

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

**In the Matter of the Accusation Against:**

**HDO3 HOLDINGS, LLC  
JAMES PREVITI, OWNER**

**License No. C11-0001341-LIC**

**Respondent.**

**Agency No. DCC23-0005063-COMP**

**OAH No. 2024010957**

**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 June 10, 2024

IT IS SO ORDERED this 9th day of May 2024

By: Matthew Lee

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**PROPOSED DECISION**

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this case by videoconference on March 28, 2024.

Joshua B. Eisenberg, Supervising Deputy Attorney General, represented complainant Jeff Merriman, Deputy Director of the Compliance Division of the Department of Cannabis Control (Department), State of California.

Eugene Kim, Esq., represented respondent HDO3 Holdings, LLC, James Previti Owner. Gregory Paiva, HDO3 Holdings LLC Compliance Officer, was respondent's corporate representative at the hearing.

The Administrative Law Judge heard testimony and received documentary evidence. The record closed and the matter was submitted at the close of the hearing.

## **SUMMARY**

Complainant proved by a preponderance of the evidence respondent failed to register its cannabis distributor license with the Department's tracking and tracing system within 10 days of obtaining the license in violation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Act) and its accompanying regulations. Respondent did not dispute it had not timely registered the license and attributed the failure to an oversight. Considering the absence of any actual harm resulting from respondent's failure to timely register, the absence of prior license discipline of any other cannabis licenses held by respondent's owner James Previti (Mr. Previti), and the lack of any evidence of suspicious or criminal activity relating to respondent's distributor license and other licenses, imposition of a fine and payment of costs are sufficient to protect the public interest.

## **FACTUAL FINDINGS**

1. The Department issued Adult-Use Distributor License number C11-0001341-LIC (distributor license) to respondent on June 7, 2021. In addition to the distributor license, respondent holds four other cannabis licenses, i.e., two small indoor licenses, a processor license, and a nursery license. The Accusation alleges the Department renewed the distributor license on June 7, 2022, and June 7, 2023. (Exhibit 1, p. A1.) The distributor license was in full force and effect at all times relevant to the

charges brought in the Accusation. The distributor license is scheduled to expire on June 7, 2024.

2. On October 5, 2023, Deputy Director Jeff Merriman, in his official capacity, signed the Accusation. The Accusation was served on respondent by certified mail addressed to its Adelanto California facility on October 6, 2023. The Accusation seeks to discipline respondent's distributor license under Business and Professions Code section 26030, subdivisions (a) and (c), on grounds that respondent failed to comply with the required credentialing process in violation of California Code of Regulations, title 4 (CCR), section 15048, subdivision (b)(3).

3. Respondent filed a Notice of Defense on October 24, 2023, acknowledging receipt of the Accusation and requesting a hearing.

4. All jurisdictional requirements were met.

### **Background – Regulatory Scheme**

5. The Department uses a "track and trace system" for its licensees, including distributor licensees, to report the movement of cannabis and cannabis products through the distribution chain. The distribution chain includes the procurement, sale, and transport of cannabis and cannabis products. The "track and trace system" is otherwise known as the California Cannabis Track and Trace system or CCTT.

6. The Department requires its licensees to enter information pertaining to their cultivation, distribution, transfer, and sale of cannabis and cannabis products into the CCTT computerized database, which is operated by Metrc, a private company contracted by the Department. The required information includes data relating to the

receipt of cannabis or cannabis products, manufacturing of cannabis or cannabis products, destruction or disposal of cannabis or cannabis products, packaging or repackaging of cannabis or cannabis products, and laboratory testing of cannabis or cannabis products. The licensee is to review the information recorded in the CCTT system at least once every 30 days for accuracy.

7. The Department also requires a cannabis license applicant or licensee to identify an owner of the commercial cannabis business as the CCTT system account manager. That account manager or their designee must, no later than 10 days after license issuance, complete the CCTT new user Metrc training provided by the Department, email Metrc to request access to the CCTT database, and complete the credentialing process to establish a login. Within 10 calendar days of obtaining CCTT credentials from Metrc, the designated account manager is also required to place an initial order for package tags and record the receipt of those tags into the CCTT/Metrc database within three days of receipt. (See Legal Conclusion 7.)

