BEFORE THE DEPARTMENT OF CANNABIS CONTROL

STATE OF CALIFORNIA

In the Matter of the Notice of Violation Issued to: BEAR BUTTE FARMS, LLC, Respondent	Case No. COM2-4054 OAH No. 2020110600 **ORDER OF DECISION**

DECISION

The Department has reviewed the Proposed Decision of the Administrative Law Judge in this matter. That Proposed Decision is thorough and well-reasoned, and the Department is grateful for the ALJ's excellent work. Nevertheless, as further explained below, the Department—pursuant to Government Code, section 11517, subdivision (c)(2)(D)—rejects the Proposed Decision and refers the case to an ALJ (the same ALJ if reasonably available; otherwise, to another ALJ) for the taking of additional evidence.

I

In particular, the Department would benefit from additional evidence regarding Violations #6 and #7—and, specifically, from any additional evidence regarding the risk that the plants at issue in those violations were diverted to the illicit market. If Respondent could show that the plants at issue (in connection with either or both violations) were not diverted to the illicit market, this would likely persuade the Department to reduce the penalties associated with the relevant violations significantly.

Violations #6 and #7 both concern Respondent's failure to timely enter required data into the track-and-trace system, on a per-plant basis, for a large number of individual plants—2,204

plants as to Violation #6; 1,445 plants as to Violation #7. The Department agrees with the ALJ that, as a matter of law, these violations could be charged on a per-plant basis. (See Proposed Decision at pp. 20–22.) Nevertheless, the Department is mindful that charging these violations on a per-plant basis could result in the imposition of extremely severe penalties on Respondent—in this case, proposed fines of $1,104,204 in connection with Violation #6 and $723,945 in connection with Violation #7. Although the Department is prepared to pursue such fines if necessary to protect the public interest, the Department would not lightly impose such severe penalties on a licensee.

With this in mind, the Department's consideration of this case would benefit from additional evidence regarding the disposition of the plants at issue in Violations #6 and #7—and, in particular, from additional evidence regarding any risk that those plants were diverted to the illicit market. For example, is there any evidence showing that the harvested plants at issue in Violation #7 were lawfully sold to licensed distributors in the regulated market (even if Respondent did not properly log that sale in the track-and-trace system)? Conversely, if there is no evidence that the harvested plants at issue in Violation #7 ever entered the regulated supply chain, should their absence from the regulated market be interpreted as evidence that those plants are more likely than not to have been diverted to the illicit market? And as to the plants at issue in Violation #6, is there any evidence to suggest that those plants were harvested (and potentially diverted), or does all available evidence indicate that those plants were in fact destroyed?[1] These

[1] As the Department reads the existing record, it appears to have been undisputed that the plants at issue in Violation #6 were destroyed to comply with an order from Humboldt County. (See Proposed Decision at p. 8; Exh. 31 at pp. 3, 13.) It seems possible, however, that this point was undisputed in prior proceedings because the parties did not regard it as material, rather than because it could not have been subject to dispute. For this reason—and because the Department sees a need for additional evidence regarding the disposition of the plants at issue in Violation #7 in any event—the Department does not intend to prejudice the parties' ability to further develop the evidentiary record as to the disposition of the plants at issue in Violation #6.

questions are not necessarily exhaustive, but they illustrate the kinds of questions that might help evaluate whether the plants at issue in Violations #6 and Violations #7 were diverted.

Additional evidence along these lines (i.e., additional evidence regarding any risk that the plants at issue in Violations #6 and #7 were diverted to the illicit market) will help the Department tailor its exercise of enforcement discretion, as applied to this case, in ways that strengthen the regulated market. The Department will not hesitate to take strong action to protect the integrity of the regulated market: if licensees are diverting cannabis or cannabis products from the regulated market to the illicit market (or inverting illicit cannabis or cannabis products into the regulated market), the Department will not hesitate to impose the strongest possible penalties against those licensees. And if licensees engage in misconduct that could conceal such illegal diversion or inversion, and cannot show that such diversion or inversion has not in fact occurred, it may be necessary for the Department to proceed as though it has. On the other hand, the Department seeks to reassure responsible operators in the regulated market that it will wield its enforcement discretion in ways that recognize their reasonable, good-faith efforts to comply with California's cannabis laws—and that, while it will not overlook their other regulatory lapses, it also will not conflate those lapses with more egregious misconduct, such as willful diversion or inversion. The Department therefore intends to exercise its enforcement discretion such that particularly severe penalties (such as the very large fines at issue here) are aimed at particularly serious violations, such as violations that threaten to undermine the integrity of the regulated market.

As relevant here, if additional evidence shows that either or both sets of track-and-trace violations at issue in Violations #6 and #7 posed no threat to the integrity of the regulated market (that is, if the evidence shows that the plants at issue in either or both sets of violations were <u>not</u>

diverted to the illicit market), this would likely persuade the Department (in its discretion) to reduce the penalties associated with the relevant violations significantly. (See Gov. Code, § 11517, subd. (c)(2)(B).)[2] For these reasons, the Department refers this case to an ALJ for the taking of additional evidence, pursuant to Government Code, section 11517, subdivision (c)(2)(D).

II

Because the Department has referred this case to an ALJ for the taking of additional evidence pursuant to subdivision (c)(2)(D), it is the Department's understanding that no aspect of the ALJ's Proposed Decision remains before the Department at this point. Instead, it is the Department's understanding that the ALJ must "prepare a revised proposed decision" based on that additional evidence and the evidence from the prior ALJ hearing. (See Gov. Code, § 11517, subd. (c)(2)(D); cf. Gov. Code, § 11517, subd. (c)(2)(B) [authorizing the Department, in proceeding under subparagraph B, to "adopt the balance of the proposed decision"].)

Nevertheless, for the benefit of the ALJ and the parties on remand (in case, for example, a party has additional evidence to offer on any of the points raised below), the Department wishes to explain the action it was inclined to take as to the balance of the ALJ's Proposed

[2] Although the Department does not pre-judge this issue, and will instead make its decision based on a full administrative record (including a revised Proposed Decision) at the appropriate time, the Department cautions Respondent that an ambiguous evidentiary record may not be sufficient to persuade the Department to exercise its discretion to reduce these penalties. When cannabis or cannabis products are clandestinely diverted to the illicit market, there may well be no evidence of such diversion other than the resulting absence of that cannabis or cannabis products from the track-and-trace system and the regulated market. Conversely, the fact that cannabis or cannabis products are missing from the regulated market, and cannot otherwise be lawfully accounted for, may give rise to a reasonable inference that the cannabis or cannabis products have been clandestinely diverted. In this light, to the extent Respondent seeks to persuade the Department to exercise its discretion to reduce these penalties, Respondent may wish to do its utmost to show that such clandestine diversion did not occur here.

