

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is made and entered into by plaintiff California Department of Food and Agriculture (CDFA), the California Department of Fish and Wildlife (CDFW), and defendants Lowell Farms LLC, Lowell Farms LLC dba Lowell Herb Co., The Hacienda Company, LLC, David Elias, and Brett Myers Vapnek (Defendants). The CDFA, the CDFW and Defendants shall be collectively referred to as "Parties" and individually as "Party." The Effective Date of this Agreement is the date it is signed by the last signatory.

RECITALS

1. Plaintiff CDFA is a state agency created in the state government of California. (Food & Agr. Code, § 101.) The CDFA is responsible for administering the provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) associated with and related to the cultivation of cannabis. (Bus. & Prof. Code, § 26012, subd. (a)(2).)
2. The CDFW is a state agency created within the Natural Resources Agency. (Fish and Game Code, § 700.) The CDFW is not a party to the subject litigation, but is a Party to this Agreement due to costs and expenses incurred related to this matter.
3. Defendant Lowell Farms LLC is a California Limited Liability Company registered with the California Secretary of State (SOS) and assigned the SOS entity number: 201904210049. Lowell Farms LLC does business as Lowell Herb Co. Defendants Lowell Farms LLC and Lowell Farms LLC dba Lowell Herb Co. are collectively referred to as "Lowell Farms LLC."
4. Defendant The Hacienda Company, LLC is a California Limited Liability Company registered with the SOS and assigned the SOS entity number: 201625910074.

5. Defendant David Elias is an individual and the Chief Executive Officer of defendants Lowell Farms LLC and The Hacienda Company, LLC, and the manager or member of the Hacienda Company, LLC.

6. Defendant Brett Myers Vapnek is an individual whom CDFA alleges had an ownership or management role in connection with defendants Lowell Farms LLC's and The Hacienda Company, LLC's commercial cannabis activity that is the subject of this Agreement.

7. On December 13, 2019, the CDFA filed a Complaint for Civil Penalties (Complaint) pursuant to Business and Professions Code section 26038 against Defendants in the Superior Court of California, County of San Luis Obispo, entitled California Department of Food and Agriculture v. Lowell Farms LLC, et al., Case No. 19CV-0759 (Action).

8. In the Complaint, the CDFA alleges that: 1) On or about March 13, 2019, Defendants were conducting unlicensed commercial cannabis activity at 887 Mesa Road, Nipomo, California 93444 (Mesa Property), in San Luis Obispo County; 2) Defendants were utilizing a portion of a warehouse located on the Mesa Property to process and store cannabis; 3) Defendants were processing cannabis packaged as Lowell Herb Co. brand pre-rolled cannabis smokes and flower at the Mesa Property; 4) Defendants had been processing cannabis without a license from at least December 2018 through the date of the March 13, 2019 joint investigation by the CDFA and the CDFW; 5) By engaging in unlicensed commercial cannabis activity, Defendants placed unregulated cannabis into the cannabis market, thereby causing economic harm to California's legal commercial cannabis industry and supporting the illegal cannabis market; 6) Defendants' distribution and sale of illegal products that are potentially untested and/or do not meet the safety standards under the MAUCRSA and its implementing regulations create grave public health and safety risks to Californians; and 7) By engaging in unlicensed

commercial cannabis activity, Defendants deprived the CDFA of licensing fees and the state of tax revenue.

9. The Parties entered into the Agreement pursuant to a compromise and settlement of disputed claims set forth in the Complaint. Defendants do not admit any allegation, finding, or determination alleged in the Action, Complaint or the Agreement. Defendants' consent to the Agreement is not an admission of liability, and not an admission regarding any issue of law or fact alleged by the CDFA and may not be construed as any such admission by any Party or third party. However, Defendants agree that the violations alleged in the Complaint and described in this Agreement shall be deemed to be admitted by the Defendant committing a post-settlement violation for the purpose of establishing a repeat violation in any subsequent action or administrative proceeding brought by any regulatory agency for any conduct occurring after the effective date of this Agreement. Further, if any Defendant fails to comply with the terms of this Agreement, and that Defendant applies for a license or permit, individually or in any capacity on behalf of an entity, under the CDFA's jurisdiction, then the violations set forth in the Complaint and Agreement shall be deemed admitted and the terms under Paragraphs 14 through 16 of the Agreement shall be deemed sanctions for such violations by that Defendant for the purpose of establishing grounds for denial of such application(s) or grounds for the probation or any term or condition of the license.

10. Given the uncertainty and cost of protracted litigation, the Parties have agreed to settle the Action. The Agreement is made to compromise the disputed claims described in these recitals, Paragraphs 1-9, and there has been no adjudication of the merits of any claim.

DEFINITIONS

11. For purposes of the Agreement, unless otherwise specified, the definitions set forth in the MAUCRSA under Business and Professions Code section 26000 et seq. and MAUCRSA's implementing regulations (California Code of Regulations, title 3, section 8000 et seq., California Code of Regulations, title 16, section 5000 et seq., and California Code of Regulations, title 17, section 40100), as they exist on the Effective Date of the Agreement, shall apply to the terms used herein.

TERMS

12. The Recitals and Definitions in Paragraphs 1-11 are fully incorporated herein.

13. Compliance with All Applicable Laws. Defendants are required to comply with MAUCRSA, MAUCRSA's implementing regulations, and all other applicable laws, regulations, or ordinances, as existing on the Effective Date of the Agreement, and as amended in the future, relating to commercial cannabis activity in California.

14. Commercial Cannabis Compliance Coordinator.

A. Within 30 calendar days of the Effective Date of this Agreement, any Defendant engaged in commercial cannabis activity shall designate one or more persons or entities knowledgeable about MAUCRSA and MAUCRSA's implementing regulations that are the subject of the Agreement to act as the Commercial Cannabis Compliance Coordinator (Compliance Coordinator) for a period of five years from the Effective Date of the Agreement. Such Defendants shall promptly provide the Compliance Coordinator copies of all written violation advisements, including but not limited to, any Notice of Violation (NOV), Notice of NonCompliance (NON), citation, action, examination report, and inspection report issued or performed by any governmental agency for five years from the Effective Date of the Agreement.

The Compliance Coordinator designated by the Defendant shall manage that Defendant's compliance with Paragraphs 13 and 14 of this Agreement and all applicable laws, regulations or ordinances related to commercial cannabis activity in California. For a period of five years from the Effective Date of the Agreement, the Compliance Coordinator shall: (1) collect and maintain copies of all written violation advisements, including but not limited to, any NOV, NON, citation, action, examination report, and inspection report issued or performed by any governmental agency, regarding Defendants' commercial cannabis activity; (2) assess Defendants' compliance with applicable laws and regulations relating to commercial cannabis activity in California; (3) advise Defendants' personnel on compliance with applicable laws and regulations relating to commercial cannabis activity in California; and (4) work with Defendants to ensure that they correct any noted deficiencies or violations (the "Compliance Program").

B. Beginning one year after the Effective Date of the Agreement and continuing until five years from the Effective Date of the Agreement, the Compliance Coordinator(s) shall submit to the CDFA, pursuant to the Notice provision under Paragraph 24 in the Agreement, an annual status report describing: (1) Defendants' Compliance Program satisfying the terms of the Agreement; (2) implementation of the Compliance Program; (3) any material changes made to the Compliance Program in the preceding year; (4) any written violation advisements, including but not limited to, any NOV, NON, citation, action, examination report, and inspection report issued or performed by any governmental agency regarding Defendants' commercial cannabis activity during the preceding year; (5) any action taken in response to any written violation advisements; and (6) any penalties paid by Defendants as a result of any written advisements. The Compliance Coordinator must sign each annual report under penalty of perjury under the laws of the State of California.