### **Findings Based on Complainant's Evidence**

8. Stephanie Dorminey is currently a Staff Services Manager II for the Department. As part of her job responsibilities for the past several years, Ms. Dorminey has overseen the administration of the CCTT/Metrc system. According to Ms. Dorminey, the purpose of the CCTT system is to track the manufacture and sale of cannabis from "seed to sale." The CCTT system informs the Department of each licensee's inventoried products and allows the Department to monitor product testing and sale. By doing so, the Department can detect and thereby prevent products cultivated or manufactured by unlicensed entities from entering the legal market and those products lawfully cultivated or manufactured from being sold in the illicit market.

9. Ms. Dorminey explained the obligations of a licensed distributor to input information into the CCTT/Metric database. A licensed distributor is required to inform the Department through the CCTT/Metric database of its inventory, transfers of its cannabis products, any repackaging of those products, transfer of those products to laboratories for testing, and transfers to retailers, among other things. Only licensed distributors can transfer cannabis and cannabis products.

10. Ms. Dorminey confirmed respondent had not registered with the CCTT/Metric database within 10 days of its initial licensure as required by the Department. She acknowledged respondent did not have to undergo CCTT/Metric system training because its designated user had undergone training when respondent registered its other cannabis licenses. Ms. Dorminey noted the Department had sent at least four emails to respondent about its obligation to register with the CCTT/Metric database but never received a response. Copies of the June 7, 2021 and September 28, 2021 emails from the Department to Brian Barlock, respondent's Compliance Manager at the time, as well as September 2, 2022 and October 25, 2022 emails from the Department to Mr. Previti, as respondent's owner, were admitted into evidence. (Exhibits 3, 4, 5, 6.) The September 2, 2022 email also informed Mr. Previti that CCR section 15047.2 required licensees to establish a CCTT system account before engaging in commercial cannabis activity. (Exhibit 3.) According to Ms. Dorminey, the Department's emails were sent to email addresses provided by respondent in its license application.

11. The October 25, 2022 email to Mr. Previti attached a Notice to Comply (Notice), issued pursuant to CCR section 17801, stating respondent's failure to correct the violations in the Notice may result in disciplinary action. The Notice listed one violation, i.e., the failure of respondent's designated manager to complete the

credentialing process to set up a login for the CCTT/Metric system within 10 calendar days after license issuance in violation of CCR section 15048, subdivision (b)(3). (Exhibit 4.) The Notice states it was sent by email as well as by certified mail. Ms. Dominey was not aware of any issues about the delivery of the Notice.

12. Ms. Dominey confirmed respondent registered with the CCTT/Metric system on October 20, 2023. She also confirmed respondent ordered inventory tags after registering with the CCTT/Metric system. The CCTT/Metric system shows respondent has not engaged in any cannabis distribution activity since its registration. The Department lacks any information about respondent's cannabis distribution activities before it registered.

13. Ms. Dominey testified respondent's distributor license entitled respondent to have cannabis or cannabis products as inventory on the premises. However, because respondent had not timely registered with the CCTT/Metric system, the Department was unable to verify and therefore unable to track respondent's cannabis inventory for more than two years. Thus, respondent could have used its license during this time to deflect any questions of suspicious activity relating to its possession or distribution of cannabis or cannabis products. From an outsider's view, any distribution of cannabis or cannabis products by respondent over this more than two-year period would appear to be legitimate because of respondent's license.

14. Complainant offered no evidence respondent or any of Mr. Previti's other cannabis companies have a criminal history. Nor did complainant offer any evidence respondent or any of Mr. Previti's companies were engaged in unlawful cannabis distribution before or after respondent obtained its distribution license. There was no evidence showing the Department or any law enforcement agency had ever investigated or inspected any of Mr. Previti's operations because of suspicious activity.

## **Findings Based on Respondent's Evidence**

15. In addition to respondent, Mr. Previti owns two other cannabis companies, HDO Holdings LLC and HDO13 Holdings LLC, which are physically located adjacent to respondent and are part of the same secured property in Adelanto, California. Respondent and these two companies are part of Intrepid Holdings, a holding company owned by Mr. Previti. HDO Holdings LLC and HDO13 Holdings LLC each hold five cannabis licenses, which were initially issued in 2020 or 2021. (Exhibit C.)

16. Gregory Paiva has been the compliance officer for Intrepid Holdings since March 2022 and testified on respondent's behalf. Mr. Paiva is responsible for ensuring the cannabis licenses held by Intrepid Holdings' companies, including those of respondent, are compliant with California's cannabis laws and regulations. Currently, Intrepid Holdings has 17 cannabis licenses.

17. Mr. Paiva explained respondent is physically located at 17321 Muskrat Avenue in Adelanto, but respondent's mailing address is at 2151 East Convention Center Way in Ontario, California. The different addresses are confirmed in respondent's profile information in the CCTT/Metric system. (Exhibit G, p. B23.) Mr. Paiva asserted respondent did not receive any of the Department's mailings because the Department sent them to respondent's physical address in Adelanto and never mailed them to the Ontario address. According to Mr. Paiva, the Adelanto location does not have any mail drops or mail receptacles, and respondent only became aware of the Accusation, which was sent to the Adelanto address, because security guards at the property accepted the package and notified respondent's manager. Mr. Paiva further asserted he was unfamiliar with the g-mail email address for Mr. Previti where the Department sent its emails. On April 23, 2023, Mr. Paiva requested the Department to change respondent's primary contact person from Mr. Barlock to himself.



18. Mr. Paiva did not dispute respondent had failed to timely complete the credentialing process for its distributor license. Mr. Paiva testified he first learned of respondent's failure to enroll the distributor license in the CCTT/Metric system from the Accusation. Mr. Paiva was not respondent's compliance officer when respondent obtained the distributor license, and Mr. Barlock, who was the compliance officer at the time, never informed him respondent's distributor license had not been registered. Although Intrepid Holdings has a separate CCTT/Metric team responsible for inputting data into the CCTT/Metric system, no one noticed respondent had failed to register its distributor license with the system.

19. Within two hours of reviewing the Accusation, respondent sent an email to Metric on October 19, 2023, to register its distributor license. Email correspondence between respondent and CCTT/Metric shows respondent completed the CCTT credentialing request with the CCTT/Metric system for its distributor license on October 20, 2023, at 11:00 a.m. (Exhibits D and E.) That same day, respondent ordered tags through Metric; respondent's shipping address was listed as the Ontario address. (Exhibit F.)

20. Mr. Paiva testified respondent had not conducted any cannabis distribution activity either before or after obtaining credentials from the CCTT/Metric system. Mr. Paiva asserted the Department has never disciplined any of respondent's licenses or any of the other licenses held by Mr. Previti. According to Mr. Paiva, Mr. Previti is dedicated to following the Department's rules and regulations, which is why he employs a compliance officer.

21. During cross-examination, complainant's counsel attempted to impeach Mr. Paiva by asking questions about the discipline of his law license by the State Bar of California (State Bar). Mr. Paiva testified he surrendered his law license after the State

Bar disciplined him for trust accounting issues. The details of the State Bar complaint and the State Bar's findings were not made known at the hearing. Although complainant's counsel asserted the information regarding the details of Mr. Paiva's license disbarment is publicly available, an administrative law judge cannot consider such information unless it is part of the record. In any event, the pertinent portions of Mr. Paiva's testimony were either unrebutted or corroborated by documentary evidence or by Ms. Dominey's testimony, and those portions are deemed credible.

### **Costs**

22. Complainant seeks a total of \$7,380 in investigation and prosecution costs under Business and Professions Code section 26031.1. The costs consist of 30.75 hours of attorney time billed at \$220 per hour, and three hours of paralegal time at \$205 per hour.

23. Respondent offered no evidence showing it lacked sufficient financial resources to pay the requested costs.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. The burden of proof in a licensing disciplinary action is on the party filing the charges in the accusation, in this case complainant. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789.)

2. Because this administrative action does not involve the discipline of a professional license, the standard of proof is the preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive*

*Repair* (2011) 201 Cal.App.4th 911, 916–918; see also Evid. Code, § 115.) That standard requires “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.)

## **Applicable Law**

3. The Department has the power, duty, purpose, responsibility, and jurisdiction to regulate commercial cannabis activity in California. (Bus. & Prof. Code, § 26010.5, subd. (d).) As part of its duties and responsibilities, the Department has the authority to issue, deny, renew, discipline, suspend, or revoke licenses for commercial cannabis activity, including licenses for distribution. (Bus. & Prof. Code, § 26012.)

4. The Department may discipline Department-issued licenses and impose a fine if the licensee is found to have committed any acts or omissions consisting of grounds for discipline. (Bus. & Prof. Code, § 26031, subd. (a); CCR, § 17809, subd. (c).) Proceedings to discipline a Department license are to be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. (Bus. & Prof. Code, § 26031, subd. (a); CCR, § 17809, subd. (b).)

5. A Department licensee is responsible for any violation committed by the licensee’s officers, directors, owners, agents, or employees while acting on the licensee’s behalf or engaged in commercial cannabis activity. (Bus. & Prof. Code, § 26031, subd. (c).) The acts, omissions, or failures of a licensee’s agent, officer, representative, or employee, acting in the scope of their employment or office, are deemed the acts, omissions, or failures of the licensee. (CCR, § 15000.5.)

6. Grounds for disciplining a Department license include failure to comply with the Act or any rule or regulation adopted under the Act and any other grounds

contained in regulations adopted pursuant to the Act. (Bus. & Prof. Code, § 26030, subds. (a) & (c).)

7. The Department requires each applicant or licensee to identify an owner of the commercial cannabis business as the track and trace system account manager. A licensee may change the account manager by submitting a written request to the Department. (CCR, § 15048, sub. (a).) No later than 10 calendar days after license issuance, the designated track and trace system account manager is required to complete the credentialing process to establish a login for the CCTT/Merc system. (CCR, § 15048, subd. (b)(3).)

### **Cause for Discipline**

8. Complainant proved by a preponderance of the evidence respondent failed to complete the required CCTT/Merc database credentialing process for its distributor license within 10 days of its initial licensure in violation of CCR section 15048, subdivision (b)(3). (Factual Findings 10, 11, 18.) Cause therefore exists to discipline respondent's distributor license under Business and Professions Code section 26030, subdivisions (a) and (c).

### **Disposition**

9. The Department's highest priority is in protecting the public. (Bus. & Prof. Code, § 26011.5.) In keeping with that mandate, the Department currently uses the *Disciplinary Guidelines for all Commercial Cannabis Licenses* (Guidelines), amended July 2022, to promote consistency in disciplinary orders for similar offenses on a statewide basis. (Exhibit 8.) Deviation from the Guidelines is appropriate where the facts of the particular case warrant such a deviation, i.e., where mitigating facts are present or evidentiary issues exist. (CCR, § 17814.)

10. Failure to comply with track and trace system requirements, i.e., a violation of CCR section 15048, subdivision (b)(3), constitutes a Tier 2 violation for a distributor licensee under the Guidelines. (Exhibit 8, p. A73.) Violations with a serious potential for harm or which involve greater risk and disregard of public safety are considered to fall within Tier 2. The recommended discipline for Tier 2 violations ranges from a minimum penalty of revocation stayed, a 15 to 30-day suspension, a fine as determined by the Guidelines' Fine Formula, or a combination of a suspension and a fine, to a maximum penalty of revocation. (*Id.*, p. A73.) When a distributor has gross revenue of less or equal to one million dollars based on their license, as is the case here, fines for Tier 2 violations range from \$1,000 to \$3,000. (*Id.*, p. A80.)

11. The Guidelines list the factors to be considered in deciding the nature of imposed license discipline. These factors include the following:

1. Nature and gravity of the act(s), violations, offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any consumer.
4. Prior disciplinary and/or administrative record.
5. Number and/or variety of current violations.
6. Mitigating evidence.
7. Rehabilitation evidence, including but not limited to, a statement of rehabilitation containing any evidence that

demonstrates fitness for licensure, or a certificate of rehabilitation under Penal Code section 4852.01.

8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.

9. Overall criminal record.

10. Time passed since the act(s) or offense(s) occurred.

11. If applicable, evidence of dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42.

12. Whether the conviction is a felony conviction based on possession or use of cannabis or cannabis products that would not be a felony if the person was convicted during the time of licensure.

(Exhibit 8, pp. A68–A69.)

12. The primary purpose of license disciplinary proceedings is to protect the public, not to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161.) Based on the Guidelines, revocation or suspension of respondents' distributor license would be unduly punitive and is unnecessary to protect the public. None of respondent's licenses have ever been disciplined or investigated. Although respondent's lapse is considered a Tier II violation and occurred less than three years ago, complainant offered no evidence showing respondent's failure to register its distribution license caused actual harm to the public or any consumer. While complainant posited a scenario of potential harm, i.e., where respondent's failure to register could provide a "cloak of legitimacy" to unlawful activities, the likelihood of

such occurrence is remote considering the absence of any evidence respondent or any of Mr. Previti's other companies have been investigated by a law enforcement agency, any of respondent's employees have been arrested or convicted of crimes, or respondent distributed cannabis or cannabis products under its distribution license between the time of licensure and the date it registered with the CCTT/Metric system. Moreover, the Accusation is based on a single violation remedied as soon as respondent learned of it. (Factual Findings 12–20.)

13. Considering the foregoing, it is more than likely respondent's failure to register its distributor license with the CCTT/Metric system was inadvertent. No evidence suggested respondent did not register its distribution license with the CCTT/Metric system for nefarious reasons. Respondent timely registered its other cannabis licenses with the CCTT/Metric system, and no reason was offered why it would intentionally not register its distributor license. Respondent also immediately registered its distributor license after learning of the issue from the Accusation. Although complainant sent emails to respondent's registered email address regarding its failure to comply with the certification requirement, it is plausible respondent was not aware of the emails because they were sent to an address not monitored by respondent. Respondent also appears to have been able to renew its distributor license at least two times despite failing to register. (Factual Finding 1.)

14. Under these circumstances, the Guideline's recommended penalties are inapposite and unwarranted. Suspension or continued monitoring of respondent's business would serve no public purpose. Payment of the minimum fine amount will ensure respondent timely complies with its reporting obligations in the future and is sufficient to protect public safety.

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## **Costs**

15. Upon finding a licensee committed a violation, the Department is authorized to recover from the licensee the Department's reasonable costs of investigation and enforcement of the case. (Bus. & Prof. Code, § 26031.1.) In reviewing a similar statute seeking reimbursement of costs in a license disciplinary matter, the Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*)). These factors include 1) the licentiate's success in getting the charges dismissed or the severity of the discipline imposed reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman, supra*, 29 Cal.4th at p. 45.)

16. Complainant requests reimbursement of \$7,380 in enforcement and investigation costs. (Factual Finding 22.) These costs are unreasonable when applying the *Zuckerman* factors as respondent was successful in reducing the severity of the discipline sought to be imposed, had a good faith belief in the merits of his position, and raised a colorable challenge to the proposed discipline. Accordingly, it is appropriate to reduce the requested costs by 25 percent, to \$5,535.

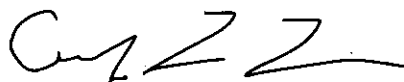
## **ORDER**

Adult-Use Distributor License No. C11-0001341-LIC issued to respondent HDO3 Holdings, LLC, James Previti, Owner, shall pay a fine of \$1,000 to the Department of Cannabis Control within 30 days of the effective date of this Order.



Adult-Use Distributor License No. C11-0001341-LIC issued to respondent HDO3 Holdings, LLC, James Previti, Owner, shall pay costs associated with the Department's investigation and enforcement pursuant to Business and Professions Code section 26031.1 in the amount of \$5,535. Respondent shall be permitted to pay these costs in a payment plan approved by the Department.

DATE: **04/26/2024**



CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings