRC from the Tep 1 and Tep 2 licenses to the receiving license at Tep 3 by January 13, 2021, and then physically and electronically transfer the product back to the originating Tep 1 and Tep 2 license by January 20, 2021. Gutierrez also issued respondent another inspection form that included a notice of non-compliance with this information. At the time, Gutierrez was unaware that cannabis cultivation was no longer allowed at Tep 1 and Tep 2 due to the amendment to the county Land Use and Development Code.

13. Respondent completed part of the electronic transfers on January 13, 2021, by creating manifests in METRC for transfers of the inventoried product to the license associated with Tep 3. The partial transfer records included 84 packages, rather



than 81 packages as stated on the updated inventory list provided during the inspection. But respondent's METRC entries did not mark the packages as received by the license associated with Tep 3, or report the inventoried product as being sent back to the originating licenses at Tep 1 and Tep 2. On January 21, 2021, Gutierrez emailed respondent and Wooten again, directing respondent to complete the remaining elements of the electronic and physical transfers by January 28, 2021.

14. Respondent marked the packages as received by the license associated with Tep 3 in METRC on January 25, 2021. However, respondent did not complete the remaining electronic or physical transfers as directed. Instead, the inventoried product remained at Tep 3 until respondent sold it over time to third parties starting on January 26, 2021. Respondent completed electronic records in METRC for those sales.

15. At or about the same time, Gutierrez learned of the county prohibition on cannabis products at Tep 1 and Tep 2, which conflicted with her directions to respondent to return the inventoried product physically to those locations. Separately, an employee of the CalCannabis Local Verification Unit sent respondent a warning notice at the end of January 2021, stating respondent had 15 days to provide a valid local permit for Tep 1 or Tep 2 or surrender the CalCannabis licenses associated with those parcels.

16. In early March 2021, respondent requested the surrender of the licenses associated with Tep 1 and Tep 2. On March 19, 2021, CalCannabis denied the request due to the violations identified during the inspection on December 23, 2020. On June 7, 2021, Richard Parrot, the Director of CalCannabis, issued a Notice of Violation to respondent charging it with eight violations of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Bus. & Prof. Code, § 26000 et seq.) and its implementing regulations that were then in effect (former Cal. Code Regs, tit. 3, § 8000 et seq.). The

charges included multiple counts of each violation and proposed penalties against respondent totaling \$270,470.

17. Respondent timely appealed the Notice of Violation by submitting a request for an informal hearing. Due to a subsequent regulatory change, the requested informal hearing was converted to an adjudicatory proceeding under chapter 5 (commencing with section 11500) of part 1 of division 3 of the Government Code. (Cal. Code Regs., tit. 4, § 17801.1.) The case was originally scheduled for hearing with OAH in 2022, but it was taken off calendar at the Department's request due to a proposed settlement. In May 2023, the Department's Director rejected the proposed settlement, and the hearing was placed back on calendar.

## **Hearing**

### **DEPARTMENT'S CASE**

#### **Tristani Gutierrez**

18. Gutierrez is now a Code Enforcement Officer for the County of San Luis Obispo after working for both CalCannabis and the Department. As a Special Investigator for CalCannabis, Gutierrez prepared a report summarizing her investigation of respondent's disaster relief request. In the report, Gutierrez stated CalCannabis denied the request after respondent failed to provide further information about it as promised in the request. Gutierrez also testified that during the inspection on December 23, 2020, she asked Wooten and Dayspring to send an email detailing the staffing and security reasons for the request that they described verbally during the inspection. Gutierrez wanted to present the email to CalCannabis management in relation to the disaster relief request, but Wooten and Dayspring never sent it, and

CalCannabis management subsequently denied the request. Gutierrez does not know who within CalCannabis management made the decision to deny it.

19. Although the CalCannabis Local Verification Unit received notice from the county of the amendment to the Land Use and Development Code affecting Tep 1 and Tep 2, Gutierrez worked in a different unit and did not receive the notice. Respondent's disaster relief request also did not mention the amendment, and Gutierrez testified Wooten and Dayspring did not mention it during the inspection on December 23, 2020. In her investigation report, Gutierrez concluded respondent's disaster relief request was false and misleading because it cited COVID-19 as the reason for moving the inventory, despite respondent knowing it could not keep the inventory at Tep 1 and Tep 2 due to the amendment.

20. Gutierrez also testified that all the cannabis products at issue were ultimately tracked and accounted for, albeit not in the manner she directed. None of the violations she identified during her investigation involved any missing cannabis products.

21. The evidence Gutierrez gathered included harvest reports from respondent for the licenses associated with Tep 1 and Tep 2. One harvest report for a license associated with Tep 2 reports a harvest date after December 15, 2020. (Exhibit 37, p. A201 [batch date 12/16/20 for license CCL18-0001222].) The remaining harvest reports all include harvest dates before December 15, 2020.

### **Petra Leyva**

22. Petra Leyva is a Supervising Planner with the County of Santa Barbara Planning and Development Department. Leyva testified her department sent notices of violation to respondent and all other affected commercial cannabis growers in the

county after the ordinance amending the Land Use and Development Code. Under the notices of violation, the growers were allowed to continue growing cannabis at the properties affected by the amendment until December 15, 2020. Leyva testified the growers were not in violation for conducting cannabis activities until then.

23. Leyva also testified the county inspected Tep 1 and Tep 2 on December 18, 2020, and verified no cannabis was growing or stored at the sites at that time.

### **RESPONDENT'S CASE**

24. Respondent contends the disaster relief request was a good-faith effort to comply with CalCannabis regulations in "incredibly unique and unprecedented circumstances." (Respondent's Hearing Brief, p. 2.) Due to the stay-at-home order, respondent found itself unable to remove the cannabis product from Tep 1 and Tep 2 as planned before the county deadline of December 15, 2020, because respondent's third-party purchase commitments were all terminated by the purchasers. Respondent was also facing a labor shortage because many of its expected workers chose not to continue working after the stay-at-home order was issued. Because of the terminated contracts and labor shortage, respondent lacked adequate security to protect the cannabis products on Tep 1 and Tep 2. This resulted in respondent's choice to consolidate the products at Tep 3, which was more remote than Tep 1 and Tep 2 and could be protected by the limited employees available. The alternative was to allow the products to remain unsecured at Tep 1 and Tep 2, which created a substantial risk of theft.

### **Stacey Wooten**

25. Respondent called Wooten as its sole witness. Wooten was the third-party compliance manager for respondent, a role she fulfills for various cannabis

growers through her company, Cal Coast Compliance. Wooten testified that but for the pandemic and the labor shortage, respondent would have sold and transferred the cannabis products at Tep 1 and Tep 2 to third-party buyers before the county deadline of December 15, 2020. Had that occurred, respondent would have had no need to move the products to Tep 3. But the stay-at-home order came on the eve of the harvest season, and the timing of the order placed respondent in a difficult situation. The disaster relief request was a result of the change in circumstances that arose from that order. According to Wooten, there was no intent to deceive CalCannabis in the disaster relief request, which complied with CalCannabis regulations in every respect.

26. Wooten disputes Gutierrez's testimony that the amendment to the Land Use and Development Code was never mentioned in connection with the disaster relief request. Wooten testified Gutierrez herself brought up the subject and EDRNs during the inspection of Tep 3 on December 23, 2020. Wooten also disputes Gutierrez's testimony that Gutierrez asked for more information about the necessity of moving the products to Tep 3. According to Wooten, Gutierrez never did so.