C. Notice to the CDFA. Pursuant to the Notice provision under paragraph 24 in the Agreement, Defendants shall submit written notice to the CDFA within 90 calendar days from the Effective Date of the Agreement confirming that: (1) the Agreement has been timely provided to each owner, designated responsible party, and any other person that controls, manages, or directs Defendants' commercial cannabis activity in California; and (2) the identity and contact information for each Compliance Coordinator.

D. In the event that a Defendant is not engaged in commercial cannabis activity at the time of the Effective Date of the Agreement, then the provisions contained in Paragraphs 14A - C shall not apply to that Defendant until such time as that Defendant is engaged in commercial cannabis activity, within five (5) years of the Effective Date of the Agreement.

15. Settlement Payment. Defendants Lowell Farms LLC, and The Hacienda Company, LLC, on behalf of all Defendants, shall remit \$500,000 via cashier's check to resolve this civil penalty Action payable to the California Department of Food and Agriculture within 30 calendar days of the Effective Date of the Agreement for deposit into the General Fund pursuant to Business and Professions Code section 26038, subdivision (a). The \$500,000 payment shall be personally delivered or mailed to the California Department of Food and Agriculture, Legal Office at 1220 N Street, Suite 315, Sacramento, California 95814.

16. Suspended Civil Penalties. If any Defendant fails to comply with Paragraphs 13 - 15 of the Agreement, that Defendant will be liable for suspended civil penalties from the Effective Date of the Agreement and continuing until five years from the Effective Date of the Agreement as follows:

A. Defendants Lowell Farms LLC, Lowell Farms LLC dba Lowell Herb Co., The Hacienda Company, LLC, and David Elias shall be jointly and severally liable to pay \$1,350,000 to CDFa, if any of them fails to comply with Paragraphs 13 - 15 of this Agreement.

B. Defendant Brett Myers Vapnek shall be liable to pay \$450,000 to CDFa, if he fails to comply with Paragraphs 13 - 15 of the Agreement.

17. Notice of Intent to Seek Assessment of Suspended Civil Penalties.

A. If any Defendant fails to comply with Paragraphs 13 – 15 of the Agreement, then the CDFa may issue to that Defendant a Notice of Intent to Seek Assessment of Suspended Civil Penalties, which shall be sent pursuant to the Notice provision under paragraph 24. A Defendant receiving a Notice of Intent to Seek Civil Penalties will have 30 calendar days to correct the violations identified therein. If the CDFa determines that the violations have been corrected within 30 calendar days from the date of the Notice of Intent to Seek Assessment of Suspended Civil Penalties, then the Defendant who received the Notice shall not be liable for the suspended civil penalties described in Paragraph 16 of the Agreement. If the CDFa determines that the violations have not been corrected within thirty (30) calendar days from the date of the Notice of Intent to Seek Assessment of Suspended Civil Penalties, then the CDFa may move this Court by noticed motion pursuant to Code of Civil Procedure section 664.6 and in accordance with Code of Civil Procedure section 1005 to assess and collect the suspended civil penalties described in Paragraph 16 of the Agreement, enjoin the Defendant from failing or refusing to comply with any provisions in the Agreement, and award any other appropriate relief. Code of Civil Procedure section 1005 shall govern the filing and service of a non-opposition or an opposition by the Defendant(s), and the CDFa's filing and service of a reply, unless otherwise stipulated by the CDFa and Defendant(s) or ordered by the Court. The CDFa and Defendants may submit

evidence to this Court on declarations and exhibits thereto. The CDFA and Defendants will request that this Court determine, by the preponderance of the evidence standard, sitting without a jury, whether the Defendant(s) have failed to comply with Paragraphs 13 – 15 of the Agreement. If this Court finds that any Defendant in receipt of a Notice of Intent to Seek Assessment of Civil Penalties failed to comply with Paragraphs 13 – 15 of the Agreement for more than thirty (30) calendar days after receipt of such Notice, then the Court shall impose the civil penalty as set forth under Paragraph 16 of the Agreement. The Court may also enjoin any violation of the Agreement and award any other relief available under the law. The suspended civil penalties set forth at Paragraph 16 of the Agreement shall be payable via cashier's check to the California Department of Food and Agriculture within thirty (30) calendar days of the Court's final order awarding such penalties. The Defendant(s) shall personally deliver or mail the suspended civil penalty payment to the California Department of Food and Agriculture, Legal Office at 1220 N Street, Suite 315, Sacramento, California 95814.

B. The CDFA shall have one year after the expiration of five years from the Effective Date of this Agreement to file a noticed motion pursuant to Code of Civil Procedure section 664.6 for civil penalties to enjoin the Defendants from failing or refusing to comply with Paragraphs 13 – 15 of the Agreement, and to award any other appropriate relief. The CDFA shall have the burden of proof based on the preponderance of evidence that the alleged violations occurred before the expiration of five years from the Effective Date of this Agreement.

C. If Defendants are not found in violation of Paragraphs 13-15 for the entire 5 years from the Effective Date of the Agreement, the suspension of civil penalties described in Paragraph 16 of the Agreement shall be permanently waived. However, if a motion to assess and collect such civil penalties is filed by the CDFA within one year after the expiration of five years

from the Effective Date of the Agreement, then the suspension of civil penalties shall not be permanently waived. In that event, if the Court issues a final order determining that a Defendant violated Paragraphs 13-15 of this Agreement, then such Defendant will pay the suspended civil penalties described in Paragraph 16 herein and awarded by the Court.

D. If any Defendant fails to comply with the terms in the Agreement, the CDFCA and/or the CDFW may bring a new enforcement action, whether administrative, civil or criminal, against the non-compliant Defendant, and seek any appropriate relief from that Defendant as authorized by law, including, but not limited to, injunctive relief and civil penalties. The suspended civil penalties pursuant to Paragraph 16 of the Agreement are in addition to, and do not bar, any other remedies or sanctions that may be available for violations of MAUCRSA, MAUCRSA's implementing regulations, or any other law or regulation.

18. Payment of Attorney's Fees, Investigation Costs, and Cannabis Destruction Costs.

A. Defendants Lowell Farms LLC, and The Hacienda Company, LLC, on behalf of all Defendants, shall pay \$33,560.08 via cashier's check for reimbursement of attorney's fees in the amount of \$22,461.50 and investigation costs in the amount of \$11,098.58, payable to the California Department of Food and Agriculture within 30 calendar days of the Effective Date of the Agreement. The \$33,560.08 payment shall be personally delivered or mailed to the California Department of Food and Agriculture, Legal Office at 1220 N Street, Suite 315, Sacramento, California 95814.

B. Defendants Lowell Farms LLC, and The Hacienda Company, LLC, on behalf of all Defendants, shall pay \$12,852.34 via cashier's check for reimbursement of attorney's fees in the amount of \$6,538.50, and investigation and cannabis destruction costs in the amount of \$6,313.84, payable to the California Department of Fish and Wildlife within 30 calendar days of

the Effective Date of the Agreement. This \$12,852.34 payment shall be personally delivered or mailed to the California Department of Fish and Wildlife, Attention: Alex Davis, LED, P.O. Box 944209, Sacramento, CA 94244-2090.

19. Future Enforcement Action. With respect to conduct other than that alleged in the Complaint or any violations arising from the March 13, 2019 joint investigation by the CDFWA and the CDFW, nothing in this Agreement shall preclude the CDFWA, CDFW, or any agency with jurisdiction, on or after the Effective Date of the Agreement, from taking any action or issuing any requirement or order that Defendants comply with MAUCRSA, MAUCRSA's implementing regulations, and any other applicable laws, regulations, or ordinances. Furthermore, neither the allegations in the Complaint in this Action nor the Agreement shall constitute notice or discovery by any governmental entity of any suspected or actual violations or environmental harm for purposes of the statute of limitations of claims.

20. Compliance with Future Laws. The Agreement shall not excuse Defendants from meeting more stringent or additional requirements relating to commercial cannabis activity in the State of California, which may be imposed hereafter by changes in applicable laws, statutes, regulations, and ordinances.

21. Jurisdiction and Enforcement.

A. The CDFWA and Defendants agree that the San Luis Obispo County Superior Court is the appropriate venue and has jurisdiction over them and the subject matter of the Action and this Agreement. Should CDFWA or Defendants fail to comply with this Agreement, the CDFWA and Defendants may seek any relief provided for by law, including a court order enforcing the terms of this Agreement or entry of judgment under Code of Civil Procedure section 664.6. The San Luis Obispo County Superior Court shall retain jurisdiction over CDFWA and Defendants to

enforce the Agreement. Before CDFA or Defendants seek to enforce the terms of this Agreement, the CDFA or Defendants shall: 1) provide written notice to each other as required by paragraph 24 of this Agreement at least sixty (60) days before taking any formal action for relief with the Court, and 2) take reasonable steps to resolve the issue with each other before seeking relief from the Court.

B. If Defendants Lowell Farms LLC, and The Hacienda Company, LLC, on behalf of all Defendants, do not timely pay CDFW for reimbursement of attorney's fees, and investigation and cannabis destruction costs in compliance with Paragraph 18 of this Agreement, then CDFW may immediately seek any relief provided for by law to enforce the terms of this Agreement.

22. Dismissal. The CDFA and Defendants will submit a proposed order requesting that the Court retain jurisdiction to interpret, modify, and enforce the terms and conditions of the Agreement, pursuant to Code of Civil Procedure section 664.6. The CDFA will file and serve on counsel for the Defendants a dismissal with prejudice of the entire Action after the Court grants the order retaining jurisdiction and within seven calendar days after the CDFA receives payment for the settlement payment under Paragraph 15, and the CDFA and CDFW receive payment of attorney's fees, investigation costs, and cannabis destruction costs under Paragraph 18.

23. Attorney's Fees and Costs (Excluding Fees and Costs Payment Under Paragraph 18 of the Agreement). Each Party shall bear its own attorney's fees and costs associated with the Action and with the drafting of this Agreement through and including the Effective Date, except as otherwise provided herein.

24. Notices. All notices and submissions required by this Agreement shall be sent by certified mail and electronic mail as follows:

A. Notices to Defendants:

(1) To Vapnek: Reif Law Group, P.C., Attn: Brandon S. Reif and Marc S. Ehrlich, 1925 Century Park East, Suite 1700, Los Angeles, California 90067, breif@reiflawgroup.com, mehrlich@reiflawgroup.com.

(2) To Lowell Farms LLC, Lowell Farms LLC dba Lowell Herb Co., The Hacienda Company, LLC, and David Elias: Browne George Ross LLP, Attn: David J. Carroll and Ivy A. Wang, 801 S. Figueroa St., Suite 1800, Los Angeles, California 90017, dcarroll@bgrfirm.com, iwang@bgrfirm.com.

B. Notices to CDFA: California Department of Food and Agriculture, Legal Office, Attn: Michele Dias, General Counsel, 1220 N Street, Suite 315, Sacramento, California 95814, CDFA.LegalOffice@cdfa.ca.gov.

C. CDFA and Defendants may modify the person and address to whom the notice is to be sent by informing each other in writing by certified mail and electronic mail. Nothing in the Agreement shall be interpreted or applied to relieve Defendants of their existing obligations to provide documentation to a federal or state agency, county, city, or other governmental agency as required by statute, regulation, ordinance, permit, or other requirement.

25. Defendants' Release. Defendants shall and do release, discharge, and covenant not to sue the CDFA, CDFW, State of California, or any of their employees, including each and every constituent agency, board, department, office, commission, fund, or other entity thereof, and successors and assigns of each and every constituent of the State of California, for any and

all claims or causes of action, of every kind and nature whatsoever, in law and in equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to the Action or the administrative or investigative actions that preceded it.

26. CDFA's Forbearance. CDFA shall not bring any civil or administrative claim or enforcement proceeding against Defendants for the conduct alleged in the Complaint, or for any alleged violation arising from the March 13, 2019 joint investigation by the CDFA and the CDFW. However, this Paragraph will not limit the use of such alleged conduct or alleged violations for purposes of Paragraphs 9, 16, and 17 herein, or for purposes of enforcement of this Agreement.

27. Scope of Agreement. The Agreement shall apply to and be binding upon Defendants and each of their respective officers, directors, agents, employees, contractors, consultants, representatives, successors, assigns, receivers, trustees, and all persons, partnerships, corporations, and other entities acting under, on behalf of, or in concert with Defendants, and upon the CDFA, the CDFW, and any successor agencies.

28. Agreement Does Not Bind Other Agencies. Except as previously expressed in the Agreement, nothing in the Agreement is intended or shall be construed to preclude the Attorney General, or any other federal, state, or local agency, board, department, office, commission, or entity from exercising its authority under any laws, statutes, regulations, or ordinances.

29. Interpretation. This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Party on the ground that such Party drafted it. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

30. Integration. This Agreement contains all of the terms and conditions agreed upon by the Parties, relating to the matters covered by this Agreement, and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Agreement.

31. Modification. The Agreement may be amended or modified only by a writing signed by all Parties or their authorized representatives, and then by order of the Court.

32. Severability. If a provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall be deemed severed and deleted and the remainder will continue to be valid and enforceable.

33. Knowing, Voluntary Agreement. Each Party to this Agreement acknowledges that it has been represented by legal counsel, and that each Party has reviewed and has had the benefit of legal counsel's advice, concerning all of the terms and conditions of this Agreement.

34. Warranty of Capacity to Execute Agreement. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on its behalf is duly authorized to enter into this Agreement, and to bind that Party to the terms and conditions of this Agreement.

35. Confidentiality. This Agreement and the fact and circumstances surrounding this Action will not be confidential and will be available for disclosure by the CDFA and the CDFW to any member of the public pursuant to a California Public Records Act request.

36. Signature. This Agreement may be executed in duplicate originals and/or in counterparts, but it is agreed there is only one Agreement. The Parties agree to accept fax and scanned signatures, in lieu of original documents and signatures.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Dated: _____

By: _____
Richard Parrott, Director of the CalCannabis
Cultivation Licensing Division

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Dated: 6/11/2020

DocuSigned by:
David Bess
By: _____
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David Bess, Chief of Law Enforcement

LOWELL FARMS LLC

Dated: 5-29-2020

By: *David Elias*
David Elias, Chief Executive Officer

THE HACIENDA COMPANY

Dated: 5-29-2020

By: *David Elias*
David Elias, Chief Executive Officer

DAVID ELIAS

Dated: 5-29-2020

By: *David Elias*
David Elias, Individually

BRETT MYERS VAPNEK

Dated: 6/5/2020

By: *Brett Vapnek*
Brett Myers Vapnek, Individually

APPROVED AS TO FORM:

Attorney General of the State of California
XAVIER BECERRA

Dated: _____

By: _____
Stacey L. Roberts, Supervising Deputy Attorney
General, Attorneys for the California Department of
Food and Agriculture and the California
Department of Fish and Wildlife

BROWN, GEORGE, ROSS, LLP

Dated: 06-01-2020

By: *David J. Carroll*
David J. Carroll
Attorneys for Defendants Lowell Farms LLC,
Lowell Farms LLC dba Lowell Herb Co., The
Hacienda Company, LLC, and David Elias

REIF LAW GROUP, PC

Dated: 06-08-2020

By: *Marc S. Ehrlich*
Marc. S. Ehrlich
Attorneys for Brett Myers Vapnek