

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 of Cannabis Control hereby adopts the Stipulated Settlement of Citation and Order, attached hereto, as its decision in the above-entitled matter.

Although I previously remanded this case for further factfinding by an ALJ to determine whether the violations at issue here threatened the integrity of the regulated market, the parties have instead negotiated a settlement without further ALJ factfinding. I am satisfied that the settlement—which, among other things, prevents Respondent and its owner from holding any California cannabis license for at least five years and imposes substantial financial penalties totaling more than \$1.6 million if Respondent or its owner ever willfully violate California’s cannabis laws—is sufficient to protect the integrity of the regulated market in the specific context of this case.

This case was first brought in 2020, prior to the creation of the Department; I expect that superficially similar cases would be investigated and prosecuted differently today. In approving this settlement, I reiterate what I said the last time this case came before me. 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.” (Order of Decision (Nov. 16, 2021), p. 3.)

I also reiterate my prior warning that evidence of diversion may well require nothing more than the absence of compliance with track-and-trace requirements:

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.

(Ibid. at p. 4, fn. 2.)

Licensees who fail to comply with track-and-trace requirements, and who cannot show that their failure had nothing to do with diversion to the illicit market, should be prepared to face serious penalties.

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.” *(Ibid.)* As I said before, the Department “intends to exercise its enforcement discretion such that particularly severe penalties (such as the very large fines at issue [in this case]) are aimed at particularly serious violations, such as violations that threaten to undermine the integrity of the regulated market.” *(Ibid.)*

With these observations, I am approving the settlement. This Decision shall become effective immediately.

IT IS SO ORDERED this 1st day of March, 2023.

By: **Nicole Elliott** Digitally signed by Nicole Elliott
Date: 2023.03.01 09:32:07
-08'00'

Nicole Elliott
Director
Department of Cannabis Control

1 TAMARA COLSON
Deputy Director
2 LINDSAY HERRICK (State Bar No. 224986)
Attorney IV
3 DEPARTMENT OF CANNABIS CONTROL
2920 Kilgore Road, Suite 228
4 Rancho Cordova, California 95825
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5 Facsimile: (916) 851-3636

6 *Attorneys for Complainant*

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

10 In the Matter of the Notice of Violation Issued to:) OAH NOs.: 2020110600; 2020110600.1
11) AGENCY NO.: COM2-4054
12 BEAR BUTTE FARMS, LLC,) AMENDED STIPULATED SETTLEMENT OF NOTICE
13) OF VIOLATION AND ORDER
14 Respondent.
15)

16
17 This Stipulated Settlement of Notice of Violation and Order (Stipulation) is made and
18 entered into by Complainant, the Department of Cannabis Control, and Respondent, Bear Butte
19 Farms, LLC, and its owner of record Erdinc Dogan (collectively "the Parties" and individually as
20 "Party").

21
22 IT IS HEREBY STIPULATED AND AGREED by and between Parties to the above-entitled
23 proceedings that the following matters are true:

24 **RECITALS**

25 1.) At the time this action was filed, Richard Parrott (Complainant) was the Director of the
26 CalCannabis Cultivation Licensing Division, California Department of Food and Agriculture (CDFA),
27 and he brought this action solely in his official capacity as the Director.

28 2.) Pursuant to Business and Professions Code section 26010.7, this action is pending before

1 the Department of Cannabis Control (DCC). and Rasha Salama, Chief Deputy Director, is now the
2 Complainant in her official capacity and is represented in this matter by Tamara Colson, Deputy
3 Director of Legal Affairs, and Lindsay Herrick, Attorney IV.¹

4 3.) Respondent, Bear Butte Farms, LLC (Respondent), previously held a Provisional Medium
5 Mixed Light Tier 1 license, number CCL18-0003553 (License) for premises located in at Assessor's
6 Parcel Number 221-230-003-000 in Humboldt County (Premises), which was revoked on October
7 6, 2020 as a result of this action. Respondent currently holds a Provisional Small Mixed-Light Tier
8 2 cultivation license, number CCL19-0001136, which expired on August 30, 2022 and may be
9 renewed until September 29, 2022.

10 4.) Respondent and its owner of record, Erdinc Dogan (collectively, "Respondent and owner"),
11 are represented in this proceeding by attorneys Patrik Griego and Jeffrey Slack of the law firm,
12 Janssen Malloy LLP, with a business address of 730 Fifth Street, Eureka, California 95501.

13 **JURISDICTION**

14 5.) The DCC is the state agency charged with administering the provisions of the Medicinal
15 and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) (Bus. & Prof. Code, § 26000 et
16 seq.) and the regulations promulgated thereunder.

17 6.) On October 6, 2020, Complainant issued a Combined Notice of Violation and License
18 Revocation revoking Respondent's License and assessing fines in the amount of \$1,857,399 for
19 violations of the MAUCRSA, and which was amended on April 16, 2020 (NOV). A true and correct
20 copy of the NOV is attached as Exhibit A and incorporated by reference.

21 7.) On November 2, 2020, Respondent submitted a timely request for hearing. On May 6-7,
22

23 ¹In accordance with Section 8 of Assembly Bill 141, and, specifically, Business and Professions Code section 26010.7,
24 subdivisions (a) and (c), the Department of Cannabis Control and the director shall succeed and be vested with all the
25 duties, powers, purposes, functions responsibilities, and jurisdiction of the California Department of Food and
26 Agriculture, CalCannabis Cultivation Division. Pursuant to Business and Professions Code section 26010.7, subdivision
27 (i), "[a]ny action by or against . . . the Department of Food and Agriculture pertaining to matters vested in the
28 Department of Cannabis Control by this section shall not abate but shall continue in the name of the Department of
Cannabis Control, and the name of the Department of Cannabis Control shall be substituted for . . . the Department of
Food and Agriculture by the Court where in the action is pending." The section became operative and the consolidation
of the licensing agencies occurred on Monday, July 12, 2021. For this reason, each reference to the Complainant shall
be deemed to mean Complainant or their successors, once the Court complies with Business and Professions Code
section 26010.7, subdivision (d) and substitutes the names of the successor complainant in this matter, the proper
Parties will be the Department of Cannabis Control and Rasha Salama, in her official capacity as Chief Deputy Director.

1 2021, an administrative hearing was held on the merits of the NOV by the Office of Administrative
2 Hearings (OAH) which resulted in a Proposed Decision on August 9, 2021 affirming the NOV with
3 minor reductions to the fines assessed. On November 16, 2021, the DCC issued an Order of
4 Decision that rejected the Proposed Decision and referred the matter back to OAH for the taking
5 of additional evidence pursuant to Government Code section 11517, subdivision (c)(2)(D). This
6 matter is now pending before OAH and is currently scheduled for a status conference on
7 September 28, 2022.

8 **ADVISEMENT AND WAIVERS**

9 8.) Respondent and owner have carefully read, fully discussed with counsel, and understand
10 the findings of violations and allegations in the NOV, case number COM2-4054, and have also
11 carefully read, fully discussed with counsel, and understand the effects of this Stipulation.

12 9.) Respondent and owner are fully aware of their legal rights in this matter, including the
13 right to a hearing on the findings of violations and allegations in the NOV, case number COM2-
14 4054; the right to confront and cross-examine the witnesses against Respondent; the right to
15 present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
16 compel the attendance of witnesses and the production of documents; the right to
17 reconsideration and judicial review of an adverse decision; and all other rights accorded by the
18 MAUCRSA, the Administrative Procedure Act, the California Code of Civil Procedure, and other
19 applicable laws.

20 10.) Respondent and owner voluntarily, knowingly, and intelligently waive and give up
21 each and every right set forth above in relation to the resolution of the NOV, case number COM2-
22 4054, and in acceptance of this Stipulation.

23 **LIABILITY**

24 11.) Respondent admits to the truth of each and every finding of violation and
25 allegation in the NOV, case number COM2-4054.

26 12.) Respondent agrees that Respondent's License is subject to summary revocation
27 and that Respondent may be fined for the findings of violations and allegations set forth in the
28 NOV, case number COM2-4054.

CONTINGENCY

1
2 13.) This Stipulation shall be subject to approval by the DCC. Respondent understands
3 and agrees that counsel for Complainant and the staff of the DCC may communicate directly with
4 the DCC regarding this Stipulation and settlement, without notice to or participation by
5 Respondent or its counsel. By signing the Stipulation, Respondent understands and agrees that it
6 may not withdraw its agreement or seek to rescind the Stipulation prior to the time the DCC
7 considers and acts upon it. If the DCC adopts the Stipulation as its Decision and Order, the
8 Effective Date of this Stipulation is the effective date of the Decision. If the DCC fails to adopt this
9 Stipulation as its Decision and Order, the Stipulation shall be of no force or effect, except for this
10 paragraph, it shall be inadmissible in any legal action between the Parties, and the DCC shall not
11 be disqualified from further action by having considered this matter. If the DCC fails to adopt the
12 Stipulation as its Decision and Order, Respondent shall retain its legal rights with respect to the
13 NOV, including the right to reschedule the hearing to allow a reasonable opportunity to prepare,
14 subject to Government Code section 11500 et seq. and all applicable administrative hearing
15 provisions.

LIMITED RELEASE

16
17 14.) Each of the Parties shall be deemed to have released the other Party and its
18 respective successors, representatives, agents, employees, and assigns, from all claims they may
19 now have or that may hereafter accrue to them, whether now known or unknown, solely in
20 connection with the NOV, Case. Nothing in this Stipulation shall constitute or be construed as a
21 satisfaction or release from liability for any violations of law other than those described in NOV,
22 case number COM2-4054.

OTHER MATTERS

23
24 15.) Portable Document Format (PDF) and facsimile copies of this Stipulation, including
25 PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

26 16.) This Stipulation may be signed in any number of counterparts, each of which is an
27 original and all of which taken together form one single document.

28 17.) This Stipulation is intended by the Parties to be an integrated writing representing

1 the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior
2 or contemporaneous agreements, understandings, discussions, negotiations, and commitments
3 (written or oral). This Stipulation may not be altered, amended, modified, supplemented, or
4 otherwise changed except by a writing executed by an authorized representative of each of the
5 Parties.

6 18.) In consideration of the foregoing stipulations, the Parties agree that DCC, may,
7 without further notice or formal proceeding, issue and enter the following Order:

8 **ORDER**

9 A) **APPEAL WITHDRAWN.** Respondent's appeal of the NOV, case number COM2-4054,
10 including any claim that its License was revoked without due process, and request for an
11 administrative hearing are deemed withdrawn and hereby waives the right to a hearing, and to any
12 reconsideration, appeal, or other right to administrative or judicial review which may be afforded
13 pursuant to the MAUCRSA, the Administrative Procedure Act, the California Code of Civil
14 Procedure, or any other provision of law.

15 B) **PAYMENT OF ADMINISTRATIVE FINE.** Respondent shall pay an administrative fine in
16 the amount of seventy-seven thousand, two hundred fifty-six dollars and sixty-seven cents
17 (\$77,256.67) to the DCC as provided below in accordance with Business and Professions Code
18 section 26031, subdivision (a). Respondent shall remit an initial payment of \$30,001.00 within 30
19 days of the Effective Date of this Stipulation to be paid in one (1) lump sum. Thereafter,
20 Respondent shall pay the remaining \$47,255.67 within six (6) months of the Effective Date of this
21 Stipulation. Payments shall be remitted by one of the following methods: (1) the Department of
22 Cannabis Control's cash payment procedures; (2) the Department of Cannabis Control's online
23 payment portal; or, (3) by cashier's check mailed to:

24 Department of Cannabis Control
25 Attn: Cashiers
26 P.O. Box 419106
27 Rancho Cordova, CA 95741-9106

28 Failure to complete the payment or comply with the above terms of this Order shall result
in enforcement of the Order in the Superior Court.

1 C) **SUSPENDED REMAINING BALANCE OF NOV FINE.** The balance of the NOV fines in the
2 amount of \$1,628,149.00 is hereby suspended unless and until Respondent or its owner commits
3 any willful violation of the MAUCRSA or regulations promulgated thereunder. For purposes of this
4 term, "willful" means volitional, voluntary, or a willingness or purpose to commit the act or
5 omission referred to and does not require the DCC to prove any Intent by Respondent or its owner
6 to violate the law, injure another, or to acquire an advantage. Any such violation by Respondent or
7 its owner shall result in the suspended balance (\$1,628,149.00) becoming due immediately for
8 payment to the DCC by one of the methods provided above in paragraph B.

9 D) **SUMMARY REVOCATION OF RESPONDENT'S LICENSE.** Respondent's Provisional Small
10 Mixed-Light Tier 2 cultivation license, number CCL19-0001136, is hereby summarily revoked.

11 E) **5-YEAR DISQUALIFICATION.** Respondent and owner are each disqualified for a period
12 of five (5) years, commencing on the Effective Date of this Stipulation, from reapplying for licensure
13 from the DCC, and shall be prohibited from engaging in commercial cannabis activity in the state of
14 California as an owner, officer, controlling shareholder, or in any similar position of authority
15 allowing the persons to make, command, or control decisions regarding the operations and
16 management of commercial cannabis activity. For purposes of this term, an "owner" means,
17 including but not limited to, any of the following: (1) a person with any ownership interest in a
18 cannabis license or in an entity applying for such license, (2) the chief executive officer of any
19 cannabis business or an entity applying for any cannabis license, (3) a member of the board of
20 directors of a nonprofit, any cannabis business, or any entity applying for any cannabis license, and
21 (4) an individual who will be participating in the direction, control, or management of the person or
22 entity applying for a cannabis license. In the event Respondent or owner are issued a cannabis
23 license, Respondent and owner agree to the summary revocation of the license(s) at any time
24 within the DCC's discretion and hereby waive any right to a hearing, and to any reconsideration,
25 appeal, or other right to administrative or judicial review which may be afforded pursuant to the
26 MAUCRSA, the Administrative Procedure Act, the California Code of Civil Procedure, or any other
27 provision of law.

28 F) **SUMMARY DENIAL OF ANY PENDING OR FUTURE APPLICATION FOR A PROVISIONAL**

1 AND/OR ANNUAL LICENSE. Any and all pending application(s) by Respondent and/or owner for a
2 cannabis license is hereby summarily denied. Respondent waives any right to appeal the denial as
3 to any such pending cannabis license application.

4 G) ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH LSA AGREEMENT.

5 Respondent and owner agree to remediate the environmental violations identified in the Notice of
6 Violation issued on September 11, 2020 by the California Department of Fish and Wildlife (CDFW)
7 and to comply with the requirements of the Lake and Streambed Alteration Agreement (LSAA) with
8 the CDFW, Notification Number 1600-2019-0723-R1, including but not limited to payment of
9 remediation costs in the amount of \$32,574.33 and correcting the deficiencies in the Diversion
10 Infrastructure Plan and Bullfrog Management Plan under the LSAA within three months of the
11 Effective Date of this Stipulation and provide confirmation from the CDFW of Respondent and
12 owner's compliance within three days.

13 H) DESTRUCTION OF CANNABIS. Respondent agrees to destroy at its own cost the 1,445
14 plants it harvested in this matter, including but not limited to all the processed cannabis located on
15 the Premises worth a total of \$125,169 within one week of the Effective Date of this Stipulation
16 and to provide evidence of the destruction, including video or photographic evidence and any
17 related invoices and other relevant documentation to the DCC within three days of the destruction.

18 I) DECISION BY SETTLEMENT. This Stipulation is a decision by settlement per Government
19 Code section 11415.60 of the Administrative Procedure Act.

20 ACCEPTANCE

21 I have carefully read the above Stipulation and have fully discussed it with my attorneys,
22 Patrik Griego and Jeffrey Slack. I understand the Stipulation and the effect it will have on
23 Provisional Medium Mixed Light Tier 1 license, number CCL18-0003553 and Provisional Small
24 Mixed-Light Tier 2 cultivation license, number CCL19-0001136. This Stipulation is entered into
25 voluntarily, knowingly, and intelligently, with agreement to be bound by the Decision and Order of
26 the DCC.


27 DATED:

28 10/11/2022

Erdinc Dogan, owner
Bear Butte Farms, LLC
Respondent

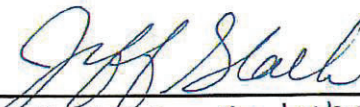
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DATED: 10/11/2022

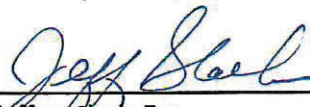

Erdinc Dogan
Respondent's Owner of Record

I have read and fully discussed with Bear Butte Farms, LLC and its owner of record Erdinc Dogan the terms and conditions and other matters contained in the above Stipulation. I approve its form and content.

DATED: 10/13/22


Patrik Griego, Esq. *on behalf of*
Janssen Malloy LLP
Attorney for Respondent and Erdinc Dogan

DATED: 10/13/22


Jeffrey Slack, Esq.
Janssen Malloy LLP
Attorney for Respondent and Erdinc Dogan

ENDORSEMENT

The foregoing Stipulated Settlement of Notice of Violation and Order is hereby respectfully submitted for consideration by the Department of Cannabis Control.

DATED: 10/13/2022

Respectfully submitted,
TAMARA COLSON
Deputy Director, Office of Legal Affairs
Department of Cannabis Control

LINDSAY HERRICK
Attorney IV


Department of Cannabis Control
Attorneys for Complainant