## **DEPARTMENT'S REBUTTAL CASE**

### **Helios Dayspring**

27. The Department called Dayspring as a witness after he did not testify during respondent's case. Dayspring testified he made the decision to move the cannabis products to Tep 3 due to a lack of employees and the "lockdown" resulting from the stay-at-home order. Dayspring had to come up to the solution to protect the products; he could only get security on one parcel. Dayspring testified he spoke to Wooten, who stated the disaster relief request was the best route to take. Dayspring agreed and authorized Wooten to draft and submit the request in Dayspring's name.

28. According to Dayspring, the cannabis products were moved to Tep 3 on December 16 or December 17, 2020. Like Wooten, Dayspring also testified he heard Gutierrez talking about EDRNs during the inspection of Tep 3 on December 23, 2020.

29. The Department challenged the credibility of Dayspring's testimony based on his criminal conviction of two felony offenses. In 2021, Dayspring pleaded guilty in federal court to bribing a public official and filing a false tax return. He recently completed a prison sentence related to the crimes, neither of which pertained to the matters at issue in this case.

### **Gutierrez and Mason Sperakos**

30. Gutierrez and Mason Sperakos, another CalCannabis Special Investigator who participated in the inspection of Tep 3 on December 23, 2020, disputed the testimony of Wooten and Dayspring that the inspection included a discussion of EDRNs and the county zoning change. According to Gutierrez and Sperakos, there was no such discussion.

### **ANALYSIS OF EVIDENCE**

31. The primary factual issue in dispute is whether respondent's disaster relief request was genuine, or merely a pretext for moving the cannabis products from Tep 1 and Tep 2 due to the amendment to the county Land Use and Development Code. Respondent contends the request was the good-faith product of "unprecedented" circumstances caused by the stay-at-home order issued in early December 2020. The Department contends the request was a pretext to move the cannabis products from Tep 1 and Tep 2 based on manufactured reasons.

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32. The preponderance of the evidence supports a finding that the disaster relief request was genuine. Wooten's and Dayspring's testimony that the stay-at-home order in early December 2020 changed the landscape in the cannabis industry is believable. Wooten testified the cannabis products on Tep 1 and Tep 2 would have been sold and removed from those properties by December 15, 2020, but for the effect of the stay-at-home order on agreements with third-party buyers. Dayspring testified the stay-at-home order reduced the number of personnel reporting to work, requiring respondent to consolidate the products at one location for security reasons. These descriptions of the effects of the stay-at-home order make sense and lend support to respondent's position.

33. The Department contends the county's amendment to the Land Use and Development Code was the real reason for the disaster relief request, not the circumstances that Wooten and Dayspring described. The Department also argues Dayspring is not credible in light of his criminal convictions. But while the change in the county's Land Use and Development Code was a reason to move the cannabis products from Tep 1 and Tep 2, it was not the only reason for the move. The stay-at-home order led to a substantial change of circumstances just before the disaster relief request that were not merely pretextual reasons for the request. In addition, Dayspring's criminal convictions did not involve any of the matters at issue in this case and do not merit rejection of his testimony.

34. The Department faults respondent for not notifying CalCannabis of the effect of the amendment to the county Land Use and Development Code on Tep 1 and Tep 2, contending the lack of notice proves respondent submitted the disaster relief request in bad faith. But respondent's lack of notice to CalCannabis does not mean the cited reasons for the disaster relief request were contrived. Furthermore, even if the

cited reasons were contrived, CalCannabis did not rely on them to the agency's or to the public's detriment. To the contrary, CalCannabis denied respondent's disaster relief request, and respondent eventually sold the products at issue to third parties in documented transfers.

35. The parties also dispute the date on which respondent was first prohibited from cultivating cannabis on Tep 1 and Tep 2. The Department contends cultivation was prohibited beyond August 13, 2020 (the effective date of the county ordinance), which respondent contends cultivation was allowed to continue until December 15, 2020 (the date specified in the county notices of violation). The evidence supports respondent's contention. The county's communications with respondent, its notices of violation to respondent in November 2020, and Leyva's testimony uniformly show respondent had until December 15, 2020, to cease cannabis operations at Tep 1 and Tep 2.