In the same vein, to the extent that determining whether diversion occurred might depend on whether one credits particular witness testimony, the Department would welcome an express credibility determination from the ALJ as to that witness testimony.

Decision. In particular, the Department was inclined to reduce or otherwise mitigate the proposed penalty as to two additional violations, and to adopt the balance of the Proposed Decision. (See Gov. Code, § 11517, subd. (c)(2)(B).)

A

First, the Department was inclined to reduce or otherwise mitigate the proposed penalty as to Violation #3 ("Failure to designate a physical space for products subject to administrative hold").

There is no dispute that Respondent failed to designate an administrative hold area on its Original Premises Diagram, in violation of the requirement formerly codified (during the relevant time period) at California Code of Regulations, title 3, section 8106, subdivision (a)(1)(I). The record appears to reflect, however, that Respondent's failure to designate an administrative hold area was apparent on the face of the Original Premises Diagram, which was submitted to the Department. (See Proposed Decision at pp. 7, 18; Exh. 3 at p. 4; Exh. 4 at pp. 6–7.) It does not appear from the record that the Department raised this omission with Respondent before this proceeding.

Although the responsibility to comply with former section 8106 remained at all times with Respondent, the Department generally intends to address omissions apparent on the face of application materials at the earliest possible time, and (if possible) without resorting to enforcement. The fact that Respondent was not prompted to correct the omission apparent on the face of its application materials somewhat mitigates the omission of an administrative hold area from the Original Premises Diagram. For these reasons, the Department was inclined to reduce the fine associated with this violation to $250—half the amount initially sought.

Of course, nothing in this decision should be understood as an attempt to prevent the ALJ

from taking additional evidence on this point, if otherwise appropriate. For example, if Department staff wish to present evidence that Respondent's failure to designate an administrative hold area was not apparent from materials submitted to the Department, or that Department staff did prompt Respondent to correct that omission, nothing in this decision should be read as an effort to prevent the ALJ from addressing that issue as the ALJ deems appropriate. The Department will ultimately decide this issue based on a full administrative record (including a revised Proposed Decision) at the appropriate time.

B

Second, the Department was inclined to reduce or otherwise mitigate the proposed penalty as to Violation #12 ("Cultivating in excess of the total allowable canopy size").

Mitigation seems appropriate here because the record suggests that Respondent's conduct in connection with Violation #12 was neither willful nor unreasonable. The ALJ credited testimony that Respondent relied on measurements from prefabricated kits to measure the canopy area at Respondent's premises, and concluded that this reasonable reliance mitigates Respondent's violation of the 22,000-square-foot limitation formerly codified at California Code of Regulations, title 3, section 8201, subdivision (d)(3). (See Proposed Decision at p. 26.) The Department agrees that this reasonable reliance counsels in favor of mitigation. The Department also agrees with the ALJ that this violation is further mitigated by the fact that Respondent's cultivation in excess of the 22,000-square-foot limit was "not very substantial": Respondent apparently exceeded this limit by no more than 567.75 square feet. (Ibid.)[3]

[3] Indeed, there appears to have been some initial uncertainty regarding this figure: it appears that Department staff initially alleged that Respondent exceeded the limit by only 269 square feet. (See Exh. 1 at p. 9; Exh. 4 at p. 10.) This apparent, initial uncertainty over the precise extent of the excess canopy bolsters the conclusion that Respondent could have mis-measured that canopy while nevertheless behaving reasonably.

For these reasons, the Department agrees with the ALJ that a fine "at the lower end of the fine range" is appropriate here. (Ibid.) Consistent with this conclusion, the Department was inclined to further reduce the fine associated with this violation to $1,001, at the low end of the applicable range.

Here again, nothing in this decision should be understood as an attempt to prevent the ALJ from taking additional evidence on this point, if otherwise appropriate. For example, if Department staff wish to present evidence that Respondent's conduct in connection with Violation #12 was willful or unreasonable, nothing in this decision should be read as an effort to prevent the ALJ from addressing that issue as the ALJ deems appropriate. (The same is true, of course, if Respondent wishes to present further evidence tending to show that Violation #12 stemmed from a reasonable mistake.) As with Violation #3, the Department will ultimately decide this issue based on a full administrative record (including a revised Proposed Decision) at the appropriate time.

C

The Department was otherwise inclined to adopt the balance of the ALJ's Proposed Decision. Indeed, the Department found the Proposed Decision to be thorough and well-reasoned. Nothing in this disposition should be read to express any doubt whatsoever about the excellent work that the ALJ has performed in this case. On the contrary, the Department's decision to refer this case to an ALJ for the taking of additional evidence should be understood as an expression of the Department's own commitment to protecting the integrity of the regulated market—and to ensuring that the penalties imposed by the Department are tailored toward that end. Here, that commitment counsels in favor of taking of additional evidence in connection with Violations #6 and #7.

III

For the reasons given above, the Department rejects the Proposed Decision, and refers the case to an ALJ (the same ALJ if reasonably available, otherwise, to another ALJ) to take additional evidence. (Gov. Code, § 11517, subd. (c)(2)(D).)

This Decision shall become effective on **December 16, 2021**.

IT IS SO ORDERED this **16th** day of **November 2021**.

By: Nicole Elliott Digitally signed by Nicole Elliott Date: 2021.11.16 16:36:26 -08'00'

Nicole Elliott
Director
Department of Cannabis Control

BEFORE THE
DEPARTMENT OF CANNABIS CONTROL
STATE OF CALIFORNIA

In the Matter of the Notice of Violation Issued to:

BEAR BUTTE FARMS, LLC, Respondent

Agency Case No. COM2-4054

OAH Case No. 2020110600

PROPOSED DECISION

On May 6 and 7, 2021, Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference from Sacramento, California.

Crystal D'Souza, Staff Counsel, represented the Department of Cannabis Control (Department), State of California.[1]

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[1] This matter was initially prosecuted by the Department of Food and Agriculture (DFA). On July 13, 2021, the Governor signed Assembly Bill (AB) 141, which created the Department of Cannabis Control and transferred the DFA's responsibility for the commercial cannabis cultivation licensing program to the Department of Cannabis Control. AB 141 also added section 26010.7, subdivision (d), to the Business and Professions Code, which states: "Any action by or against the . . . [DFA] pertaining

Patrik Griego and Jeffrey Slack, Attorneys at Law, Janssen Malloy LLP, represented Bear Butte Farms, LLC (BBF).

Evidence was received, and the record left open until July 2, 2021, for the filing of closing briefs. On May 28, 2021, the Department filed its closing brief, marked for identification as Exhibit 31; on June 18, 2021, BBF filed its closing brief, marked for identification as Exhibit M; and on July 1, 2021, the Department filed its reply brief, marked for identification as Exhibit 32. On July 2, 2021, Exhibits 31, 32, and M were admitted as argument, the record was closed, and the matter was submitted for decision.

FACTUAL FINDINGS

Jurisdiction

1. On December 31, 2018, BBF applied for an Adult-Use-Medium Mixed-Light Tier 1 Cannabis Cultivation License from the Department. On November 15, 2019, the Department issued BBF Provisional Adult-Use-Medium Mixed-Light Tier 1 Cannabis Cultivation License No. CCL18-0003553 (License) for premises located in

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to matters vested in the Department of Cannabis Control by this section shall not abate but shall continue in the name of the Department of Cannabis Control, and the Department of Cannabis Control shall be substituted for the . . . [DFA]. . . ." Given the foregoing, and for convenience, the Proposed Decision refers to the currently-responsible Department of Cannabis Control and the formerly-responsible DFA interchangeably as "Department."

Humboldt County, Assessor's Parcel Number (APN) 221-230-003-000 (the Premises). The License was set to expire on November 15, 2020, unless renewed or revoked.

2. On October 6, 2020, the Department issued BBF a Combined Notice of Violation and License Revocation (Notice of Violation). The Notice of Violation revoked BBF's License effective October 7, 2020.[2]

Additionally, the Notice of Violation assessed 13 statutory and/or regulatory violations and associated fines:[3] (1) failure to accurately and completely enter data in the track-and-trace system (one count; $500 per count); (2) failure to notify the Department of any changes to items in the application (four counts; $500 per count); (3) failure to designate a physical space for products subject to administrative hold (one count; $500 per count); (4) unlawful material modifications to the Premises (three counts; $1,000 per count); (5) failure to report the disposition of immature plants into the track-and-trace system within three days (one count; $1,000 per count); (6) failure to report the destruction or disposal of mature plants into the track-and-trace system within three days (2,204 counts; $501 per count); (7) failure to report the wet weight of each harvested plant (1,445 counts; $501 per count)[4]; (8) failure to report the net

[2] That revocation is not appealable and is not at issue here.

[3] Since its initial issuance, the Notice of Violation was amended multiple times, including by stipulation at hearing. This Proposed Decision sets forth the final alleged violations, associated number of counts, and assessed fines at issue.

[4] The parties' closing briefs refer to 1,437 counts (corresponding to 1,437 harvested plants) for alleged violation no. (7). However, the parties' stipulation on the

weight of each harvest batch (one count; $1,000 per count); (9) failure to report the weight of cannabis waste for each harvest batch (one count; $1,000 per count); (10) failure to report the unique name of each harvest batch (one count; $1,000 per count); (11) using a water source that was not identified or permitted in the application (three counts; $5,000 per count); (12) cultivating in excess of the total allowable canopy size (one count; $5,000 per count); and (13) failure to prohibit cannabis plants maintained outside the designated canopy area from flowering (one count; $5,000 per count). The total fine amount assessed is $1,863,149.

The Notice of Violation specified whether each alleged violation was deemed correctable or not. For the alleged violations deemed correctable, the Notice of Violation did not specify any timeframe for correction.

3. BBF timely appealed and requested a hearing on the Notice of Violation. The matter was then set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Statutory/Regulatory Scheme

4. Commercial cultivation of cannabis in California is governed by the Medicinal and Adult Use Cannabis Regulation and Safety Act (Bus. & Prof. Code, §§ 26000 et seq.) (the Act) and its implementing regulations (Cal. Code Regs., tit. 3, §§

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record at hearing was for 1,445 counts corresponding to 1,445 harvested plants, which is the number adopted by this Proposed Decision.

8000 et seq.). The Act charges the Department with licensing and regulating commercial cannabis cultivation.

5. The regulatory scheme requires an applicant for a medium-size cultivation license to submit a cultivation plan, including a property diagram (identifying the geographical coordinates of all lawful water sources for irrigation and including any necessary permits from the Department of Fish and Wildlife (DFW) and the California State Water Resources Control Board); a premises diagram (identifying all canopy areas, processing areas, and an administrative hold area); and a pest management plan (including a listing of product names and active ingredients applied to the cannabis). Once a license is approved, the licensee must conduct its operations consistent with the terms of its license and the cultivation plan. The licensee must report changes to items in its application, including modifications of the cultivation plan, to the Department within specified periods, and must obtain preapproval from the Department for making certain material changes.

6. The Act also requires the Department to establish a system to track and trace cannabis through the supply chain from seed to sale. Tracking is important to prevent diversion to the unregulated market and to allow back-tracing of product for health and safety reasons. To satisfy its statutory obligation, the Department established the California Cannabis Track-and-Trace System using Metrc software (track-and-trace system). All licensees are required to track inventory by applying a unique identifier (UID) to plants or products, and to timely and accurately report specified data regarding such plants or products in the track-and-trace system. Only licensees can enter data; Department staff can only review the entered data. Licensees can also, without the need for Department approval, designate employees or other

persons as individuals with authorized access to enter data. However, the licensee retains responsibility for accurate and timely entry of data.

7. To enforce the Act and its implementing regulations, the Department conducts inspections and investigations of licensee premises, and reviews data entered into the track-and-trace system. If statutory and/or regulatory violations are found, the Department has authority to suspend, revoke, place on probation with terms and conditions, or otherwise discipline a license, and fine the licensee. For purposes of assessing such fines, the Department by regulation established a table classifying specific violations as "Minor," "Moderate," or "Serious," with associated fine ranges.

BBF's License Application

8. Erdinc Dogan (Dogan) is the owner of the Premises and the managing member of BBF. He purchased the Premises in 2018 with the understanding that it was already permitted by Humboldt County, and licensed by the Department, for 22,000 square feet (SF) of cannabis cultivation. After the purchase, he discovered that Humboldt County had only permitted the Premises for 8,400 SF, and there was no license issued by the Department.

9. Dogan initially worked with Mother Earth Engineering (Mother Earth), the prior owner's consultant, to assist him with licensing and permits. With Mother Earth's assistance, BBF applied for a license from the Department in December 2018. However, Dogan subsequently terminated Mother Earth and instead retained the consulting firm of Vanessa Valare (Valare) in August 2019. Valare assisted Dogan with completing BBF's pending license application with the Department, which was granted in

November 2019. The issued License authorized BBF to have a maximum of 22,000 SF of canopy[5] on the Premises for commercial cannabis cultivation.

10. As part of BBF's application to the Department, Dogan provided the following materials:

(a) A property diagram identifying a rainwater pond as the sole water source for cannabis irrigation (Original Property Diagram);

(b) A premises diagram identifying four canopy areas for mature/flowering cannabis plants, an immature plant/nursery area, and a processing area (Original Premises Diagram); and

(c) A pest management plan identifying two chemicals to be applied to the cannabis: "Safer Soap 3 N 1" and "Dr Zyme."

No administrative hold area was designated.

BBF's Operations

11. Once BBF obtained its License from the Department, Dogan learned of his obligation to enter data into the track-and-trace system. He completed the required online video training for the track-and-trace system and obtained his unique login and password around January 2020. He did not designate any employees or other persons as individuals with authorized access to enter data.

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[5] "Canopy" is defined as "the designated area(s) at a licensed premises, except nurseries and processors, that will contain mature plants at any point in time . . . ." (Cal. Code Regs., tit. 3, § 8000, subd. (f).)

12. After BBF obtained its License from the Department, Valare started working with Humboldt County to get a permit for 22,000 SF of cannabis cultivation instead of the already-permitted 8,400 SF. She submitted application materials to Humboldt County in December 2019, which included revised property and premises diagrams (the Updated Property Diagram and Updated Premises Diagram).

13. On August 10, 2020, Humboldt County agreed to process the permit application, but ordered BBF to temporarily reduce its existing cannabis cultivation from 22,000 SF back to 8,400 SF. That same day, BBF removed and destroyed 2,204 mature/flowering cannabis plants to comply with Humboldt County's order. On August 29 and 30, 2020, BBF harvested the remaining 1,445 mature/flowering cannabis plants on the Premises. That harvest consisted of a single harvest batch.[6]

September 3, 2020 Inspection

14. On September 3, 2020, Department Environmental Scientist Shannon Walkenhauer (Walkenhauer), accompanied by officers from the DFW, inspected the Premises in response to an unauthorized water diversion complaint. Walkenhauer prepared a report regarding the inspection and testified at hearing.

15. During her inspection, Walkenhauer discovered the following:

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[6] A harvest batch is a specific quantity of cannabis uniform in strain or cultivar that is harvested in whole or in part at the same time. (Cal. Code Regs., tit. 3, § 8000, subd. (d).)

(a) There were nine greenhouse canopy areas on the Premises, one of which was supposed to be an immature plant area according to the Original Premises Diagram.

(b) There were no immature or unharvested mature/flowering cannabis plants on the Premises. There were numerous signs of a recently-completed harvest of mature plants, including in the immature plant area. Such signs included pots with large cut-off stocks, with UID tags still attached.

(c) The processing area was in a different location than what was identified on the Original Premises Diagram.

(d) There was a compost area containing harvested cannabis waste.

(e) The pesticides on site did not match the pest management plan submitted with BBF's application.

(f) There was no administrative hold area.

(g) After measuring all the greenhouse canopies with an electronic measuring wheel, Walkenhauer calculated a total of at least 22,567.75 SF of canopy on the Premises. Because of depressions in the ground, she measured the canopies twice, and obtained slightly different measurements for only two canopies. In those instances, she used the lesser measurements to compute the total canopy square footage.

(h) There was a rainwater pond on the Premises that contained water. However, Walkenhauer also found evidence that water used for cannabis irrigation was coming from three unpermitted diversions from nearby Hacker Creek. More specifically, Walkenhauer observed three pumps connected to electricity, two in the

stream, and one nearby the stream. Although one pump was not actively diverting at the time, it was very light and could easily be placed in the stream. In the course of the inspection, BBF employees removed the pumps from Hacker Creek.

Walkenhauer further observed water lines/pipes running from the diversions in Hacker Creek to a 45,000-gallon water storage tank on the Premises, which had not been identified in BBF's Original Property Diagram. The 45,000-gallon water storage tank was not a 45,000-gallon rainwater catchment tank indicated on the Original Property Diagram, because the tank Walkenhauer observed did not have the correct design for a rainwater catchment tank. The 45,000-gallon rainwater catchment tank was also not identified on the Original Property Diagram as a water source for cannabis irrigation.

16. On September 11, 2020, the DFW issued BBF a notice of violation. That notice found that BBF had failed to notify DFW of a "surface water diversion used to irrigate cannabis resulting in substantial diversion of natural flow of a stream" with respect to the three pumps found in Hacker Creek.

Post-Inspection Records Review

17. Following the September 3, 2020 inspection, Department Senior Environmental Scientist/Supervisor Rebecca Garwood (Garwood) reviewed records from the track-and-trace system to compare with Walkenhauer's observations at the inspection. Garwood testified at hearing.

18. The track-and-trace system allows Department staff to review a licensee's records for a specific day(s), providing a snapshot of reported inventory on a particular date(s). From July 29, 2020, through October 6, 2020, the track-and-trace system consistently indicated that BBF had 1,557 immature cannabis plants and 3,649

mature/flowering cannabis plants on the Premises. No harvests were reported between January 1, 2020, and October 6, 2020. Around October 7, 2020, Dogan lost access to the track-and-trace system when BBF's License was revoked.

BBF's Additional Evidence

19. Dogan testified at hearing concerning BBF's operations and its attempts to comply with the requirements of the Department and Humboldt County. Valare also testified regarding her efforts to assist Dogan with BBF's compliance. Except as discussed below, BBF does not dispute the majority of underlying facts. However, it provided additional evidence regarding extenuating circumstances.

20. Dogan is originally from Bulgaria and moved to the United States approximately 20 years ago. He was initially involved in the restaurant industry, but became in interested in cannabis cultivation around 2017. He purchased the Premises in 2018.

21. Dogan and Valare admitted that the Original Property Diagram and Original Premises diagram did not accurately reflect BBF's actual cultivation plan and operations at the time of the September 3, 2020 inspection. The Updated Property Diagram, Updated Premises Diagram, and an updated pest management plan were previously provided to Humboldt County, but had not been provided to the Department until after that inspection.

22. Although the number and locations of the greenhouse canopy areas changed in accordance with the Updated Premises Diagram, respondent testified that the overall amount of canopy on the Premises remained less than 22,000 SF. The greenhouses were constructed from ordered prefabricated kits, which contained plans and measurements. According to the kits' measurements, the total amount of canopy

was supposed to be less than 22,000 SF. Additionally, Dogan hired an engineer who also measured the square footage as less than 22,000 SF. Neither respondent nor Valare personally measured the greenhouses.

23. Dogan denies diverting water from Hacker Creek for cannabis irrigation. According to Dogan, BBF obtained all its water for cannabis irrigation from the rainwater pond, which had sufficient water for such purposes. The diversions from Hacker Creek were purely for domestic use. Dogan typically diverts water from Hacker Creek during the winter to fill up his tanks, which supply water to a cabin on the Premises. At the time of the September 3, 2020 inspection, Hacker Creek would have been almost empty. When asked why the Updated Property Diagram showed water distribution lines running from a 45,000-gallon water storage tank, labeled as "for irrigation use," to the various greenhouses, Dogan testified that it was a mistake on the Updated Property Diagram and that the tank does not actually exist.

24. After removing mature/flowering cannabis plants on August 10, 2021, to comply with Humboldt County's order, BBF employees counted and weighed the removed plants, saving the data before destruction. Dogan sought assistance from Valare to enter the data into the track-and-trace system. He did not fully understand the system and did not feel comfortable contacting the Department for assistance by phone, because English is not his native language. Valare unsuccessfully attempted to assist Dogan over the phone and she was too busy at the time to visit Dogan in person. They made an appointment for the end of August 2020 for Valare to help Dogan enter data. That appointment never realized due to events described below.

On August 12 or 13, 2020, Dogan's pregnant wife flew to Bulgaria. Shortly after her arrival, she encountered medical issues, and her doctor in Bulgaria stated that she needed multiple surgeries. Around the same time, Dogan's mother in Bulgaria was

diagnosed with COVID-19. Consequently, Dogan decided to travel to Bulgaria to support his wife and mother. On August 23 or 24, 2020, he first flew to his home in Seattle, Washington to get his passport.

While in Seattle, Dogan's friends overseeing the Premises informed him that mold was starting to grow on the remaining mature/flowering cannabis plants. Thus, he instructed them to harvest the plants on August 29 and 30, 2020. All the harvested plants were again counted and weighed, with the generated data saved. Dogan did not attempt to enter data in the track-and-trace system while still in Seattle.

Dogan left Seattle for Bulgaria on September 2 or 3, 2020. While in Bulgaria, he attempted to access the track-and-trace system to enter data, but was unable to log in. Dogan never informed the Department that he had difficulty logging in. Dogan again requested Valare's assistance. Valare was able to log in to the track-and-trace system under Dogan's credentials, but she had not been designated as an individual authorized to enter data.

Dogan returned from Bulgaria to Seattle around September 21, 2020. He did not attempt to enter data from Seattle then, because he was waiting for a letter from the Department following the September 3, 2020 inspection "to see what to do." After arriving in Humboldt County in early October 2020, Dogan and Valare met to enter data around October 7, 2020. However, at that time Dogan discovered that his privileges to the track-and-trace system had been revoked.

25. Dogan believes the overall fine amount sought is excessive and unduly punitive. He testified that BBF's net worth consists almost entirely of the value of the harvested plants and its License, which has been revoked.

Analysis

BBF's General Challenges to the Notice of Violation

26. Before turning to an analysis of the individual alleged violations, the court addresses two general challenges BBF raises to the Notice of Violation. BBF argues that the Department abused its discretion by violating: (a) California Code of Regulations, title 3, section 8603; and (b) Business and Professions Code section 26031.5. Each provision is discussed separately.

(a) California Code of Regulations, title 3, section 8603

27. Section 8603 provides as follows:

> (a) The Department may issue a Notice of Violation to a licensee that is in violation of applicable statutes and regulations. A Notice of Violation shall be served upon the licensee and the legal owner of the property. The Notice of Violation shall contain 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.
>
> (b) The right to a hearing will be deemed waived if respondent fails to respond in writing within thirty (30) calendar days from the date the Notice of Violation was received by the respondent.

(Cal. Code Regs., tit. 3, § 8603.)

28. BBF argues that the Department abused its discretion by failing to comply with California Code of Regulations, title 3, section 8603. More specifically, it contends that the Department improperly designated certain alleged violations as not correctable, failed to designate a time period within which to correct the correctable violations, and pursued fines regardless of any corrective efforts by BBF.

The Department counters that the purpose of the regulation's requirement to designate violations as correctable or not correctable, and provide a time period to correct the correctable violations, is to allow a licensee to come into compliance and avoid further discipline. Because the Department revoked BBF's License, the issue of correctability is moot. Moreover, the Department argues that correctability has no impact on whether a fine may be issued for the initial violation.

29. Based on the regulatory language, the Department has the more persuasive argument. Nothing in section 8603 states that a licensee can avoid a fine for the initial violation by later correcting the violation. The reference to "proposed penalty" merely indicates that a penalty is not final until a hearing on the Notice of Violation is conducted or the licensee waives its right to a hearing. The Department may pursue fines for alleged violations regardless of correctability. Thus, even assuming, without deciding, that the Department erroneously designated certain alleged violations as not correctable and erroneously failed to designate a time period within which to correct the correctable violations, any such errors were harmless and inconsequential to the fines assessed.

(b) Business and Professions Code section 26031.5

30. BBF argues that the Department failed to comply with Business and Professions Code section 26031.5. That statute governs the issuance of citations, and provides that the Department "may include in each citation an order of abatement and fix a reasonable time for abatement of the violation" and must consider specified factors in determining the amount of a fine imposed with the citation. (Bus. & Prof. Code, § 26031.5, subd. (a).)

31. BBF's reliance on section 26031.5 is misplaced. Although the Notice of Violation in this case contains some references to section 26031.5, its substance is not a citation. It is a Notice of Violation, which both revokes the License and seeks to impose fines pursuant to Business and Professions Code section 26031 and California Code of Regulations, title 3, section 8601, Table A. (*See* Bus. & Prof. Code, § 26031.5, subd. (b) ["The sanctions authorized under this section shall be separate from, and in addition to, all other administrative . . . remedies."].) Thus, the requirements of section 26031.5 do not apply to this matter.

SPECIFIC ALLEGED VIOLATIONS AND ASSESSED FINES

(1) Failure to accurately and completely enter data in the track-and-trace system

32. A licensee is required to accurately and completely enter data in the track-and-trace system. (Cal. Code Regs., tit. 3, § 8402, subd. (a).) The preponderance of the evidence plainly establishes, and BBF concedes, that BBF failed to accurately and completely enter data in the track-and-trace system.

33. BBF's single-count violation of section 8402, subdivision (a), is deemed a Minor violation with a fine range of $100 to $500. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a $500 fine. Given the amount of inventory involved and the extended period of time over which BBF failed to enter data, the fine is reasonable and not an abuse of discretion.

(2) Failure to notify the Department of any changes to items in the application

34. "Licensees shall notify the department in writing within ten (10) calendar days of any change to any item listed in the application . . . ." (Cal. Code Regs., tit. 3, § 8204, subd. (a).) The preponderance of the evidence establishes, and BBF concedes, that BBF failed to notify the Department of changes to the number and/or locations of greenhouse canopy areas, the processing area's location, and chemicals used as part of its pest management plan within the required period of time. Additionally, for the reasons discussed below concerning alleged violation no. (11) for using unpermitted water sources, the preponderance of the evidence establishes that BBF failed to notify the Department of a change to the water sources it used to irrigate cannabis.

35. BBF's four counts of violating section 8204, subdivision (a), are deemed Minor violations with a fine range of $100 to $500. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a $500 fine for each count. Given the number and substantial nature of the changes, the fines are reasonable and not an abuse of discretion.

(3) Failure to designate a physical space for products subject to administrative hold

36. "The cultivation plan for each Specialty Cottage, Specialty, Small, and Medium licenses shall include all of the following: (1) A detailed premises diagram showing all boundaries and dimensions in feet of the following proposed areas to scale: . . . (I) Designated area(s) for physically segregating cannabis or nonmanufactured cannabis products subject to an administrative hold . . . ." (Cal. Code Regs., tit. 3, § 8106, subd. (a)(1)(I).) The preponderance of the evidence establishes, and BBF concedes, that the Original Premises Diagram did not designate an administrative hold area. Additionally, Walkenhauer did not observe any administrative hold area during her September 3, 2020 inspection.

37. BBF's single count of violating section 8106, subdivision (a)(1)(I), is deemed a Moderate violation with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a $500 fine, slightly below the fine range for a Moderate violation. Moreover, given BBF's failure to designate an administrative hold area for an extended period of time, the fine is reasonable and not an abuse of discretion.

(4) Unlawful material modifications to the Premises

38. "A licensee shall not make a physical modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises as specified in the premises diagram originally filed with the license application without the prior written approval of the department. (a) The following premises modifications require approval in writing from the department prior to modification: (1) Modification to any area described in the licensee's cultivation plan

including, but not limited to, the removal, creation, or relocation of canopy, processing, packaging, composting, harvest storage, and chemical storage areas; (2) change in water or power source(s); . . . ." (Cal. Code Regs., tit. 3, § 8205, subd. (a).)

The preponderance of the evidence establishes, and BBF concedes, that BBF failed to obtain written approval from the Department prior to making changes to the number and/or locations of greenhouse canopy areas and the processing area's location. Additionally, for the reasons discussed below concerning alleged violation no. (11) for using unpermitted water sources, the preponderance of the evidence establishes that BBF failed to obtain written approval from the Department before changing the water sources it used to irrigate cannabis.

39. BBF's three counts of violating section 8205, subdivision (a), are deemed Moderate violations, with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a $1,000 fine for each count. Given the number and substantial nature of the changes made without prior written approval, the fines are reasonable and not an abuse of discretion.

(5) Failure to report the disposition of immature plants into the track-and-trace system within three days

40. A licensee must report the movement of immature plants to a canopy area, or any destruction or disposal of immature plants, in the track-and-trace system within three calendar days. (Cal. Code Regs., tit. 3, § 8405, subd. (c)(2) & (c)(3).) The preponderance of the evidence establishes, and BBF concedes, that BBF failed to report movement of immature plants to canopy areas in the track-and-trace system within the required period of time. From July 29, 2020, through October 6, 2020, the track-and-trace system consistently indicated that BBF had 1,557 immature cannabis

plants on the Premises. However, the September 3, 2020 inspection revealed that there were no immature cannabis plants on the Premises.

41. BBF's single-count violation of section 8405, subdivisions (c)(2) and (c)(3), is deemed a Moderate violation with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a $1,000 fine. Given the large number of immature plants involved, and that they were moved to the canopy areas well before Dogan's family emergencies and travel to Bulgaria, the fine is reasonable and not an abuse of discretion.

(6) Failure to report the destruction or disposal of mature plants into the track-and-trace system within three days

42. A licensee must report the destruction or disposal of a mature plant into the track-and-trace system within three days. (Cal. Code Regs., tit. 3, § 8405, subd. (c)(3).) The preponderance of the evidence establishes, and BBF concedes, that BBF removed and destroyed 2,204 mature/flowering cannabis plants on August 10, 2020, and failed to report it in the track-and-trace system within the required period of time.

BBF contends that the Department inappropriately alleged 2,204 counts of this violation, given that it only charged a single count for failure to report the disposition of immature plants. BBF is mistaken for two reasons.

First, the plain meaning of the regulatory language supports the Department's charges. The substance of alleged violation no. (5) was for failure to report the movement of immature plants to the designated canopy area upon their maturation, which specifically relates to California Code of Regulations, title 3, section 8405, subdivision (c)(2) (referring to reporting the movement of "immature plants" in the

plural). By contrast, alleged violation no. (6) was for failure to report the destruction or disposal of mature plants, which specifically relates to California Code of Regulations, title 3, section 8405, subdivision (c)(3) (referring to reporting the destruction or disposal of a "mature plant" in the singular). Thus, the regulatory language supports charging a failure to timely report destruction or disposal of mature plants on a per-plant basis.

Second, practical reasons support treating immature and mature plants differently. Licensees are allowed to assign a single UID to each lot of immature plants, but when an individual plant starts flowering and/or is moved to a canopy area, the individual plant must be assigned an individual UID. (Cal. Code Regs., tit. 3, § 8403, subd. (b).) Thus, mature plants, unlike immature plants, are tracked on an individual basis. Accordingly, it is appropriate to treat the unreported disposition of immature plants as a single-count violation and the unreported disposal of 2,204 mature plants as 2,204 separate violations.

Contrary to BBF's argument, charging 2,204 separate violations here is not grossly excessive and does not unlawfully cumulate fines. Holding a licensee responsible for timely reporting destroyed mature plants on a per-plant basis is consistent with the Department's mandate to track cannabis from seed to sale to prevent diversion to the unregulated market and to allow back-tracing of product for health and safety reasons.

43. BBF's 2,204 violations of section 8405, subdivision (c)(3), are deemed Moderate violations with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed the minimum fine of $501 per count. Thus, the fines are reasonable and not an abuse of discretion.

(7) Failure to report the wet weight of each harvested plant

44. A licensee must report the wet weight of each harvested mature cannabis plant into the track-and-trace system within three calendar days. (Cal. Code Regs., tit. 3, § 8405, subd. (c)(4)(A).) The preponderance of the evidence establishes, and BBF concedes, that BBF harvested 1,445 mature/flowering cannabis plants on August 29 and 30, 2020, and failed to report the wet weight of each harvested plant in the track-and-trace system within the required period of time. Because the regulation requires the wet weight on a per-plant basis, the Department appropriately charged BBF with 1,445 separate counts.

45. BBF's 1,445 violations of section 8405, subdivision (c)(4)(A), are deemed Moderate violations with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed the minimum fine of $501 per count. Thus, the fines are reasonable and not an abuse of discretion.

(8) Failure to report the net weight of each harvest batch

46. A licensee must report the net weight of each harvest batch into the track-and-trace system within three calendar days. (Cal. Code Regs., tit. 3, § 8405, subd. (c)(4)(B).) The preponderance of the evidence establishes, and BBF concedes, that BBF harvested a single batch of 1,445 mature/flowering cannabis plants on August 29 and 30, 2020, and failed to report the net weight of that harvest batch in the track-and-trace system within the required period of time.

47. BBF's single-count violation of section 8405, subdivision (c)(4)(B), is deemed a Moderate violation with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a maximum $1,000 fine. Dogan

demonstrated that he encountered family emergencies and travel to Bulgaria that impacted his ability to enter the August 29 and 30, 2020 harvest data. Such circumstances are not an excuse, because he could have designated other persons to enter data in the event of an emergency, and he never notified the Department of his access issues. (*See* Cal. Code Regs., tit. 3, § 8402, subd. (c)(6) [requiring the licensee to "[n]otify the Department immediately for any loss of access that exceeds three (3) calendar days"].) Nevertheless, because the extenuating circumstances have some mitigating impact, the fine amount should be reduced to $750.

(9) Failure to report the weight of cannabis waste for each harvest batch

48. A licensee must report the weight of cannabis waste for each harvest batch into the track-and-trace system within three calendar days. (Cal. Code Regs., tit. 3, § 8405, subd. (c)(4)(C).) The preponderance of the evidence establishes, and BBF concedes, that BBF harvested a single batch of 1,445 mature/flowering cannabis plants on August 29 and 30, 2020, and failed to report the weight of cannabis waste for that harvest batch in the track-and-trace system within the required period of time.

49. BBF's single-count violation of section 8405, subdivision (c)(4)(C), is deemed a Moderate violation with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a maximum $1,000 fine. For the same reasons discussed above with respect to violation no. (8), the fine amount should be reduced to $750.

(10) Failure to report the unique name of each harvest batch

50. A licensee must report the unique name of each harvest batch and the initiating date of the harvest into the track-and-trace system within three calendar days. (Cal. Code Regs., tit. 3, § 8405, subd. (c)(4)(D).) The preponderance of the evidence establishes, and BBF concedes, that BBF harvested a single batch of 1,445 mature/flowering cannabis plants on August 29 and 30, 2020, and failed to report the unique name and initiating date of the harvest for that harvest batch in the track-and-trace system within the required period of time.

51. BBF's single-count violation of section 8405, subdivision (c)(4)(D), is deemed a Moderate violation with a fine range of $501 to $1,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a maximum $1,000 fine. For the same reasons discussed above with respect to violation nos. (8) and (9), the fine amount should be reduced to $750.

(11) Using a water source that was not identified or permitted in the application

52. Commercial cannabis cultivators are required to identify their water sources for irrigation, including any water diversions. Water diversions must be properly permitted. (Bus. & Prof. Code, § 26060.1, subd. (a).)

The preponderance of the evidence establishes that BBF unlawfully used water from three diversions from Hacker Creek to irrigate cannabis. It is undisputed that BBF did not have appropriate permits to divert water from Hacker Creek for commercial cannabis irrigation. Yet, Walkenhauer witnessed three pumps connected to electricity

in or near the stream. She further observed water lines/pipes running from the diversions in Hacker Creek to a 45,000-gallon water storage tank on the Premises, which had not been identified in BBF's Original Property Diagram submitted with its application. BBF's own Updated Property Diagram, provided to the Department after the September 3, 2020 inspection, showed water distribution lines running from the 45,000-gallon water storage tank, labeled as "for irrigation use," to the various greenhouses.

Dogan's contrary testimony that the Updated Property Diagram was mistaken and that water diversion was purely for domestic use was self-serving and not credible. Additionally, that BBF employees removed the pumps from Hacker Creek during the inspection reasonably indicates knowledge that the diversions were unlawful. That BBF may also have obtained water for cannabis irrigation from the rainwater pond does not render the diversions lawful. Finally, the notice of violation issued by the DFW related to the three Hacker Creek diversions further supplement and bolster the Department's other evidence.

53. BBF's three violations of Business and Professions Code section 26060.1, subdivision (a), are deemed Serious violations, with a fine range of $1,001 to $5,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a maximum fine of $5,000 per count. Given the involvement of multiple diversions, the potentially serious consequences to the environment, and evidence that BBF employees attempted to cover up evidence of the diversions during the September 3, 2020 inspection, the fines are reasonable and not an abuse of discretion.

(12) Cultivating in excess of the total allowable canopy size

54. A licensee must conduct its cannabis cultivation operations consistent with the terms of the type of license it holds. (Cal. Code Regs., tit. 3, § 8201.) It is undisputed that BBF's License authorized BBF to have a maximum of 22,000 SF of canopy on the Premises for commercial cannabis cultivation. (*Id.*, § 8201, subd. (d)(3).)

The preponderance of the evidence establishes that there was a total of at least 22,567.75 SF of canopy on the Premises at the time of the September 3, 2020 inspection based on the measurements Walkenhauer personally took. Although BBF relied on measurements from ordered prefabricated kits, neither Dogan nor Valare personally measured the constructed greenhouses. Even though an engineer also purportedly measured the total square footage as less than 22,000 SF, that engineer did not testify at hearing or explain his methodology.

55. BBF's single-count violation of section 8201 is deemed a Serious violation, with a fine range of $1,001 to $5,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a maximum $5,000 fine. However, the excess square footage is not very substantial. Moreover, Dogan credibly testified that he relied on the measurements provided with the kits, albeit mistakenly. Consequently, the fine amount should be reduced to $2,000, at the lower end of the fine range.

(13) Failure to prohibit cannabis plants maintained outside the designated canopy area from flowering

56. "Cannabis plants maintained outside of the designated canopy area(s) for specialty cottage, specialty, light, and medium licenses are prohibited from flowering.

Should plants outside of the canopy area(s) begin to flower, a UID shall be applied, the plant(s) shall be moved to the designated canopy area without delay, and reported in the track-and-trace system." (Cal. Code Regs., tit. 3, § 8300, subd. (a).)

The preponderance of the evidence establishes, and BBF concedes, that BBF allowed mature/flowering cannabis plants to grow outside the canopy areas designated on the Original Premises Diagram on file with the Department. At the time of the September 3, 2020 inspection, there were numerous signs of a recently-completed harvest of mature plants in the designated immature plant area.

57. BBF's single-count violation of section 8300, subdivision (a), is deemed a Serious violation, with a fine range of $1,001 to $5,000. (Cal. Code Regs., tit. 3, § 8601, Table A.) Here, the Department assessed a maximum $5,000 fine. Although this is a serious violation, the Department has failed to articulate circumstances or reasons justifying imposition of the maximum fine. A reduced fine of $3,000 in the middle of the range would be more reasonable.

CONCLUSION

58. Given the foregoing, the total assessed fine of $1,863,149 is reduced by $5,750 to $1,857,399 (corresponding to the reductions associated with violation nos. 8 through 10, 12, and 13).

LEGAL CONCLUSIONS

1. The Department bears the burden of proving the alleged violations in the Notice of Violation, and demonstrating the propriety of assessed fines, by a preponderance of the evidence. (Cal. Code Regs., tit. 3, § 8607, subd. (a); Evid. Code, §

115.) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. The Department "may suspend, revoke, place on probation with terms and conditions, or otherwise discipline licenses issued by the department and fine a licensee, after proper notice and hearing to the licensee . . . if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action." (Bus. & Prof. Code, § 26031, subd. (a); *see also* Bus. & Prof. Code, § 26030 [outlining grounds for disciplinary action, including failure to comply with applicable statutes and regulations].) For purposes of assessing fines for violations, the Department by regulation established a table classifying specific statutory and regulatory violations as "Minor," "Moderate," or "Serious," with associated fine ranges. (Cal. Code Regs., tit. 3, § 8601, Table A.)

3. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 32 and 33, BBF's single-count violation of California Code of Regulations, title 3, section 8402, subdivision (a), is affirmed. The assessed fine of $500 is reasonable and not an abuse of discretion.

4. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 34 and 35, BBF's four counts of violating California Code of Regulations, title 3, section 8204, subdivision (a), are affirmed. The assessed fines of $500 per count are reasonable and not an abuse of discretion.

5. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 36 and 37, BBF's single count of violating California Code of Regulations, title 3,

section 8106, subdivision (a)(1)(I), is affirmed. The assessed fine of $500 is reasonable and not an abuse of discretion.

6. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 38 and 39, BBF's three counts of violating California Code of Regulations, title 3, section 8205, subdivision (a), are affirmed. The assessed fines of $1,000 per count are reasonable and not an abuse of discretion.

7. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 40 and 41, BBF's single count of violating California Code of Regulations, title 3, section 8405, subdivisions (c)(2) and (3), is affirmed. The assessed fine of $1,000 is reasonable and not an abuse of discretion.

8. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 42 and 43, BBF's 2,204 counts of violating California Code of Regulations, title 3, section 8405, subdivision (c)(3), are affirmed. The assessed fines of $501 per count are reasonable and not an abuse of discretion.

9. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 44 and 45, BBF's 1,445 counts of violating California Code of Regulations, title 3, section 8405, subdivision (c)(4)(A), are affirmed. The assessed fines of $501 per count are reasonable and not an abuse of discretion.

10. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 46 and 47, BBF's single count of violating California Code of Regulations, title 3, section 8405, subdivision (c)(4)(B), is affirmed. The reduced fine of $750 is reasonable and not an abuse of discretion.

11. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 48 and 49, BBF's single count of violating California Code of Regulations, title 3, section 8405, subdivision (c)(4)(C), is affirmed. The reduced fine of $750 is reasonable and not an abuse of discretion.

12. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 50 and 51, BBF's single count of violating California Code of Regulations, title 3, section 8405, subdivision (c)(4)(D), is affirmed. The reduced fine of $750 is reasonable and not an abuse of discretion.

13. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 52 and 53, BBF's three counts of violating Business and Professions Code section 26060.1, subdivision (a), are affirmed. The fines of $5,000 per count are reasonable and not an abuse of discretion.

14. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 54 and 55, BBF's single count of violating California Code of Regulations, title 3, section 8201, is affirmed. The reduced fine of $2,000 is reasonable and not an abuse of discretion.

15. Based on the Factual Findings as a whole, and specifically, Factual Finding Nos. 56 and 57, BBF's single count of violating California Code of Regulations, title 3, section 8300, subdivision (a), is affirmed. The reduced fine of $3,000 is reasonable and not an abuse of discretion.

16. Based on Factual Finding No. 58 and the foregoing Legal Conclusions, BBF shall be required to pay the Department a total fine of $1,857,399.

ORDER

1. The Notice of Violation issued to respondent Bear Butte Farms, LLC is AFFIRMED, but WITH REDUCTION of the total fine amount.

2. Respondent Bear Butte Farms, LLC shall pay the Department of Cannabis Control a total fine of $1,857,399 within 30 days of the effective date of this order or pursuant to a payment plan approved by the Department of Cannabis Control.

DATE: August 9, 2021

Wim vanRooyen

WIM VAN ROOYEN
Administrative Law Judge
Office of Administrative Hearings