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12/13/2019 2:29 PM

SAN LUIS OBISPO SUPERIOR COURT
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN LUIS OBISPO

13 **CALIFORNIA DEPARTMENT OF FOOD
14 AND AGRICULTURE,**

Case No.: 19CV-0759

15 Plaintiff,

COMPLAINT FOR CIVIL PENALTIES

16 v.

[Bus. & Prof. Code, § 26038]

17 **LOWELL FARMS LLC,
18 LOWELL FARMS LLC DBA LOWELL
HERB CO.,
19 THE HACIENDA COMPANY, LLC,
20 DAVID ELIAS,
BRETT MYERS VAPNEK;
and DOES 1 through 30, inclusive,**

21 Defendants.

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24 Plaintiff, the California Department of Food and Agriculture (CDFA), complains against
25 defendants, LOWELL FARMS LLC, LOWELL FARMS LLC DBA LOWELL HERB CO., THE
26 HACIENDA COMPANY, LLC, DAVID ELIAS, and BRETT MYERS VAPNEK, and Does 1
27 through 30 (Defendants), and alleges on information and belief the following:

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INTRODUCTION

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2 1. Pursuant to Business and Professions Code section 26038 and other applicable laws
3 and regulations, the CDFA brings this action for civil penalties against Defendants for engaging
4 in commercial cannabis activity without a license. The CDFA also seeks a court order for the
5 destruction of cannabis and cannabis products associated with Defendants' unlicensed
6 commercial cannabis activity, and all costs for the destruction of cannabis and cannabis products
7 related to Defendants' law violations. (Bus. & Prof. Code, § 26038.)

8 2. In 2017, the California Legislature enacted the Medicinal and Adult-Use Cannabis
9 Regulation and Safety Act (MAUCRSA) to establish a comprehensive system to control and
10 regulate the cultivation, distribution, transportation, storage, manufacturing, processing, testing,
11 and sale of medicinal and adult-use cannabis and cannabis products. (Bus. & Prof. Code, § 26000
12 et seq.)

13 3. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*,
14 or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or
15 purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative,
16 mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin,
17 whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks
18 of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any
19 other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks
20 (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which
21 is incapable of germination." (Bus. & Prof. Code, § 26001, subd. (f).) Under the MAUCRSA,
22 "cannabis" does not mean "industrial hemp" as defined by Health and Safety Code section
23 11018.5. (*Ibid.*)

24 4. Under the MAUCRSA, "commercial cannabis activity" includes the "cultivation,
25 possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling,
26 transportation, delivery, or sale of cannabis and cannabis products." (Bus. & Prof. Code,
27 § 26001, subd. (k).) Cultivation is defined as "any activity involving the planting, growing,
28 harvesting, drying, curing, grading, or trimming of cannabis." (Bus. & Prof. Code, § 26001,

1 subd. (l).) Further, process, processing and processes mean “all activities associated with the
2 drying, curing, grading, trimming, rolling, storing, packaging, and labeling of cannabis or
3 nonmanufactured cannabis products.” (Cal. Code Regs., tit. 3, § 8000, subd. (ab).)

4 5. In order to engage in commercial cannabis activity, a person must hold a state license
5 issued by the appropriate state licensing authority depending on the nature of the commercial
6 cannabis activity. (Bus. & Prof. Code, §§ 26053, 26001, subsd. (y), (aa), and 26012.) The
7 MAUCRSA created powers and duties of the three state agencies responsible for controlling and
8 regulating the commercial cannabis industry. (Bus. & Prof. Code, § 26000 et seq.) The Bureau
9 of Cannabis Control has the “sole authority to create, issue, deny, renew, discipline, suspend, or
10 revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities,
11 distribution, testing, and sale of cannabis and cannabis products within the state.” (Bus. & Prof.
12 Code, § 26012, subd. (a)(1).) The CDFPA has the “authority to create, issue, deny, and suspend or
13 revoke cultivation licenses. . . .” (Bus. & Prof. Code, § 26012, subd. (a)(2).) The California
14 Department of Public Health has the “authority to create, issue, deny, and suspend or revoke
15 manufacturing licenses. . . .” (Bus. & Prof. Code, § 26012, subd. (a)(3).) All commercial
16 cannabis activity shall be conducted between licensees. (Bus. & Prof. Code, § 26053.) A person
17 may hold multiple licenses for commercial cannabis activity, except that a person that holds a
18 state testing laboratory license is prohibited from licensure for any other activity. (Bus. & Prof.
19 Code, § 26053.)

20 6. In enacting the MAUCRSA, the California Legislature declared that “the protection
21 of the public shall be the highest priority for all licensing authorities in exercising licensing,
22 regulatory, and disciplinary functions.” (Bus. & Prof. Code, § 26011.5.) The protection of the
23 public shall be paramount whenever public protection is inconsistent with other interests sought
24 to be promoted. (*Ibid.*)

25 7. A person engaging in commercial cannabis activity without a license as required by
26 the MAUCRSA shall be subject to civil penalties of up to three times the amount of the license
27 fee for each violation, and the court may order the destruction of cannabis and cannabis products
28 associated with the violations in accordance with Health and Safety Code section 11479. (Bus. &

1 Prof. Code, § 26038.) Each day of operation shall constitute a separate violation of this section.
2 (*Ibid.*) A violator shall be responsible for the cost of the destruction of cannabis and cannabis
3 products associated with his or her violation. (*Ibid.*)

4 PARTIES

5 8. The CDFA is a state agency created in the state government of California. (Food &
6 Agr. Code, § 101.) The CDFA is responsible for administering the provisions of the MAUCRSA
7 associated with and related to the cultivation of cannabis. (Bus. & Prof. Code, § 26012, subd.
8 (a)(2).) The CDFA is authorized to file suit pursuant to Government Code section 945. The
9 CDFA, as a licensing authority under the MAUCRSA, may bring this action for civil penalties
10 pursuant to Business and Professions Code section 26038 for violations of unlicensed commercial
11 cannabis activity.

12 9. On information and belief, defendant LOWELL FARMS LLC is a California Limited
13 Liability Company and a person as defined in Business and Professions Code section 26001,
14 subdivision (an). On information and belief, defendant LOWELL FARMS LLC distributes
15 cannabis pre-roll smokes, flower, and oil under the “Lowell Herb Co.” brand through retail stores
16 and by delivery in California, in addition to operating a cannabis café in Los Angeles, California.
17 (See <https://www.lowellfarms.com>)

18 10. On information and belief, defendant LOWELL FARMS LLC DBA LOWELL
19 HERB CO. is an entity and a person as defined in Business and Professions Code section 26001,
20 subdivision (an).

21 11. On information and belief, defendant THE HACIENDA COMPANY, LLC is a
22 California Limited Liability Company and a person defined in Business and Professions Code
23 section 26001, subdivision (an). Defendant THE HACIENDA COMPANY, LLC is a manager or
24 member of defendant LOWELL FARMS LLC.

25 12. On information and belief, defendant DAVID ELIAS is an individual and a person as
26 defined in Business and Professions Code, section 26001, subdivision (an). Defendant DAVID
27 ELIAS is the Chief Executive Officer of defendants LOWELL FARMS LLC, LOWELL FARMS
28

1 LLC DBA LOWELL HERB CO., and THE HACIENDA COMPANY, LLC, and the manager or
2 member of THE HACIENDA COMPANY, LLC.

3 13. On information and belief, defendant BRETT MYERS VAPNEK is an individual and
4 a person as defined in Business and Professions Code section 26001, subdivision (an). On
5 information and belief, and as admitted by defendant BRETT MYERS VAPNEK, he is part
6 owner of defendants LOWELL FARMS LLC and LOWELL LLC FARMS DBA LOWELL
7 HERB CO.

8 14. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of defendants Does 1 through 30, inclusive, are unknown to the CDFA which therefore sues these
10 Does by such fictitious names. The CDFA will amend this complaint to show defendants true
11 names and capacities when the same have been ascertained. The CDFA is informed and believes,
12 and on that basis alleges, that each of these fictitiously named Does 1 through 30, inclusive, are
13 legally responsible for the events, occurrences, and circumstances that form the basis of this
14 lawsuit, and are thereby liable for the penalties, costs, and other relief sought herein.

15 15. On information and belief, at all times herein mentioned each of the defendants were
16 the agents, servants, employees, or contractors of each of the remaining defendants and were at
17 all times acting within the course and scope of their authority as such agents, servants, employees,
18 or contractors and with the permission and consent of their co-defendants.

19 JURISDICTION AND VENUE

20 16. The amount in controversy is in excess of the minimal jurisdictional limits of this
21 Court.

22 17. Venue is appropriate in San Luis Obispo County because the unlicensed commercial
23 cannabis activity occurred in San Luis Obispo County, giving rise to the obligations and liability
24 herein alleged against Defendants, and because Defendants reside in, own, manage, control, or
25 operate property in, do business within, and/or employ agents within San Luis Obispo County.
26 (Code Civ. Proc., § 395, subd. (a).)

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1 **FACTUAL ALLEGATIONS**

2 18. On or about March 13, 2019, Defendants were conducting unlicensed commercial
3 cannabis activity at 887 Mesa Road, Nipomo, California 93444 (Mesa Property) in San Luis
4 Obispo County. On information and belief, Defendants were utilizing a portion of a warehouse
5 located on the Mesa Property to process and store cannabis. On information and belief,
6 Defendants were processing cannabis packaged as Lowell Herb Co. brand pre-rolled cannabis
7 smokes and flower at the Mesa Property.

8 19. On that same date, in connection with the CDFA's and the California Department of
9 Fish and Wildlife's (CDFW) joint investigation into Defendants' unlicensed commercial cannabis
10 activity, the CDFW seized the following illegal cannabis from the Mesa Property:

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Item No.	Illegal Cannabis Seized	Approximate Amount Seized
1	Cannabis Pre-roll Smokes	184 Boxes Containing In Total Approximately 17,772 Pre-roll Smokes
2	Cannabis Pre-roll and Unpackaged Pre- Roll Smokes	1 Tote Containing approximately 19 pounds of Pre-roll Smokes and Unpackaged Pre-roll Smokes
3	Cannabis Flower (Trimmed)	55 Boxes Containing In Total Approximately 7,162 Glass Jars of Cannabis Flower
4	Cannabis Shake (Small Particles of Cannabis Bud and Leaves)	2 Totes Collectively Containing Approximately 60 Pounds of Cannabis Shake
5	Cannabis Flower (Untrimmed)	90 Totes Collectively Containing Approximately 677.6 Pounds (Gross Weight)

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6	Cannabis Flower (Trimmed and Untrimmed)	4 Barrels Containing In Total Approximately 72.9 Pounds (Gross Weight)
7	Cannabis Kief (Loose Cannabis Trichomes)	3 Totes Containing In Total Approximately 125.1 Pounds (Gross Weight)
8	Cannabis Flower	21 Totes Collectively Containing Approximately 290.5 Pounds (Gross Weight)
9	Cannabis Flower	26 Plastic Bags Collectively Containing Approximately 180.3 Pounds (Gross Weight)
10	Cannabis Flower	1 Box Containing Approximately 16.5 Pounds (Gross Weight)
11	Cannabis Pre-roll Smokes	33 Baggies Collectively Containing Approximately 8.9 Pounds (Gross Weight)

20. On the same date, defendant BRETT MYERS VAPNEK admitted that Defendants' were processing cannabis packaged as Lowell Herb Co. on the Mesa Property without a license for a period of time.

21. On information and belief, 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.

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1 **FIRST CAUSE OF ACTION**
2 **(Civil Penalties Pursuant to Business and Professions Code Section 26038**
3 **Against All Defendants)**

4 22. The CDFA re-alleges and incorporates by reference as though fully set forth herein
5 all allegations contained in Paragraphs 1 through 21, inclusive.

6 23. The CDFA is informed and believes, and on that basis alleges, that at all times
7 relevant to this complaint, Defendants engaged in commercial cannabis activity on the Mesa
8 Property without a Processor license in violation of California law, including without limitation,
9 Business and Professions Code sections 26038 and 26069; and California Code of Regulations,
10 title 3, section 8201, subdivision (f). Defendants are liable for civil penalties of up to three times
11 the amount of the license fee for each day of each violation for engaging in commercial cannabis
12 activity without a license. (Bus. & Prof. Code, § 26038.) The annual license fee for a Processor
13 license is \$9,370. (Cal. Code Regs., tit. 3, § 8200, subd. (r).) Defendants are liable for the cost of
14 the destruction of cannabis and cannabis products associated with Defendants' violations. (*Ibid.*)

15 24. By engaging in unlicensed commercial cannabis activity, Defendants placed
16 unregulated cannabis into the cannabis market, thereby causing economic harm to California's
17 legal commercial cannabis industry and supporting the illegal cannabis market. Defendants'
18 distribution and sale of illegal products that are potentially untested and/or do not meet the safety
19 standards under the MAUCRSA and its implementing regulations create grave public health and
20 safety risks to Californians. Moreover, by engaging in unlicensed commercial cannabis activity,
21 Defendants deprived the CDFA of licensing fees and tax revenue.

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PRAYER FOR RELIEF


WHEREFORE, the California Department of Food and Agriculture prays for judgment to be taken against Defendants, and each of them, as follows:

1. For civil penalties in an amount to be proven at trial;
2. For a court order for the destruction of cannabis and cannabis products associated with Defendants' violations not otherwise destroyed without a court order in accordance with Health and Safety Code section 11479;
3. For all costs of the destruction of cannabis and cannabis products associated with Defendants' violations;
4. For all costs as provided in the Code of Civil Procedure section 1032; and
5. For such other and further relief as the Court deems just and proper.

Dated: December 13, 2019

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
HARINDER K. KAPUR
Senior Assistant Attorney General


STACEY L. ROBERTS
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***Code of Civil Procedure section 446
requires verification of the Answer to this
Complaint***

SA2019701017