36. In addition, the parties dispute whether the county ordinance and its effect on respondent's operations were discussed during the inspection of Tep 3 on December 23, 2020. Wooten and Dayspring testified those topics were discussed; Gutierrez and Sperakos testified they were not. But this factual dispute is immaterial to the issues on appeal. Whether those topics were discussed at the inspection does not prove or disprove any of the violations alleged in the Notice of Violation.

## **LEGAL CONCLUSIONS**

### **Legal Standards**

1. CalCannabis issued the Notice of Violation to respondent under former California Code of Regulations, title 3, section 8603. Under that regulation, the



Department of Food and Agriculture was authorized to "issue a Notice of Violation to a licensee that is in violation of applicable statutes and regulations" that contained all of the following: "(1) A brief statement of the violation(s) alleged; [¶] (2) The proposed penalty; [¶] (3) A statement of whether the violation is correctable and a time frame in which the violation shall be corrected; and [¶] (4) Notice of an administrative hold of property, if applicable." (Former Cal. Code Regs., tit. 3, § 8603.) For purposes of determining the proposed penalty, the regulations divided violations into classes designated as "Minor," "Moderate," or "Serious," with corresponding fine ranges for each class of violations. (Former Cal. Code Regs., tit. 3, § 8602.)

2. A party disputing a Notice of Violation could contest it by submitting a written request for an informal hearing that included identifying information about the party and the license, a copy of the Notice of Violation, and "[a] clear and concise statement for the basis of the appeal or counts within the Notice of Violation." (Former Cal. Code Regs., tit. 3, § 8605, subd. (a).) As described previously, such appeals are now heard as formal administrative hearings. (See *supra* at p. 9; Cal. Code Regs., tit. 4, §.17801.1.) "The standard of proof to be applied by the hearing officer shall be proof by a preponderance of the evidence." (Former Cal. Code Regs., tit. 3, § 8607, subd. (a).) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

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## **Analysis**

### **VIOLATIONS**

3. The Notice of Violation charges respondent with committing multiple counts of eight violations. (Exhibit 2, pp. A9-10.) The evidence proves four of those eight violations as set forth below.

#### **Violation No. 1: Failure to Notify CalCannabis of Revocation of a Local License, Permit, or Other Authorization**

4. First, the Notice of Violation charges respondent with failing to notify CalCannabis of the revocation of a local license, permit, or other authorization. The relevant regulation in effect at the time stated, "licensees shall notify the department in writing of the following within forty-eight (48) hours of . . . receiving notification of the revocation of a local license, permit, or other authorization." (Former Cal. Code Regs., tit. 3, § 8204, subd. (c)(2).) The Department charges respondent with six counts of this violation, one for each CalCannabis license associated with Tep 1 and Tep 2.

5. The evidence proves this charge. Respondent did not notify CalCannabis in writing of the ordinance amending the county Land Use and Development Code to prohibit cannabis activities at Tep 1 and Tep 2. The change eliminated the prior county authorization for respondent to conduct cannabis activities at the properties. Respondent never notified CalCannabis in writing (or otherwise) of the change.

6. Respondent contends the change was not a revocation of a local license, permit, or authorization, because it was a legislative action not directly specifically at any license. But eliminating a previously existing local authorization is a revocation of

that authorization, regardless of whether it was directed at a specific license.

Furthermore, a county official checked boxes stating it "Denied" and "Revoked" the local permit associated with Tep 1 and Tep 2 in a notification to CalCannabis of local non-compliance. (See Factual Finding 6.)

7. Respondent also contends the county ordinance was highly publicized and well known within the cannabis industry, including to cannabis regulators. But this is not a defense to respondent's failure to give written notice to CalCannabis as required. Well known or not, respondent had to notify CalCannabis in writing regarding the revocation of authorization for respondent's specific cannabis operations and properties, and respondent did not do so.

### **Violation No. 2: Failing to Transfer Harvested Cannabis to a Licensed Processor**

8. Second, the Notice of Violation charges respondent with failing to transfer harvested cannabis to a licensed processor when respondent moved the cannabis products to Tep 3 on or about December 17, 2020. "Licensees shall process their harvested cannabis only in area(s) designated for processing in their cultivation plan provided they are compliant with packaging and labeling requirements . . . , or transfer their harvested cannabis to a licensed processor, manufacturer, or distributor via a licensed distributor." (Former Cal. Code Regs., tit. 3, § 8300, subd. (d).) The Notice of Violation charges respondent with 84 counts of this violation, one count for each cannabis package moved to Tep 3 from Tep 1 and Tep 2.

9. Respondent contends its compliance with the disaster relief regulations of CalCannabis is a defense to this charge. Under those regulations, "if a licensee needs to move cannabis and nonmanufactured cannabis products stored on the

premises to another location immediately to prevent loss, theft, or degradation of the cannabis and nonmanufactured cannabis products from the disaster, the licensee may move the cannabis without obtaining prior approval from [CalCannabis] if the following conditions are met: [¶] (1) The . . . products are moved to a secure location where access to the cannabis is restricted to the licensee, its employees, and contractors; [¶] (2) The licensee notifies the department in writing that the . . . products have been moved and that the licensee is requesting relief from complying with specific licensing requirements pursuant to subsection (a) of this section within twenty-four (24) hours of moving the cannabis; [¶] (3) The licensee provides the department access to the location where the . . . products have been moved to for inspection; and [¶] (4) The licensee submits in writing to [CalCannabis] within ten (10) calendar days . . . a request for temporary relief that clearly indicates the statutory and regulatory sections from which relief is requested, the time period for which the relief is requested, and the reasons relief is needed for the specified amount of time." (Former Cal. Code Regs., tit. 3, § 8207, subd. (h).)

10. Respondent met the stated conditions, and the Department did not prove the disaster relief request was merely a pretext to move the cannabis products from Tep 1 and Tep 2 due to the county prohibition on continued cannabis operations at those properties. Therefore, respondent was authorized under the disaster relief regulations to move the cannabis products on December 17, 2020, without obtaining prior approval from CalCannabis. Thus, the transfer of the products to Tep 3 on or about that date was not a violation, even though CalCannabis later denied the disaster relief request, which rendered respondent out of compliance after the denial. The denial did not retroactively create a violation for a transfer that was authorized by regulation at the time. Accordingly, the evidence establishes a defense to this charge.

### **Violation No. 3: Failure to Report Transfers Prior to the Movement of Cannabis Off Premises**

11. Third, the Notice of Violation charges respondent with failing to report the transfer of cannabis products from Tep 1 and Tep 2 in the track-and-trace system (i.e., METRC) before moving the products to Tep 3. Generally, a licensee "shall report in the track-and-trace system any and all transfers of cannabis or nonmanufactured cannabis products to another licensee prior to the movement of the cannabis or nonmanufactured cannabis products off the licensed premises." (Former Cal. Code Regs., tit. 3, § 8405, subd (a).) The Notice of Violation charges respondent with 84 counts of this violation, one count for each cannabis package moved to Tep 3 on or about December 17, 2020.

12. The evidence establishes the same defense to this charge as to the prior charge. The disaster relief regulations in effect at the time allowed movement of cannabis without prior reporting to CalCannabis under certain conditions, and respondent met the stated conditions. (Former Cal. Code Regs., tit. 3, § 8207, subd. (h).) The later denial of respondent's disaster relief request did not retroactively create the alleged violation.

### **Violation No. 4: Failure to Report Required Information for Transfers of Cannabis to Another Licensee**

13. Fourth, the Notice of Violation charges respondent with failing to report required information for transfers of cannabis to another licensee. "The account manager or user shall be required to report information in the track-and-trace system for each transfer of cannabis or nonmanufactured cannabis products to, or cannabis or nonmanufactured cannabis products received from, another licensee." (Former Cal.

Code Regs., tit. 3, § 8405, subd. (d).) For products physically received from another licensee, the required information must be reported within 24 hours of receipt. (*Id.*, subd. (b).) The Notice of Violation charges respondent with 84 counts of this violation, one count for each cannabis package moved to Tep 3 from Tep 1 and Tep 2.

14. The evidence proves this charge. Respondent's METRC entries for the cannabis products were late and incomplete. Respondent only entered some of the required information in METRC after prompting from Gutierrez on January 13, 2021, almost a week after denial of the disaster relief request, and almost a month after moving the cannabis products from Tep 1 and Tep 2. Furthermore, respondent did not electronically report the receipt of the products by the license associated with Tep 3 until January 25, 2021, and only after further prompting from Gutierrez. Although respondent held all of the licenses at issue, the license associated with Tep 3 was separate from those associated with Tep 1 and Tep 2. Therefore, receipt of the products at Tep 3 was receipt from "another licensee" for purposes of the reporting requirements. (Former Cal. Code Regs., tit. 3, § 8405, subd. (d).) Respondent did not timely satisfy those reporting requirements.

**Violation No. 5: Interfering, Obstructing, or Impeding  
CalCannabis Inspection, Investigation or Audit.**

15. Fifth, the Notice of Violation charges respondent with interfering, obstructing, or impeding the CalCannabis investigation of the disaster relief request. "No applicant, licensee, or any agent or employee shall interfere with, obstruct, or impede the department's inspection, investigation, or audit," including by "[p]roviding false or misleading statements" or "[p]roviding false, falsified, fraudulent, or misleading documents and records." (Former Cal. Code Regs., tit. 3, § 8501, subd. (c)(2) and (c)(3).) The Notice of Violation charges respondent with two counts of this violation, one for

making a false or misleading statement in the disaster relief request about the reasons for the request, and another for making an unspecified false or misleading statement during the inspection on December 23, 2020.

16. Contrary to the Department's contention, the evidence does not prove the reasons for the disaster relief request were contrived. Although the county prohibition on continued cannabis operations was one reason for respondent to move the products from Tep 1 and Tep 2, it was not the only reason, and respondent's failure to list one of several reasons justifying the move did not make the disaster relief request false or misleading. As to the inspection on December 23, 2020, the Notice of Violation does not identify what statement made during the inspection was allegedly false or misleading, and the evidence does not reveal any such statement. Therefore, the evidence does not prove this charge.

### **Violation No. 6: Failure to Comply with Requirement of a Local Ordinance Regulating Commercial Cannabis Activity**

17. Sixth, the Notice of Violation charges respondent with failing to comply with the requirement of a local ordinance regulating commercial cannabis activity in violation of Business and Professions Code section 26030, subdivision (f). Respondent allegedly violated this provision by continuing to cultivate cannabis at Tep 1 and Tep 2 beyond August 13, 2020. "'Cultivation' means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis." (Bus. & Prof. Code, § 26001, subd. (n); former Cal. Code Regs., tit. 3, § 8000, subd. (h).) The Notice of Violation charges respondent with four counts of this violation, consisting of one count for each of the four of six licenses associated with Tep 1 and Tep 2 under which respondent moved cannabis products to Tep 3.

18. The Department contends cultivation was prohibited at Tep 1 and Tep 2 beyond August 13, 2020 (the effective date of the county ordinance), while respondent contends cultivation was allowed to continue until December 15, 2020 (the date specified in the county notices of violation). The evidence supports a finding that the county allowed cannabis operations to continue until December 15, 2020, not just until August 13, 2020. Therefore, respondent was not in violation of a local ordinance by continuing to cultivate cannabis at Tep 1 and Tep 2 between August 13 and December 15, 2020.

19. After December 15, 2020, the local ordinance prohibited cannabis activities at Tep 1 and Tep 2. Respondent did not remove all cannabis products from Tep 1 and Tep 2 by December 15, 2020; according to the disaster relief request, cannabis products remained at those properties until two days later on December 17, 2020. But the charge in the Notice of Violation is "cultivation" of cannabis in violation of a local ordinance, not the mere presence of cannabis at Tep 1 and Tep 2. Only one harvest report for a license associated with Tep 2 reports a harvest date after December 15, 2020. (Factual Finding 21.) This evidence proves a single count of cultivating cannabis under that license in violation of a local ordinance. The remaining harvest reports all include harvest dates before December 15, 2020, which do not prove the other charged counts of cultivating cannabis in violation of a local ordinance.

### **Violation No. 7: Failure to Transport Cannabis in a Vehicle Owned or Leased by a Licensed Distributor**

20. Seventh, the Notice of Violation charges respondent with failing to transport cannabis in a vehicle owned or leased by a licensed distributor when it used a U-Haul truck to transport the cannabis products to Tep 3 on or about December 17,



2020. Under the relevant regulation, "[t]ransportation shall only be conducted by persons holding a distributor license under the Act, or employees of those persons. All vehicles and trailers used for transportation shall be owned or leased, in accordance with the Vehicle Code, by the licensee. The licensee is not required to be the sole owner or lessor of the vehicle or trailer and all owners and lessors may use the vehicle for non-commercial cannabis activity." (Former Cal. Code Regs., tit. 16, § 5311, subd. (a).) The Notice of Violation charges respondent with 84 counts of this violation, consisting of one count for each of the 84 packages transported from Tep 1 and Tep 2 to Tep 3.

21. The Vehicle Code does not include a definition of the word "lease," but it does require leased vehicles to be registered with the Department of Motor Vehicles in the name of both the owner/lessor and the lessee. (Veh. Code, § 4453.5.) Respondent's short-term U-Haul truck rental did not involve a vehicle registered with the Department of Motor Vehicles in respondent's name as the lessee. Therefore, the U-Haul truck was not a vehicle leased "in accordance with the Vehicle Code" as specified in the regulation. (Former Cal. Code Regs., tit. 16, § 5311, subd. (a).) Accordingly, the evidence proves this violation.

### **Violation No. 8: Cultivating Cannabis Without First Obtaining a State License**

22. Eighth, the Notice of Violation charges respondent with cultivating cannabis in violation of Business and Professions Code section 26069, subdivision (b). According to the charge, respondent did so when it "processed cannabis [from Tep 1 and Tep 2 at Tep 3], including storing cannabis and non-manufactured cannabis," and "engaged in sales of the transferred cannabis" without first obtaining a processor license for Tep 3. (Exhibit 2, p. A13.) At the time, Business and Professions Code section

26069 provided in relevant part: "A person or entity shall not cultivate cannabis without first obtaining a state license issued by the department pursuant to this division." (Former Bus. & Prof. Code, § 26069, subd. (b).) The Notice of Violation charges respondent with 84 counts of this violation, one count for each cannabis package moved to Tep 3 from Tep 1 and Tep 2.

23. As noted previously, "'[c]ultivation' means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis." (Bus. & Prof. Code, § 26001, subd. (n); former Cal. Code Regs., tit. 3, § 8000, subd. (h).) In contrast, the charge in the Notice of Violation refers to "processing," "storing," and "sale" of cannabis, none of which is mentioned in the definition of "cultivation." In addition, the definition of "[c]ommercial cannabis activity" differentiates "processing," "storing," and the "sale" of cannabis and cannabis products from "cultivation" of cannabis. (Bus. & Prof. Code, § 26001, subd. (m).) Given these considerations, respondent's storage, sale, and alleged processing of cannabis from Tep 1 and Tep 2 at Tep 3 were not "cultivation" as that term was used in former Business and Professions Code section 26069, subdivision (b).

24. Furthermore, the allegation that respondent needed a processor license for Tep 3 in connection with the cannabis products from Tep 1 and Tep 2 appears inconsistent with the evidence presented. "'Processor' means a person authorized to engage in only trimming, drying, curing, grading, packaging, and labeling of cannabis and nonmanufactured cannabis products." (Bus. & Prof. Code, § 26001, subd. (av).) The evidence does not show that any of these actions of a processor took place at Tep 3 with respect to the cannabis products moved from Tep 1 and Tep 2. Instead, those actions occurred at Tep 1 and Tep 2 before the products were moved to Tep 3.

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25. Therefore, the evidence does not prove the charge as alleged in the Notice of Violation.

### **PENALTIES**

26. Based on the above, the evidence proves four of the eight charged violations (Violation Numbers One, Four, Six, and Seven). As to the first violation (Failure to Notify CalCannabis of Revocation of a Local License, Permit, or Other Authorization), the Notice of Violation proposes penalties of \$500 per count for six counts, one for each CalCannabis license associated with Tep 1 and Tep 2. These proposed penalties are appropriate. At the time, the level of severity of the violation was classified as minor, with a fine range of \$100-\$500. (Former Cal. Code Regs., tit. 3, § 8601, subd. (h).) The proposed penalties are at the top of that range, which is reasonable given the evidence. Respondent never gave written notice to CalCannabis of the revocation of local authorization, either within 48 hours as required or otherwise. The total penalties for the six counts equal \$3,000.

27. As to the fourth violation (Failure to Report Required Information for Transfers of Cannabis to Another Licensee), the Notice of Violation proposes penalties of \$501 per count for 84 counts, one for each cannabis package moved to Tep 3 from Tep 1 and Tep 2. At the time, the level of severity of the violation was classified as moderate, with a fine range of \$501-\$1,000. (Former Cal. Code Regs., tit. 3, § 8601, subd. (h).) The proposed penalties are the minimum penalty within the range. Furthermore, each package required METRC entries that respondent was late and incomplete in providing. Therefore, per-package penalties are appropriate as to this violation. The total penalties for these counts equal \$42,084.

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28. As to the sixth violation (Failure to Comply with Requirement of a Local Ordinance Regulating Commercial Cannabis Activity), the Notice of Violation proposes penalties of \$501 per count for four counts, one count for each of the four of six licenses associated with Tep 1 and Tep 2 under which respondent moved cannabis products to Tep 3. The level of severity of the violation is classified as moderate. However, the evidence proves only one count of cultivating cannabis under one license in violation of a local ordinance. (Legal Conclusions 17-19.) Therefore, only one \$501 penalty is appropriate. That penalty amount is within the range for a moderate violation.

29. As to the seventh violation (Failure to Transport Cannabis in a Vehicle Owned or Leased by a Licensed Distributor), the Notice of Violation proposes penalties of \$100 per count for 84 counts, one for each of the packages transported in a U-Haul truck to Tep 3. The level of severity of the violation is classified as minor. As to this violation, the transportation at issue was a single incident involving all of the packages, not multiple incidents. Under the circumstances, assessing one penalty for the transportation violation is more appropriate than separate penalties for each package that was transported in that single incident. A single penalty of \$500 – the maximum amount for a minor violation – appropriately addresses the nature and gravity of the violation.

30. Based on the above, the total penalties assessed for the proven violations is \$46,085.

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## ORDER

The appeal of respondent 805 Ag Holdings, LLC is granted in part:

The first, fourth, sixth, and seventh charged violations in the Notice of Violation are sustained; the remaining charges are dismissed.

The total penalties due and payable under the Notice of Violation are reduced to \$46,085. Payment of this amount to the Department is due within 30 days of the effective date of this order.

DATE:

05/30/2024



Thomas Heller (May 30, 2024 10:00 PDT)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings