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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

**NORTH VALLEY DISTRICT-CHATSWORTH COURTHOUSE**

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| **DEPARTMENT OF CANNABIS CONTROL,**<br><br>Plaintiffs,<br><br>**v.**<br><br>**VERTICAL BLISS, INC., KUSHY PUNCH, INC., CONGLOMERATE MARKETING, LLC, MORE AGENCY, INC., RUBEN KACHIAN AKA RUBEN CROSS, ARUTYUN BARSAMYAN, KEVIN HALLORAN, MIKE A. TOROYAN, and DOES 1 through 30, inclusive,**<br><br>Defendants. | Case No. 20CHCV00560<br><br>**DECLARATION OF EILEEN DEL ROSARIO IN SUPPORT OF DEPARTMENT OF CANNABIS CONTROL'S MOTION FOR SUMMARY JUDGMENT**<br><br>Date: December 5, 2022<br>Time: 8:30 a.m.<br>Dept: F49<br>Judge: The Honorable Stephen P. Pfahler<br><br>Trial Date: January 30, 2023<br>Action Filed: September 23, 2020 |

I, Eileen Del Rosario, declare:

1. I have personal knowledge of the information set forth herein below, all of which is true and correct of my own personal knowledge and belief, and if called upon to testify, I could and would competently testify thereto.

2. I am currently employed as an Environmental Scientist with the Department of Cannabis Control. I have been an Environmental Scientist since 2018, when I began employment with the California Department of Public Health – Manufactured Cannabis Safety Branch (CDPH). My work for the two departments has been the same – conducting inspections and investigations of commercial cannabis manufacturing operations.

3. I have participated in inspections and investigations of hundreds of commercial cannabis manufacturing sites, I have observed hundreds of licensed and unlicensed cannabis manufacturing facilities, and I am familiar with the practices commonly used by these operations. I have also received training in the areas of hazard analysis, critical control points, good manufacturing practices, sanitation, food safety, technical writing, and technical analysis.

4. On March 14, 2018, CDPH addressed and sent a letter to Ruben Kachian (Kachian) as the Chief Executive Officer of Vertical Bliss, Inc. (Vertical Bliss) to the address of record for Vertical Bliss as filed with the Secretary of State. The letter stated that a complaint was received alleging that Vertical Bliss is an unlicensed manufacturer of cannabis edibles and vape cartridges. The letter directed Kachian to immediately cease all activity that violated state cannabis laws and included information on how to acquire a license to legally operate a commercial business within the State of California.

5. On August 16, 2018, I, together with other CDPH staff, met Kachian, Kevin Halloran (Halloran), and Mike A. Toroyan (Toroyan) in a business complex in Canoga Park, CA for the purpose of discussing how Vertical Bliss could apply for a license to operate in the licensed commercial cannabis market.

6. On December 24, 2018, CDPH issued a temporary, Type-6 manufacturing license (License No.: CDPH-T00001177) to Vertical Bliss, DBA Kushy Punch, at the address 20500 Nordhoff Street, Chatsworth, CA 91311(Licensed Premises). On the California Secretary of State

Statement of Information form, Ruben Kachian was registered as the Chief Executive Officer for Vertical Bliss, Inc.

7. On December 27, 2018, CDPH received an application for a Type-6 annual manufacturing license (Application Number: APL-1329) for Vertical Bliss for the Licensed Premises. Vertical Bliss Inc (Seller's Permit Number: 230714880) (Federal Tax ID Number: 82-1551507) was identified as a private corporation. The annual license application requires, among other things that all owners submit information about their title or position within the applicant business entity. The annual application listed Kachian as the Chief Executive Officer, Halloran as the Chief Financial Officer and primary contact, and Toroyan as the General Manager.

8. The operational activities listed in Vertical Bliss's license application were extractions, infusions, and packaging and labeling. The products identified to be manufactured were edibles and vape cartridges. Kachian was the signatory for the attestation on the application. By signing the attestation, Kachian declared under penalty of perjury that the information in the application was complete, true, and accurate and that he was authorized to act on behalf of the commercial cannabis business.

9. On June 6, 2019, I, along with other CDPH inspectors, went to Vertical Bliss's Licensed Premises. The purpose was to inspect Vertical Bliss prior to transition of their temporary license to a provisional license. Vertical Bliss staff showed CDPH inspectors the process of making their edibles, demonstrated what equipment was used, and some of the documentation used during the production of a batch. As part of the inspection, state inspectors asked if Kushy Punch was their own brand or if it belonged to a third party. Halloran, who was present during the inspection, confirmed that Kushy Punch products were "their brand" and were being produced at the facility for Vertical Bliss, not a third party.

10. During the June 6, 2019 inspection of the Licensed Premises, I observed Vertical Bliss's commercial cannabis manufacturing processes. Vertical Bliss was using what is referred to as a "NANO" machine which deposits a cannabis infused, gummy candy mix into a small tray. The "NANO" machine, then cuts and seals packaging to the size of the tray. Each sealed tray of the cannabis edible is referred to as a "blister." Blisters are placed in a refrigerator for the gummy

to cure. I was informed, during the inspection that the "NANO" machine was purchased from Germany and customized for production of Kushy Punch edibles. In addition to notes of the inspection, photographs were also taken to record what was observed.

11. During the same inspection on June 6, 2019, I asked Vertical Bliss staff about the batch naming convention used for the edibles produced. I learned that the batch number starts with "VB" for the license name and is followed by two digits for the year, two digits for the day of production, a letter representing the month, and a letter representing the type of edible it is. I requested to see batch production records for the manufacturing activity. I learned that there was a Kushy Punch document used to record the mixture of a puck with non-cannabis ingredients and a Kushy Punch document called the "Make Up Production Form." The Make Up Production Form was used to document the batches that went through the NANO machine and record information such as the date and time that product went through the NANO machine, the batch number, and the quantity of accepted and rejected units.

12. During the inspection numerous violations were observed, including the use of hemp derived CBD oil, and the use of hemp or cannabis derived products that were not sourced from licensed sources. At the end of the inspection, CDPH inspectors provided a verbal summary of violations observed on the premises. It is common practice to conclude a manufacturing inspection with a summary and discussion of observed violations, so the licensee knows the extent of the issues.

13. On June 27, 2019, CDPH issued a provisional Type-6 manufacturing license (License No.: CDPH-10003574) to Vertical Bliss.

14. On October 2, 2019, Department of Consumer Affairs' Division of Investigation (DCA) executed a search warrant for addresses, 8415 and 8427 Canoga Avenue, Canoga Park, CA 91304 (Unlicensed Premises), that were suspected of unlicensed commercial cannabis activity. Following the search, DCA notified CDPH that the illegal activity found by its team involved manufacturing of Kushy Punch branded products.

15. On October 9, 2019, once it was suspected that the Unlicensed Premises and Licensed Premises were part of the same business operation, a second inspection of the Licensed Premises

was planned, and I was assigned to be the lead. In preparation for the second inspection, I reviewed information and documents that Vertical Bliss submitted to CDPH with their application for an annual manufacturing license, such as a premises diagram, standard operating procedures, and a list of products to be manufactured on the premises. CDPH and Bureau of Cannabis Control (BCC) staff began retrieving all Certificates of Analysis for Kushy Punch products that had undergone regulatory compliance testing. In addition to the Certificates of Analysis, I reviewed data from the state's tracking and tracing system, referred to as Metrc. Metrc is a private contractor that created and maintains California's track-and-trace system for reporting cannabis and cannabis products from seed to sale in the licensed market. In my review of Vertical Bliss' Metrc data prior to the inspection, I found that there were two packages of hash samples accounted for in their manufacturing inventory. I also reviewed photos taken at the Licensed Premises during the first inspection.

16. On October 15, 2019, I met with investigators from DCA. Supervising Investigator Wilson Linares, of DCA, gave me a USB device containing photos and videos taken by his staff at the search that occurred on October 2, 2019. The USB device also included scanned files of documents seized from the Unlicensed Premises. I previewed some of the photos from the Unlicensed Premises and took note of batch numbers found on cannabis concentrate and edibles that were manufactured at the Unlicensed Premises.

17. On October 15, 2019, after meeting with staff from DCA and the BCC, I along with other staff from CDPH and representatives from BCC and DCA conducted an unannounced inspection of the Licensed Premises. Halloran was at the Licensed Premises at the time of the inspection. Although the license allowed Vertical Bliss to conduct extractions, Halloran informed me there were no plans or dates established by which to set-up extraction activities. I understood the implication of this information to be that Vertical Bliss was not manufacturing cannabis concentrates themselves for use in their gummy and vape products and that any cannabis concentrate at the Licensed Premises must have been sourced from other manufacturers.

18. During the inspection, I requested that Vertical Bliss representatives walk me through the Licensed Premises and show me how cannabis and non-cannabis ingredients were received at

the premises, manufactured into product, and packaged for retail. The manufacturing inspection included a walkthrough of the licensed distribution premises since cannabis and non-cannabis ingredients were received through that area. I asked representatives about their processes and procedures for cannabis intake, ingredient and inventory storage, inventory tracking, manufacturing activities, cleaning and sanitation, video surveillance, personnel, and employee training. As part of the inspection, I requested documents, such as, invoices, manifests, batch production records, standard operating procedures, training records and certifications.

19. As part of the inspection, I requested batch production records for Vertical Bliss's manufacturing operations from Mr. Sabino Jimenez and Mr. Ozzy Gomez. Vertical Bliss did not have a batch production record or any documentation for the mixture of cannabis concentrates being prepared for edibles manufacturing. Vertical Bliss was unable to evidence, in records, the identity of cannabis materials going into each of its batches, and was unable to provide batch production records for the packaging and labeling activities occurring on the Licensed Premises. In the licensed commercial cannabis market, packaged and labeled cannabis products in final form, are transferred to a licensed cannabis distributor. A licensed cannabis testing lab goes to the distributor and selects a random sample of product based on the quantity of the batch size. The testing lab will produce a Certificate of Analysis for the sample, assess the THC content, determine whether the product exceeds allowable limits for contaminants, as specified in regulation, and determine a pass or fail status for the product. Cannabis products passing regulatory compliance testing can be transferred to a licensed retailer for sale. Upon interviewing Vertical Bliss staff and requesting production records, and requesting Certificates of Analysis, I concluded that there were significant discrepancies between the quantity of edibles Vertical Bliss, Inc. was manufacturing and the quantity of product that was reported for regulatory compliance testing.

20. I observed cannabis concentrate and CBD throughout the premises that either had an identifier or lacked an identifier entirely. Some of the items had Vertical Bliss Unique Identifier (UID) tags, which are each a tag with a 24-digit number established and used in the track-and-trace system, however there was no correlating information about the source of the materials and

no data reported in the track-and-trace system about the existence of the tagged cannabis concentrates. I requested shipping manifests for the cannabis concentrate that I observed on the premises, but Vertical Bliss representatives could not evidence the source and identity of all cannabis concentrate located at the premises.

21. I identified sixty (60) items in Vertical Bliss's inventory that indicated that the product may be misbranded and/or sourced from an unlicensed source. CDPH staff weighed each item, filled out an Embargo Notice listing each of the items, and cordoned off the items being embargoed.

22. In response to the embargo, I communicated with Vertical Bliss representatives between October 2019 and February 2020. Halloran served as the primary contact for the embargo and provided response letters and documentation as an attempt to evidence the source and traceability of the cannabis concentrate under embargo. Halloran copied Kachian on the email communication. Kachian's email address used the name "Ruben Cross".

23. On October 18, 2019, Halloran emailed a response letter and supplemental documentation for product under embargo. In the letter, Halloran requested release of cannabis distillate, cannabis crude, terpenes, hemp powder, and "legacy oil," and provided a series of documents intended to explain why cannabis products were present at the Licensed Premises. Ultimately, even though it is a basic regulatory requirement that licensees maintain records for transport or transfer of cannabis product, Halloran was unable to provide documentation showing how the items came into Vertical Bliss's possession, or that they came from a licensed source and that mixed cannabis concentrates were composed solely of cannabis from a licensed source.

24. On October 28, 2019, I emailed Halloran a letter documenting CDPH's determination for products under embargo based on the documents I received and reviewed. Fifty-one (51) of the 60 items embargoed were deemed to lack sufficient evidence that they were obtained from a licensed source. The letter instructed Halloran to email me by November 1, 2019, to arrange supervision of the release of embargoed product and the voluntary condemnation and destruction of product.

25. On October 30, 2019, Halloran emailed a response to the letter I sent him on October 28, 2019. Halloran copied Kachian, attorney Eric Shevin, and my supervisor Tedd Yargeau to the email. In Halloran's response letter, he identified and requested that twenty-eight (28) items be released from embargo and asked to schedule a time on October 31, 2019, to release the items.

26. On November 4, 2019, CDPH supervisor, Tedd Yargeau copied me on an email sent to Halloran, Kachian, and Eric Shevin, with a letter attached. The letter stated that "[CDPH] has reviewed your letter and previously submitted documents and found no evidence that would support the conclusions in your letter. As a result, this matter has been referred to the Office of the Attorney General for commencement of condemnation proceedings." The letter also stated, "Be advised, none of the items placed under embargo on October 15, 2019 have been released from embargo and cannot be touched, moved, or destroyed without the authorization from the Department or a court."

27. On November 21, 2019, CDPH, BCC, and DCA staff went to the Vertical Bliss, Inc. manufacturing premises and distribution premises to revoke both of its manufacturing and distribution licenses. A hard copy of the license revocation notification was handed to Kachian. All cannabis and CBD products found on the manufacturing premises were inventoried and placed under embargo.

28. On December 9, 2019, I emailed a letter to Kachian, Halloran, and Toroyan with an inventory of items placed under embargo on November 21, 2019.

29. On December 10, 2019, Kachian emailed me asking, "Hi Eileen. What are we supposed to do with all this product in the warehouse?" I replied that his options were to either destroy the product pursuant to a destruction plan approved by and under the supervision of CDPH or to demonstrate that the product was produced in compliance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act and transfer the products to a licensee. I further informed him that regardless of which option he chose it would have to be carried out in accordance with a plan approved by, and under the supervision of, CDPH.

30. On December 16, 2019, after receiving a tip that cannabis concentrate under embargo was being taken from the site, I returned to Vertical Bliss's formerly licensed manufacturing premises, with additional CDPH and DCA staff.

31. CDPH and DCA staff examined locations at the site where embargoed product had formerly been stored and photographed and weighed embargoed products that were still at the premises. We found that over 13,000 products were missing from the embargo and two containers of cannabis concentrate were approximately 30 grams less than the weight that was recorded on November 21, 2019. Based on the pricing of Kushy CBD products on its website and the fact that Kushy CBD products could be purchased and shipped directly to consumers, I estimated the retail value of the Kushy CBD products that were removed in violation of the embargo to be over $570,000.

32. On December 23, 2019, CDPH received a letter via email from Rik D. Jefferey, counsel for Vertical Bliss, Inc. describing an action plan for products under embargo. The action plan discussed intent to transfer cannabis products approved by CDPH and destruction of products without approval. The letter also discussed details about products under embargo, the edibles production process, and documentation and information that would allegedly evidence the legitimacy of products under embargo.

33. On January 17, 2020, CDPH emailed a letter to Kachian, Halloran, Toroyan, and their attorney, giving notice that the embargo had been broken and products were missing from the inventory. The letter requested a destruction plan to be sent to CDPH.

34. On January 27, 2020, an attorney for Vertical Bliss sent a letter via email to CDPH stating that Vertical Bliss accepted the determinations made in the letter sent on January 17, 2020.

35. On February 13, 2020 and February 14, 2020, CDPH and DCA staff went to Vertical Bliss's formerly licensed premises to observe the embargoed product go through voluntary condemnation and destruction.

36. In addition to investigating the Licensed Premises, I simultaneously participated in the investigation of the unlicensed manufacturing of Kushy Punch brand products. In collaboration with DCA investigators, I reviewed the evidence and analyzed data collected from

the search warrants conducted on October 2, 2019, from the Unlicensed Premises. Documents and employee notebooks found at the Unlicensed Premises included references to Kushy Punch, Conglomerate Marketing, LLC, More Agency, Vertical Bliss, as well as to their employees.

37. Contracts, invoices, receipts, manifests, and delivery invoices made references to the defendants and their employees. An employee contract found at the Unlicensed Premises listed the hiring employer as Conglomerate Marketing, LLC and used the Vertical Bliss Licensed Premises address as the hiring employer. Other personnel like records that mentioned the three business names included Conglomerate's Attendance Policy, a Vertical Bliss Non-Disclosure Agreement, Kushy Punch Employee Time-Off Requests, and a Kushy Punch Employee Time Correction Form. Packing slips that had the Kushy Punch logo had the words "A Vertical Bliss, Inc. Company" under it and identified the vendor as Conglomerate Marketing at the Licensed Premises. Bills of Lading often identified Conglomerate Marketing, LLC as the shipper and used the addresses of the Unlicensed Premises. An invoice from June 7, 2018, from Coast to Coast label identified material being sold to Conglomerate Marketing and shipped to the Licensed Premises. A delivery order dated March 12, 2019, from Alta Logistics, identified More Agency, Inc. as the recipient for two blister packing machine chillers to the Unlicensed Premises. A rental agreement from Premium Equipment Company dated March 13, 2019, listed the renter as Kushy Punch and used the address of the Licensed Premises, but identified the Unlicensed Premises address as the "Ship to" address. Shipping receipts from the company called Estes identified Kushy Punch and used the Unlicensed Premises address.

38. The Unlicensed Premises had two time clock machines that were used with punch cards to check employees in and out of work. One machine was labeled "Conglomerate," while the other time clock machine was labeled with "More." A "Time Clock Policy" instructed employees to clock in and out of work with their timecards. There were scanned copies of eight timecards found on site, two of which were illegible. I cross referenced the names and initials with the employee list for the Licensed Premises and found that six of the names on the punch cards used at the Unlicensed Premises were employees of Vertical Bliss.

39. The operations at the Unlicensed Premises mirrored that of the Licensed Premises in process, equipment, and documentation. The Unlicensed Premises had the same system of portioning cannabis concentrate into "pucks" and attaching a traveler sheet to follow the product through the manufacturing process. A photo of multiple stainless-steel pots containing non-cannabis ingredients were seen on the floor of the Unlicensed Premises' kitchen area. Batch production records from the Unlicensed Premises had the Kushy Punch logo and documented the same process of a single batch being comprised of multiple pots of the gummy material. The Unlicensed Premises used a "NANO" machine and a machine referred to as "MT 125." The "MT 125" machine does the same function of a "NANO" machine, but at a more efficient rate. Based on batch production records reviewed from the Unlicensed Premises, a single run of the "NANO" machine produced about seven hundred (700) to eight hundred (800) blisters in approximately an hour. In one run of the "MT 125 machine," approximately one thousand five hundred (1,500) to one thousand eight hundred (1,800) blisters can be produced in less than one and a half hours. A notebook found on the premises detailed adjustments to settings and differences in how many blisters could be produced. The Unlicensed Premises had racks for storing stainless steel trays for Kushy Punch brand blisters and a refrigerator that could store the entire rack of edibles. There were multiple stainless-steel tables in the photos with packaging and labeling and Kushy Punch edibles.

40. The Unlicensed Premises used batch production records, such as the "Compounding Production Form," "Make Up Production Form," "Batch Label Records," and "Batch Label Sign Off," with the Kushy Punch logo. With the exception of the Kushy Punch T.K.O. product, the Unlicensed Premises produced the same Kushy Punch brand edibles as the Licensed Premises. Batch production records included initials, signatures, and names of employees identified as current and former employees of Vertical Bliss. Batch labels referenced the license name or license number of Vertical Bliss. Kushy Punch brand labels were found at the Unlicensed Premises labels and were used on products manufactured at that facility. The labels identified Vertical Bliss as the manufacturer and "CDPH-T00001659" as the license number. Based on my

investigation I concluded that products from the Unlicensed Premises were being packaged, labeled, and sold as if they were made at the Licensed Premises.

41. The earliest date indicating unlicensed manufacturing activity comes from a "received date" section on a batch production record, which used the date April 23, 2018. Based upon my investigation and interviews with Vertical Bliss staff, the "received by" date was indicative of the day that cannabis concentrate was portioned out into "pucks" for use in the manufacture of Kushy Punch edibles. Batch production records found at the Unlicensed Premises document the manufacture of edibles between June 7, 2018, and September 19, 2019, however, employees were actively manufacturing product up until the day the search warrant was executed. Based upon my investigation, review of seized documents, and my personal observations, I found that unlicensed production of Kushy Punch Brand Products occurred between April 23, 2018, the "received date" found on production records, and October 2, 2019, when DCA officers executed a warrant at the Unlicensed Premises and found employees actively engaged in commercial cannabis manufacturing.

42. Large quantities of packaged retail ready cannabis products called Kushy Punch T.K.O. (TKO), were found at the Unlicensed Premises. Additionally, production and sales records seized by DCA evidenced production of over 200,000 blisters of TKO. TKO is a lime-flavored cannabis infused gummy that advertises a tetrahydrocannabinol (THC) content of 20 mg per serving and 200 mg per package. The manufacture and sale of this product is prohibited since it exceeds the regulatory and statutory limits of 10 mg THC per serving and 100 mg THC per package for cannabis edibles. The regulatory and statutory limits for THC content aim to reduce the risk of potential overconsumption and overdose by consumers unaware or unfamiliar with the delayed effects from intentional and accidental ingestion. As products that cannot be sold in the licensed commercial cannabis market, the TKO products had not undergone regulatory compliance testing requirements that screen products for pesticides, residual solvents, heavy metals, microbial contamination, and physical contamination. Regulatory compliance testing would also assess the accuracy of cannabinoid content claims on packaging and labeling of the product. In the licensed commercial cannabis market, products that test above allowable limits

for contaminants are adulterated, and products that are inaccurately packaged and labeled are misbranded. In either case, such products would be prohibited from sale to consumers.

43. As part of my investigation, I compared batch numbers, labels on manufacturing equipment, invoices, and examined production records found at the Unlicensed Premises to ones previously collected at the Licensed Premises. Based upon my investigation, I found conclusive evidence establishing that cannabis concentrate, as well as non-cannabis ingredients for making gummies, was transported between the Licensed and Unlicensed Premises.

44. Based on photos taken by DCA, the Unlicensed Premises possessed Kushy Punch cannabis edibles that were packaged and labeled in final form with an estimated wholesale value of $740,940 and estimated retail value of $1,961,172. The Unlicensed Premises had additional Kushy Punch brand edibles in inventory that were in process and awaiting packaging and labeling.

45. As part of Kushy Punch's batch production records, they used a log referred to as a Daily Production Summary. The Daily Production Summary identified the type of edible produced, a batch number, a count of accepted or rejected blisters along with other information. The "accepted" status referred to a gummy that met quality control standards and could be packaged for retail sale. A "rejected" status was indicative of a gummy tray not meeting quality control standards or being defective. I calculated the total "accepted" quantity for each type of Kushy Punch edible recorded on the production summary sheets found at the Unlicensed Premises. The quantity reported on the Daily Production Summary sheets excluded the value of any edibles that were manufactured at the Licensed Premises.

46. In response to discovery requests made by CDPH as part of this case, Halloran provided a collection of Excel sheets with sales information. The Excel sheets provided the wholesale price of Kushy Punch cannabis edibles, cannabis vape cartridges, and CBD edibles. One of the Excel sheets I reviewed recorded order numbers and the type of edibles sold for each order in July 2019, while a correlating data sheet recorded the amount of money due, paid, and owed for orders in July 2019. I cross referenced the order numbers and found that some order numbers missing on one sheet were available on the other. The Excel sheets provided also do not

report transactions for the same period that are established in the batch production records. To estimate the wholesale value of the cannabis and CBD products found at the Unlicensed Premises, I use the quantities calculated from the Daily Production Summary sheets and the wholesale price identified on Halloran's Excel sheets.

47. To determine market prices for each type of Kushy Punch edible being manufactured at the Unlicensed Premises, I averaged the retail price of Kushy Punch edibles that were posted on online websites for both legal and unlicensed cannabis retailers. The Kushy Punch website had a store locator. I used prices for stores identified on Kushy Punch's website when available. For the market price for Kushy Punch T.K.O. I used the average price from only websites of illegal cannabis retailers since it is a prohibited product and could not be sold at a licensed commercial cannabis retailer. Calculations for retail value used average market prices found online and the quantity of edibles reported on the Daily Production Summary Sheets.

48. The estimated retail value of Kushy Punch cannabis edibles is $64,142,039. The wholesale value of the cannabis edibles manufactured at the Unlicensed Premises is $24,488,543. The estimated wholesale value of Kushy Vape brand vape cartridges manufactured at the Unlicensed Premises is $419,860.

49. Kushy Punch also produced edibles using hemp derived CBD at the Unlicensed Premises, which is prohibited in the licensed commercial cannabis market. Hemp-derived CBD is also not an approved additive in food products. Kushy CBD products were either sold to retailers or sold on Kushy CBD's website and shipped directly to consumers. Using the wholesale price and the price listed on Kushy CBD's website, the estimated value of CBD edibles is between $1,850,860 and $4,071,892.

50. The retail and wholesale value estimates given for Kushy Punch cannabis edibles does not include the quantity or value of edibles that were manufactured solely at the licensed Vertical Bliss, Inc. premises. The retail and wholesale valuation of products is not reflective of all revenue generated by Kushy Punch.

51. I calculated the total number of days of operation at the Unlicensed Premises, I used the earliest referenced date on batch production records, April 23, 2018, and the day the search

warrant was executed, October 2, 2019, to be 527 calendar days. A notebook found at the Unlicensed Premises referenced a work schedule that identified staff working on both weekdays and weekends. Based on the activity, scale of operations, and the estimated wholesale value of edibles manufactured at the Unlicensed Premises, the Unlicensed Premises would have required Kushy Punch to acquire a Type-N license and pay the license fee for a Tier VII manufacturer of $75,000 annually.

52. Acquiring a license to engage in commercial cannabis activity subjects the business to the inspection process and assessment of whether a licensed cannabis manufacturer is compliant with the requirements and standards set in state laws and regulations. In addition to addressing requirements for safety and security, the cannabis manufacturing regulations implement requirements to assess and address the potential risk of environmental, microbial, and physical contamination that may occur in the manufacture of cannabis products. Products manufactured and sold in the illegal commercial cannabis market bypass regulatory requirements that would test for and identify the presence and quantity of pesticides, residual solvents, heavy metals, microbial contamination, and physical contamination, in addition to assessing the accuracy of label claims for cannabinoid content, prior to being sold to consumers. Regulatory compliance testing of cannabis products would also assign a "fail" status to cannabis edibles that exceed the regulatory limits for THC content per serving and per package and prohibit sale of the product to consumers. Operating without a license prevents state inspectors from completely assessing the procedures, conditions, and safety of the manufacturing operations and the product itself. Operating without a license bypasses regulatory safeguards that would prevent cannabis products of concern from being sold to consumers.

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53. Based on my participation in the inspections and investigations, including my observations and discussions with the defendants in this case, I prepared an investigation report. A true and correct copy of the report is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on September 19, 2022, at Long Beach, California.

EILEEN DEL ROSARIO

Exhibit A

State of California—Health and Human Services Agency
California Department of Public Health

SONIA Y. ANGELL, MD, MPH
*State Public Health Officer & Director*

GAVIN NEWSOM
*Governor*

April 13, 2020

TO: Harinder Kapur
Senior Assistant Attorney General
Cannabis Control Section
Office of the Attorney General

FROM: Eileen Del Rosario
Environmental Scientist
Manufactured Cannabis Safety Branch
California Department of Public Health

SUBJECT: Vertical Bliss, Inc.
20500 Nordhoff Street
Chatsworth, CA 91311
License No.: CDPH-10003574 (Revoked)

**INSPECTION REPORT: VERTICAL BLISS INC dba KUSHY PUNCH dba CONGLOMERATE MARKETING UNLICENSED ACTIVITY**

## VIOLATIONS

B&PC 26038 Unlicensed activity; Penalties

A person engaging in commercial cannabis activity without a license required by this division shall be subject to civil penalties of up to three times the amount of the license fee for each violations, and the court may order the destruction of cannabis associated with that violation in accordance with Section 11479 of the Health and Safety and Safety Code.

## BACKGROUND INFORMATION

Vertical Bliss, Inc., (VB), does business as both Kushy Punch and Conglomerate Marketing. Personnel documentation, invoices, and receipts occasionally list Conglomerate Marketing as the hiring agency, purchaser, and client on VB documentation. VB's formerly licensed manufacturing premises is located at 20500 Nordhoff Street, Chatsworth, CA 91311.

Kushy Punch has variations of its brand name depending on the cannabis product type. Kushy Punch is the name used for cannabis-infused gummies. Kushy Vape and Kushy CBD are variants of the Kushy Punch brand for vape cartridge and CBD product SKUs. For simplicity, this report will refer to Kushy Punch as the brand for all products.

On March 14, 2018, the Department issued a letter to Mr. Ruben Kachian to cease all activity violating state cannabis laws (Attachment #1). The letter encouraged Mr. Kachian to submit an application to obtain a cannabis manufacturing license from the Department. Prior to applying and receiving its own license, Kushy Punch cannabis gummies and vape cartridges were contract manufactured under a different manufacturing licensee, Passion Care, LLC in Adelanto (#CDPH-T00000525). The Department issued Vertical Bliss, Inc. a temporary manufacturing license on December 24, 2018 (#CDPH-T00001659) (Attachment #2). The Department issued a provisional manufacturing license (#CDPH-10003574) on June 27, 2019 (Attachment #3); and the provisional license was revoked on November 21, 2019 (Attachment #4). The license application identified Ruben Kachian (CEO), Kevin Halloran (CFO), and Mike Toroyan (General Manager) as associates of the business (Attachment #5). Ruben Kachian also goes by the name Ruben Cross.

The Department conducted two inspections of VB's licensed manufacturing premises on June 6, 2019 and October 15, 2019. The first inspection was scheduled with VB personnel and the second was unannounced. VB notified the Department that it was beginning to manufacture in June 2019 after receiving final approval from Los Angeles Department of Cannabis Regulations. Reports of VB's involvement with unlicensed activity on October 2, 2019 prompted the Department to do the unannounced inspection on October 15, 2019 with the Department of Consumer Affair's Division of Investigation (DOI), which led to the license revocation.

Kushy Punch representatives told Department inspectors that Passion Care, LLC would be contract manufacturing the Kushy Punch product until the VB premises in Chatsworth was operational. During the October inspection, ES Del Rosario asked Mr. Halloran when Passion Care, LLC stopped manufacturing Kushy Punch products. Mr. Halloran verbally confirmed that Passion Care, LLC stopped making Kushy Punch products when manufacturing activities started at the VB premises.

On October 2, 2019, DOI served a search warrant for two unlicensed cannabis-manufacturing facilities in the City of Canoga Park (8415 Canoga Avenue and 8427 Canoga Avenue, Canoga Park, CA 91304). During the searches, DOI discovered equipment and materials associated with cannabis manufacturing, which included an inventory of cannabis concentrate, a manufacturing kitchen, and packaging and labeling equipment. In addition, DOI discovered Kushy Punch brand materials, packaging, and retail ready cannabis edibles and vape cartridges on the unlicensed premises. In reviewing CDPH's license applications for cannabis manufacturers CDPH has never received a license application for either of the Canoga Park addresses.

On October 15, 2019, prior to the unannounced inspection of VB's licensed premises, DOI provided the Department with a USB drive that contained copies of over 2,200 pages of manufacturing records, personnel documents, photos, and other miscellaneous documents retrieved from the unlicensed locations. The files in its entirety is included as a USB drive (Attachment #6). Specific documents from the DOI USB drive are included as attachments to this report.

The purpose of this report is to provide a summary and analysis of the unlicensed activity and identify associations between the unlicensed and licensed premises, VB and its representatives. Specific documents and photos, acquired by DOI, from the unlicensed premises and documents acquired by the Department from the licensed premises are included as attachments.

## ANALYSIS OF UNLICENSED MANUFACTURING

### CANNABIS CONCENTRATE

On June 6, 2019, Department inspectors took a photo of stainless steel trays containing cannabis concentrate material in VB's inventory (Attachment #7). The photo shows three containers with the batch numbers KPG025, KPG026, and KPG027. The batch ID numbers written on the stainless steel containers are identical to batch numbers used in the production of edibles found at the unlicensed manufacturing premises, evident in the batch production records discovered by DOI in October 2019 (e.g., Attachments #8 & #9).

On October 15, 2019, the Department embargoed cannabis concentrate at the VB licensed manufacturing premises until employees could provide documentation evidencing origin, transfer, and composition of cannabis material held in inventory. Over a series of emails between October and November 2019, Mr. Halloran submitted manifests, invoices, and emails discussing deals for cannabis material in an attempt to demonstrate that the embargoed cannabis material came from a licensed source.

Photos of the unlicensed premises show two containers of cannabis distillate with visible batch ID numbers.

- A jar of distillate found in a safe on the unlicensed premises displays the batch ID "OXI-070819-001" (Attachment #10).
- A jar of distillate is upside down next to a stainless steel container of cannabis crude. A partial read of the label says "070819-005" on the jar (Attachments #11 & #12).

During the October 15, 2019 inspection, Department staff requested manifests evidencing that cannabis material observed in VB's inventory was sourced from a state-licensed premises along with details of when the material entered VBs manufacturing premises. VB staff present stated that there was no one on the premises with access to the requested documents during the inspection. Based on this lack of documentation, Department staff placed cannabis material under embargo until VB could provide sufficient documentation.

On October 19, 2019, Mr. Halloran provided emails from February 13, 2018, detailing terms and conditions for sale of cannabis concentrate with a Mr. Don Copeland, of the company Nature by Design (Attachment #13). In these emails, the Kushy Punch representatives included in the email are Joseph Brock, Kevin Halloran, and Ruben Cross. The emails provided by Mr. Halloran pre-date Vertical Bliss, Inc. having either a temporary or provisional license from the Department. The documents do not evidence when and from where the material entered VB's licensed manufacturing premises.

On October 23, 2019, Mr. Halloran emailed Department staff a manifest (Invoice/Manifest Number: WDD-KP-02) for cannabis distillate embargoed on the licensed manufacturing premises (Attachment #14). The manifest lists the batch ID numbers for each jar of distillate that VB purchased from Fluids Manufacturing, Inc (#CDPH-10001352). Manifest WDD-KP-02 lists two batch ID numbers of two containers found on the unlicensed premises, OXI-070819-001 and "070819-005" (Attachments #10 & #12). Items listed on invoice WDD-KP-02 at the licensed premises are in the same jar styles and bear the same batch label as those observed at the unlicensed premises (e.g., Attachment #15).

Of the material also placed under embargo on October 15, 2019, there were five jars of distillate with labels referencing information that correlates with vape cartridge SKUs that VB was not manufacturing at its licensed premises. Information on the jars references a mixture with terpenes, which is unique to production of vape cartridges, and the material was sourced in 2018 (Attachment #16). A review of Kushy Punch's edibles recipes reveals that terpenes is not an ingredient in any of its edibles products. Mr. Halloran could not provide any evidence documenting the transfer or acceptance of the cannabis concentrate into the VB licensed premises.

Department of Consumer Affairs forwarded a complaint regarding Kushy Punch to the Department on January 9, 2018 (Attachment #17). The complaint alleges that hash oil produced is full of pesticides and other contaminants. Batch production records identify documents from the unlicensed premises have notes saying "pest-free," which is believed to refer to whether or not cannabis concentrate has detectable levels of pesticides. The comments section of batch sheets from June 2018 show comments that say "pest free", "pest free?", and "pest free 10 g gummy" (Attachment #18). The complaint states the company tests "clean" candy and mass produces "dirty" candy for sale.

**EDIBLES PRODUCTION**

During inspections of the VB premises, Department inspectors asked VB employees about manufacturing operations and the records used to document manufacturing activity. ES Del Rosario analyzed the records acquired at the unlicensed premises to quantify the product manufactured and the duration of time manufacturing was occurring.

The Department reviewed Kushy Punch batch production records recovered from the unlicensed premises, dated between October 2018 and September 2019. Based on the records, the Department calculated the total quantity of blisters produced for each edible product SKU. "Kitchen Production Sheets" report the quantity of cannabis used for each production run of gummies through a NANO or MT125 machine. The Department used estimates of cannabis use per NANO production run to estimate the quantity of cannabis used in edibles production at the unlicensed premises (**Table 1**). Based on the analysis, over 600,000 grams of cannabis concentrate was used in the illegal manufacture of Kushy Punch gummies[1].

**Table 1.** Estimated cannabis concentrate use in illegally manufactured Kushy Punch gummies.[2]

| **Product SKU** | **Blisters produced (Qty)[3]** | **NANO Runs (Qty)[4]** | **Cannabis use per run (g)[5]** | **Total Cannabis used (g)** |
|---|---|---|---|---|
| Hybrid (HYB) | 781,926 | 1,043 | 135 | 140,747 |
| Indica (IND) | 882,865 | 1,177 | 135 | 158,916 |
| Private Reserve (PR) | 191,934 | 256 | 104 | 26,615 |
| Recover (REC) | 173,319 | 231 | 83 | 19,181 |
| Sativa (SAT) | 989,817 | 1,320 | 138 | 181,466 |
| Sugar Free (SF) | 52,393 | 70 | 142 | 9,885 |
| T.K.O. | 209,401 | 279 | 289 | 80,689 |
| **ESTIMATED QUANTITY OF CANNABIS USED** | | | | 617,498 |

**Table 2.** Estimated cannabis use per NANO production run.

| **Product SKU** | **Low - Cannabis use (g)** | **High - Cannabis use (g)** | **Average (g)** |
|---|---|---|---|
| Hybrid (HYB) | 120 | 150 | 135 |
| Indica (IND) | 120 | 150 | 135 |
| Private Reserve (PR) | 100 | 108 | 104 |
| Recover (REC) | 71 | 95 | 83 |
| Sativa (SAT) | 120 | 155 | 138 |

[1] Calculations exclude the use of cannabis concentrate for samples production and research and development purposes. Kushy CBD gummies are not included, as they do not contain cannabis.
[2] All numbers are rounded to the nearest whole number.
[3] The "Make Up Daily Production Summary" and "Production Count Verification" records document the quantity of blisters produced each day; the documents were used to calculated the quantity of blisters produced for each SKU.
[4] The NANO machine produces an average of 750 blisters per production run. The quantity of NANO runs is estimated by dividing the total blisters produced by 750.
[5] "Cannabis use per run (g)" is estimated by averaging the high and low of cannabis use reported on kitchen production sheets. The high and lows used are available in **Table 2**.

| | | | |
|---|---|---|---|
| Sugar Free (SF) | 140 | 143 | 142 |
| T.K.O. | 258 | 320 | 289 |

VB provided documentation evidencing a business negotiation for cannabis concentrate that occurred on February 13, 2018, which pre-dates receiving a manufacturing license with the Department. The earliest reported date of receipt of cannabis material into the unlicensed manufacturing premises is 4/23/18, indicated by the "received date" section of the attached batch sheet (Attachment #19). Manufacturing records found at the unlicensed premises document the manufacture of edibles occurring at the unlicensed premises between June 7, 2018 and September 19, 2019, however, manufacturing employees were at the premises when DOI searched the unlicensed premises on October 2, 2019. A tray of cannabis material observed at the unlicensed premises had a batch label with the date "10/2/19" (Attachments #20 & #21). Batch production records from the unlicensed premises are not representative of all days manufacturing activities actually occurred; Kushy Punch did not maintain records for all of the manufacturing activities, such as packaging and labeling product, that took place. Notes found at the unlicensed premises identified which days employees are working on a weekend and the production schedule for weekends (Attachments #22 & #23).

The manufacturing process for producing Kushy Punch gummies at the unlicensed premises was conceptually identical to VB. The Department compared the procedural set up of manufacturing operations, equipment, and batch production records with photos and documents acquired at VB. In addition, employee notes reference the movement of non-cannabis ingredients between the unlicensed and licensed premises. The Department observed the same non-cannabis ingredients and samples of the packaging and labeling used at VB and at the unlicensed premises.

At VB, the premises had a single machine, referred to as NANO, to deposit infused gummy substance into blisters. Photos acquired from DOI show that the unlicensed premises possessed a NANO and a machine referenced as MT125. The MT125 is unique to the unlicensed premises. The NANO can only deposit infused gummy material into one blister at a time. The MT125 has a higher hopper capacity and can deposit the infused gummy material into multiple blisters at the same time, which produces a larger quantity of blisters in a shorter period. Manufacturing records show that a single run of the NANO typically produces 700 to 800 blisters for most of the gummy SKUs, in about an hour; whereas, one run of the MT125 can produce between 1500 to 1800 blisters in less than an hour and a half.

Review of employee notebooks located at the premises document efforts to increase production by using both machines and making setting modifications, in addition to acquiring more manufacturing equipment. A note in one of the employee notebooks, dated February 6, 2019, discusses a new NANO being delivered in 5 weeks and a reference in the batch production record distinguishes product made from "NANO 1" and "NANO 2" (Attachments #24 & #25). To put production levels into perspective, documentation for the manufacture of batch VB1930E-B, which occurred at both the licensed and unlicensed locations, evidences approximately 4,000 blisters produced at

the licensed premises in one day while the unlicensed premises produced approximately 19,000 blisters in one day.

Employee notes also directed staff at the unlicensed premises to produce gummies to use child-resistant (CR) and non-CR packaging. Specifically, the note says "FOR TESTING – CR Packaging. 300-400" (Attachment #26). Production schedules identified the quantity of gummies needed in each packaging type. In addition, a packaging display at the licensed premises had samples of the product from the unlicensed premises and the legal operations, distinguishable by the white boxes versus colored (Attachments #27 & #28). A document titled "WIP Gummy Count Legal + Medical" crosses out the word "legal" and replaces it with "CR" (Attachment #29). Batch sheets often reference a product as "legal" or "medical". Employees reference "legal" inventory in their manufacturing records and detail shared production, starting at "Nordhoff" or manufacturing with specific employees.

The unlicensed premises accounted for the accumulation of manufacturing waste. Notebooks detail the movement of waste between the unlicensed and licensed premises in addition to scheduling a day to collect waste directly from the unlicensed premises (Attachment #30).

Manufacturing records, acquired at the unlicensed premises, document the production of at least 3.3 million Kushy Punch between October 15, 2018 and September 18, 2019. The Department conducted an internet search on 3/17/2020 to determine a price point for Kushy Punch gummies in licensed and unlicensed retail stores. The Department used two websites that locate multiple sellers and report the prices for each product SKU[6] and recorded the price high and low. Online prices for all available product SKUs were recorded from eight additional websites[7][8]. The unit price for each SKU is an average of all researched prices, rounded to the nearest dollar. The estimated retail value is the estimated unit price multiplied by the quantity of gummies manufactured. The calculated unit price and retail estimates of illegally manufactured products are in **Table 3**.

The estimated retail value of all Kushy Punch gummies produced is over sixty-eight million dollars ($68,000,000). The unlicensed premises' activity and scale of operations would have required Kushy Punch to acquire a Type-N license and pay the license fee for a Tier VII manufacturer of $75,000 annually.

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[6] (www.weedmaps.com) and (www.iheartjane.com)

[7] Budmanoc.com is the only website found with pricing for Kushy Punch T.K.O. product (https://budmanoc.com/product/tko-extra-strength-kushy-punch-gummy-edibles-200mg-thc/); other websites reviewed did not post a price or have the product.

[8] Additional websites sources: bud.com (www.bud.com), California Green Cross (https://www.californiagreencross.org/), Luvbrite (www.luvbrite.com), SFV Delivers (www.sfvdelivers.com), San Fernando Valley Patient's Cooperative (www.sfvog.org), The Healing Center San Diego (www.thcsd.com), and Tops Cannabis (www.topscannabis.com).

**Table 3.** Estimated retail values of illegally manufactured Kushy Punch gummies.

| PRODUCT SKU | UNIT PRICE | QTY | RETAIL VALUE |
|---|---|---|---|
| T.K.O. | $ 35.00 | 209,401 | $ 7,329,035.00 |
| Private Reserve (PR) | $ 20.00 | 191,934 | $ 3,838,680.00 |
| Recover (REC) | $ 20.00 | 173,319 | $ 3,466,380.00 |
| Hybrid (HYB) | $ 19.00 | 781,926 | $ 14,074,668.00 |
| Indica (IND) | $ 18.00 | 882,865 | $ 15,891,570.00 |
| Sativa (SAT) | $ 18.00 | 989,817 | $ 17,816,706.00 |
| Sugar Free (SF) | $ 18.00 | 52,393 | $ 943,074.00 |
| CBD | $ 22.00 | 185,086 | $ 4,071,892.00 |
| **TOTAL ESTIMATED RETAIL VALUE OF ALL EDIBLES** | | | **$ 68,213,931.00** |

## KUSHY PUNCH T.K.O. PRODUCT

DOI found a product named Kushy Punch T.K.O. at the unlicensed premises that was fully packaged and ready for retail sale (Attachments #31 & #32). Kushy Punch's T.K.O. product is a lime-flavored cannabis infused gummy that advertises a THC content of 20 mg per serving and 200 mg per package. MAUCRSA and the Department's regulations set a maximum limit of 10 mg per serving and 100 mg per package of THC for any cannabis edible.

The production of Kushy Punch T.K.O. is unique in that all production and sale of this product is illegal. There is no evidence of production of the T.K.O. edible on their licensed premises. VB employees had T.K.O. packaging on display with the rest of their packaging at the licensed premises (Attachments #27 & #28).

## HEMP-DERIVED CBD

The Department's regulations only allow the manufacture of goods with cannabinoids that are derived from cannabis. The definition of cannabis in the Department's regulations specifically exclude industrial hemp. Industrial hemp is not an approved additive for the manufacture of non-cannabis food products. CBD from hemp has not received a classification deeming it safe as an ingredient in cannabis products.

During the inspection of the licensed premises on June 6, 2019, VB employees told the Department that a different location manufactures Kushy CBD products. Also on the June inspection, the Department observed Kushy CBD brand products on VB's distribution premises; the CBD products had CDPH manufacturer Passion Care, LLC's name labeled on the product (Attachments #33, #34, & #35). When asked about the CBD product, Andrew Dorsett, distribution manager, said that the products are packaged and labeled like cannabis products when sold in the licensed cannabis market. On October 15, 2019, a VB employee told one of the Department's inspectors, ES Hoy, that CBD products are manufactured at VB on an as needed basis. VB employee Steve Prosniewski told ES Del Rosario that VB ships CBD products directly

to consumers and retail stores from their manufacturing premises.

Between October 15, 2019 and December 16, 2019, the Department placed hemp derived CBD isolate, which is an ingredient in their cannabis products, and hemp derived CBD products under embargo at the VB manufacturing premises. One of the containers under embargo displays the ID number "NTCBS070919". During the warrant search of the unlicensed premises, a safe had a container of CBD isolate bearing the same ID number as the isolate embargoed on the VB premises (Attachment #36). The unlicensed premises had a container of CBD isolate with the same "NTCBS070919" batch ID, a bottle of "CBD Tincture Rework", and Kushy CBD tincture bottles on site (Attachments #37, #38, & #39).

A review of documentation found at the unlicensed premises, batch sheets and label requests evidence the manufacture of CBD gummies and vape cartridges (e.g., Attachment #40 & #41).

**KUSHY PUNCH BATCHES AND INVENTORY**

Manufacturing records from the unlicensed premises identify batch numbers for gummies that used a batch number prefix of "KPG," "KPL," or "VB". On the "Daily Production Summary," "Product Count Verification," and "Make-Up Daily Production Summary" Kushy Punch forms, employees documented the batch number and total quantity of blisters accepted and rejected from each pot of cannabis-infused gummy mixture run on the equipment. The referenced documents have different names and designs but are conceptually the same. Documents evidence the manufacture of batches with the "KPG" and "KPL" batch prefix from October 15, 2018 to September 18, 2019.

"KPG" prefixed batches are only referenced in manufacturing records for blister production; there are no references made for batch labels or packaging used for the blisters. Batch sheets for "KPG" batches often reference "Med", "Medical," and "Use Medical" in the comments section or page header. In "VB" and "KPL" batch sheets, the comments section typically uses the term "legal" or is blank. Also unique to "KPG" batches is the association with the Kushy Punch T.K.O. product. Kushy Punch's T.K.O. SKU is, and was, a prohibited product for manufacture and sale; manufacturing records document the production of approximately 1.8 million blisters with the "KPG" prefix.

Certificates of Analysis (COAs) report the results of product sampled for regulatory compliance testing. The Department reviewed all CannaSafe COAs from 2018 for Kushy Vape cartridges listing Passion Care, LLC as the manufacturer; batch numbers on all of the COAs use the "KPL" prefix (Attachments #42 & #43). Documentation from the unlicensed premises details the manufacture of vape cartridges with the same "KPL" batch numbers reported on the COA results (Attachment #44). For gummies, three batch production records from the unlicensed premises display a batch label used for product packaging. The batch label stickers match the batch number documented on the batch sheet but lists Passion Care, LLC as the manufacturer (Attachment #45). A

document referred to as "Gummy Batch Label Information", identifies which "KPL" prefixes for varying gummy SKUs, a sample batch label for a product produced by Passion Care, LLC, and instructions on how the batch number, date of manufacture, best by date, and concentration is reported (Attachment #46). The sample label on the Gummy Batch Label Information sheet uses "KPLR002". The Passion Care, LLC, batch labels on the batch production records are for batches "KPLC001", "KPLI003", and "KPLPR001". In addition to the references to Passion Care, LLC in documentation, the Department embargoed a small quantity of cannabis gummies with the "KPL" batch prefix on the VB premises; all photographed "KPL" gummies listed Passion Care, LLC, on the product labels (e.g., Attachments #47 & #48). The Department concluded that the "KPL" prefix is for products that are listing Passion Care, LLC, as the manufacturer. Manufacturing records for gummies at the unlicensed premises document the production of approximately 1.6 million blisters that have a batch number beginning with "KPL".

In June, VB employees generally explained how batch numbers were created; the batch number is representative of the manufacturer name (VB), date, and the product type. During the October inspection, Sabino Jimenez provided ES Del Rosario a copy of VBs batch naming convention sheet (Attachment #49). A photo from the unlicensed premises shows a "Batch/Lot Number Key" taped to an employee work station; the document is a different design of the same information as the sheet provided by Sabino Jimenez (Attachments #50 & #51). Records from the unlicensed premises evidence employees manufacturing batches with the "VB" prefix starting on June 5, 2019, which correlates with when VB legally started manufacturing products. "Batch label records" and "Batch Label Sign Off" sheets, which references actual product labels and approval for use on packaging and labeling, shows that product manufactured at the unlicensed premises was being packaged and labeled with the "VB" batch numbers.

When the Department visited VB on June 6, 2019, inspectors observed the packaging and labeling of batch VB1930E-B and the preparation of materials for production of batch VB1930E-C. Retail ready packaged and labeled gummies of batch VB1930E-C were observed in inventory during this inspection (Attachments #52, #53, & #54). Leafly, a cannabis website, published an article on October 11, 2019 that included a photo from DOI's search of the unlicensed premises; one of the photos showed a cannabis puck with the batch number "VB1930E-B" (Attachment #55). Prompted by the article, ES Del Rosario requested all batch production records and COAs for batches beginning with "VB1930E" from Ozzy Gomez and Sabino Jimenez during the October 2019 inspection. The Department requested documentation for additional batch numbers as well.

ES Del Rosario reviewed batch production records and compared the quantities manufactured at VB to the batch sizes reported on COAs of product that had undergone regulatory compliance testing. This analysis revealed discrepancies in the thousands and tens of thousands for the quantity of manufactured product reported. The following are examples of details of these discrepancies:

- **Batch VB1930E-C** – COA results for batch VB1930E-C documents a batch size of 27,684 units and manufacture date of 5/31/19 (Attachment #56). Batch production

records provided by VB for the batch account for the production of 9,897 blisters between the dates 6/7/19 and 6/17/19 (Attachment #57). During the inspection on June 6, 2019, there were 221 retail ready boxes of batch VB1930E-C; each retail box contained 36 individually packaged blisters for sale, which means there were 7,956 packaged blisters in VB's inventory. The manufacture of VB's packaged inventory pre-dates when batch production records document production of batch VB1930E-C with a labeled manufacture date of 5/31/19 and package date of 6/2/19 at the licensed premises. Documentation indicates that 8,026 blisters of batch VB1930E-C were manufactured at the unlicensed premises on 6/6/19 (Attachment #58).

- **Batch VB1930E-B** – COA results for batch VB1930E-B reports a batch size of 26,280 units and that the compliance testing lab collected the testing samples on 6/17/19 (Attachment #59). VB's batch production records for VB1930E-B accounts for the production of 12,327 blisters between the dates of 6/5/19 and 6/17/19 (Attachment #60). The unlicensed premises documents the manufacture of 18,910 blisters (Attachment #61) The Leafly article photo of cannabis material with the VB1930E-B batch number indicates that the unlicensed premises had material leftover from producing VB1930E-B blisters or the cannabis product was being prepared for manufacturing additional blisters (Attachment #55).
- **Batch VB1910F-A** – COA results for batch VB1910F-A report a batch size of 39,348 units and that the compliance testing lab collected the testing samples on 7/9/19 (Attachment #62). VB batch production records for VB1910F-A account for the production of approximately 4,600 blisters between July 11, 2019 to July 17, 2019 (Attachment #63). The manufacture of product submitted for regulatory compliance testing pre-dates any records for gummies made at the VB premises. Kushy Punch "Batch Label Records" from the unlicensed premises documents the production of at least 19,600 batch labels for VB1910F-A between 6/24/19 and 7/1/19 (Attachment #64).

"Batch Label Records" and production summary sheets for Kushy Punch gummies also evidences the manufacture of other batches with the "VB" prefix, including: VB1910F-A, VB1910F-B, VB1910F-C, VB1910F-D, VB1910F-E, VB1920F-H, VB1930E-B, VB1930E-C, VB1930E-D, VB1930E-C, and VB1930E-G.

## KUSHY VAPE – VAPE CARTRIDGES

Cannabis media site Ganjapreneur posted an article on October 7, 2019 about the two warrant searches conducted by DOI at the two unlicensed premises (Attachment #65). In the article, Gangapreneur journalist, TG Branfalt states that Ruben Cross, CEO for Kushy Punch, emailed the media site and stated, "BCC went into an old storage warehouse and found two-year-old disposable vapes with dead batteries that have been off the market even before regulations came around and they assumed we are selling vapes to the black market."

In another article by Marijuana Business Daily writer Bart Schaneman, Eric Shevin, legal counsel for Kushy Punch, wrote to the media site "[the disposable vaporizer cartridges] were located in a single box labeled for destruction following their discovery among packaging and marketing materials at a separate storage facility" (Attachment #66). Eric Shevin also stated, "These cartridges were unusable due to their age as the batteries had died after being stored for more than two years."

Documentation from the unlicensed premises detail manufacturing of cannabis and CBD vape cartridges in the last quarter of 2018. Pages of "Vape – Batch Label Requests" detail batch numbers, label request dates, manufacture dates, types of cartridges, and the quantity needed (Attachment #44). The batch label requests document the manufacture of over 22,000 vape cartridges between September 7 and November 20, 2018; the year is inferenced from one of the documents stating "10/24/18 GABE" at the bottom (Attachment #44). In addition, DOI discovered thousands of vape cartridges being stored on the unlicensed premises (e.g., Attachments #67 & #68). The Department reviewed all CannaSafe COAs from 2018 for Kushy Vape products that list Passion Care, LLC as the manufacturer. Batch numbers on the documentation use the same batch numbers for product that has undergone regulatory compliance testing. Included with these documents as evidence is a guide of vape cartridge SKUs for Kushy Punch, along with their concentrations and cannabinoid contents. Records document the manufacture of 10,780 THC vape cartridges and 10,150 disposable THC cartridges at the unlicensed premises (Attachment #44). Kushy Vape cartridges use typically 1 gram of cannabis concentrate and disposable vape cartridges typically hold 0.5 grams of cannabis concentrate. Based on the product types, the Department estimates the use of over 16,000 grams of distillate for the quantity of vape cartridges reported in manufacturing records. The estimate does not include other retail ready vape cartridges found on the unlicensed premises by DOI.

**SUMMARY OF UNLICENSED ACTIVTY AND PUBLIC HEALTH CONCERNS**

The Kushy Punch brand and its affiliated companies, Vertical Bliss, Inc., More Agency, and Conglomerate Marketing, are implicated in the unlicensed manufacture and sale of cannabis and/or industrial hemp-derived CBD edibles and vape cartridges.

Kushy Punch sold misbranded product with the intent of misleading consumers, evident in the recycling of batch numbers and labeling of products with Passion Care, LLC and Vertical Bliss, Inc's name and license number. The products mislead consumers into believing that the goods purchased had undergone the required regulatory compliance testing. In addition, COAs for Kushy Punch batches use samples that are not representative of the entire batch.

Products manufactured deliberately violated regulations requiring the use of child-resistant packaging, which state law and the Department's regulations implemented to protect children and other unknowing consumers from accidental ingestion, as edibles bear a resemblance to other food products and have a higher risk of consumption than other cannabis consumption methods. The concerns about lack of child-resistant packaging and accidental ingestion increase when considering the THC potency of Kushy Punch's T.K.O. product. For edibles, (MAUCRSA established a 10 mg per serving THC limit; the Department adopted the 10 mg per serving requirement and established a THC limit of 100 mg per package. THC limits aim to reduce the risk of overconsumption and overdose by those unaware or unfamiliar with the delayed effects from intentional and accidental ingestion. In addition, products that exceed the 100 mg of THC per package limit pose a threat to public health and safety; consumers that

regularly purchase cannabis edibles through legal retail outlets are accustomed to the products within the limits established by the Department. Products sold with a higher THC limit opens opportunity to accidental overconsumption and overdose.

In addition, the Department's license review and inspection process assesses a licensed cannabis manufacturer's compliance with public health and safety standards set in the state's regulations. Operating an unlicensed premise bars the Department from identifying public health concerns for both consumers and employees via inspections.

## VERTICAL BLISS, INC. AND THE UNLICENSED PREMISES

### MORE AGENCY AND CONGLOMERATE MARKETING

Ruben Cross's LinkedIn profile lists him as the President of More Agency (Attachment #69). Marijuana Business Daily posted an article on November 21, 2019 that included a written statement from Kushy Punch's legal counsel, Eric Shevin. Mr. Shevin stated that, "The More Agency, as the sole owner to all rights to the recipes, formulas and intellectual property to Kushy Punch, is saddened by the license revocation (Attachment #66). The unlicensed premises has a delivery order for the receipt of two "blister packing machine chillers"; the delivery identifies More Agency Inc as the recipient and the delivery address to be one of the unlicensed locations that was served a warrant (Attachment #70). Ozzy Gomez, VB's engineer, is the contact listed on the delivery order.

The Department observed use of the Conglomerate Marketing business name during the June inspection of VB's licensed premises. The Department requested to see an invoice of CBD isolate observed on the premises. VB staff provided an invoice from C-Side Supply that details Conglomerate Marketing at 20500 Nordhoff St., Chatsworth, CA 91311 as the billing address and recipient of the material (Attachment #71). Documents from the unlicensed premises referencing Conglomerate Marketing as the client or recipient are included as attachments (Attachment #72).

Photos taken at the unlicensed premises provided additional references to Conglomerate Marketing. Photos of an employee contract lists the hiring employer as Conglomerate Marketing, LLC, but identifies the VB licensed premises as the address of the hiring employer; VB's Human Resources manager, Merari Ramos, signed the employee contract as a representative for Conglomerate Marketing (Attachments #73 & #74). Also included with personnel documents is a printed version of Conglomerate Marketing's attendance policy and Conglomerate's "Time Clock Policy" (Attachments #75 & #76). "Conglomerate" is written on a pallet of non-cannabis ingredients stored in the manufacturing facility and on boxes of packaging and labeling used for product being made at the facility (Attachments #77, #78, #79, & #80). An employee notebook also documents need for materials at the unlicensed premises, which lists one of the items as "4 foot strip curtain door [Conglomerate, Nordhoff]" (Attachment #81). Also found at the unlicensed premises is a Police Commission Permit addressed to

Conglomerate Marketing at 8415 Canoga Avenue (Attachment #82).

The unlicensed premises had two ADP machines used to clock employees in and out of work; one machine was labeled "Conglomerate", while the other was labeled "More" (Attachments #83 & #84). A "Time Clock Policy" instructs employees to clock in and out of work with their ADP cards (Attachment #76). There are scanned copies of eight ADP cards found on site, two of which are illegible (Attachment #85). The ADP cards display the names: Angel A., Ashley D., Doug C., Chris M., Steven H., and Nicholas N. The six listed employees are current or formers employees of VB.

**VERTICAL BLISS PARTNERS**

Of the VB staff that ES Del Rosario interacted with, Ruben Kachian and Kevin Halloran are the only chief officers and business partners that Department inspectors have met in person. Documents referencing "Mike" may be VB General Manager, Mike Toroyan.

Employee notebooks acquired from the unlicensed premises mention "Ruben", "Kevin", "Andrew", and "Sabino" for managerial type decisions. The notebooks document the development of new artwork for the Kushy Punch products and sending samples or the artwork itself to "Ruben, Kevin Sabino, and Andrew" (Attachments #86 & #87). One of the notes specifically references the printing of materials and needing to "get more direction from Ruben" (Attachment #88). An additional note reference to "Ruben Cross" is included as an attachment (Attachment #89).

Employee notes also reference the involvement of "Kevin" and "Sabino" in decisions regarding the purchase and reimbursement of materials for the unlicensed premises. A note dated 2/11/19 documents a reminder to "send invoice for sealer to Kevin/Allison/Mike" (Attachment #90). Another note from an employee notebook says, "Might need another sealer for MT – Talk to Kevin/Sabino about potentially purchasing a steel set" (Attachment #91). One employee note, dated 6/19/19, discusses production and team training and references a meeting occurring with Kevin, Gabe, Ozzy, and Sabino (Attachment #92). Another employee note indicates that Kevin knew of the inventory at the unlicensed premises, which directs the employee to "have Chris send Kevin counts on Samples. Med + Rec" (Attachment #93). An additional note reference to "Kevin" is included as an attachment (Attachment #94).

Documents reference "Mike" in the context of product and document development and approvals. As previously mentioned in notes for "Ruben" or "Kevin", "Mike" is included in receiving updates on the Kushy Punch artwork development and equipment approvals and reimbursements. Other notes mentioning "Mike" include, "Lidding sticker – email sent to Brock/Allison/Mike" and "Inventory count? Mike. WIP count? Mike. Determine HVAC – Mike/owner" (Attachments #90 & #95). Another reference appears to be assigning the task of developing a biohazard and waste disposal standard operating procedure to both Mike and Carolina Mitchel (Attachment #96). An additional reference to "Mike" is included as an attachment (Attachment #97).

## KUSHY PUNCH SUPERVISORS

During the Department's inspections of VB, Sabino Jimenez said he is the production manager and his duties include oversight of cannabis-infused gummies manufacturing. An office at the unlicensed premises had a variety of documentation belonging to Sabino Jimenez; documents on the desk with Sabino Jimenez's name or signature include a letter from Public Storage, a rental agreement, and a receipt for Sabino Jimenez bailing out an employee for a charge of reckless driving (Attachments #98, #99, #100, & #101). In addition to references to Sabino Jimenez about product artwork, production meetings, and equipment requests, Sabino Jimenez signed as a supervisor on personnel documents, such as Kushy Punch time-off requests (Attachments #102 & #103). A Kushy Punch Batch Label Sign Off document shows Sabino Jimenez's initials as a verifier of a label for packaging and labeling of product produced on the unlicensed premises (Attachment #104). In addition, a Kushy Punch Machine Down Time Report dated 4/24/19 includes the note, "Sabino held meeting/asked to stop production" (Attachment #105). An employee note references going over a Leaf Logix plan with "Sabino" (Attachment #106). Leaf Logix is VB's inventory software system for the licensed premises. Additional mentions of "Sabino" in employee notes are included as attachments (Attachment #107).

Merari Ramos is the HR manager for VB. During the October 15, 2019 inspection, Merari Ramos printed out a list of all employees for the licensed manufacturing and distribution premises (Attachment #108). Merari Ramos highlighted in green all employees that were active, meaning employed by VB at the time. Merari Ramos signed off as a representative for Conglomerate Marketing on one of the employee contracts found at the unlicensed premises (Attachment #74). Employee notes reference Merari Ramos in the context of employee training and requests for materials and clock-in cards (Attachment #109).

Andrew Dorsett's responsibilities included oversight for the transfer of materials into and out of distribution, managing product in inventory for distribution, regulatory compliance testing, and management of documentation. VB employees identified Andrew as the manager of manifests and other records. During the October 2019 inspection, VB staff told the Department that they were unable to access documentation evidencing the source of their cannabis and waste records because Andrew Dorsett was not on the premises and he was the only person with access to such records. Employee notebooks found at the unlicensed premises reference picking up and sending materials and product to the Nordhoff premises (Attachment #110) and mention Andrew Dorsett in the context of needing materials, facilitating pick-ups, and involvement with the product blisters (Attachment #111). Also, shipping manifests for non-cannabis materials were found at the unlicensed manufacturing premises listing Andrew Dorsett as the contact for Vertical Bliss Inc (Attachment #112).

Department inspectors met Carolina Mitchell, VB's Chief Chemist, in June of 2019. Carolina Mitchell managed VB's laboratory and her duties included research, product development, quality assurance and quality control, and potency testing. A majority of

the cannabis inventory at VB is stored in the lab. Production managers would notify Carolina Mitchell of manufacturing goals for edibles and she would calculate the quantity of cannabis material needed based on the THC potency. On the batch sheets, also referred to as traveler sheets, which follow cannabis product throughout production, a majority of the documents documented Carolina Mitchell in the "received by" or "released by" fields. An example of the batch sheet from VB is attached (Attachment #113). Batch sheets from the unlicensed premises document Carolina Mitchell's name as a receiver of cannabis material on April 23, 2018 (Attachment #114). Carolina Mitchell is mentioned in employee notes in the context of production and manufacturing approvals (Attachment #115 & #116). An employee note from 1/19/2019 documents a reminder to "speak [with] Carolina about legal inventory not accounted for in count (inventory)" (Attachment #117). Also, a note from 5/18/19, says "Carolina – Batch 12. Start at Nordhoff. CC Ozzy and EJ" (Attachment #118). According to Sabino Jimenez, Carolina Mitchell stopped working for VB in late August or early October 2019. Additional mentions of Carolina Mitchell is included as an attachment (Attachment #119).

Christopher "Chris" Maldonado, Ozzy Gomez, Douglas "Doug" Conran, and Gabriel "Gabe" Acosta were the main supervisors of daily manufacturing operations. Chris Maldonado and Doug Conran's Vertical Bliss badges were at the unlicensed premises (Attachment #120 & #121). The badges show an identifier beginning in "KP"; the KP number for Doug Conran matches the number observed next to his name on VB's employee list; the identifier used for Chris Maldonado, KP0021, does not appear on the VB employee list (Attachment #108). The VB employee list skips from KP0020 to KP0022. The Department was unable to confirm whether Chris Maldonado was a current or former employee of VB, but Ozzy Gomez, Doug Conran, and Gabe Acosta were confirmed to be current VB employees. Chris Maldonado's employment contract documents him starting to work for Conglomerate Marketing on 2/12/18. Manufacturing records document the supervisors' conducting manufacturing activities themselves in addition to reviewing and approving the activities of other staff. Supervisor verifications are on batch production records, summary sheets of blisters produced, and on batch labels used when packaging and labeling the product.

## OTHER EMPLOYEE REFERENCES AND PERSONNEL DOCUMENTATION

The Department cross-referenced names referenced from documents obtained from the unlicensed premises with the employee list provided by Merari Ramos. Approximately 50, former or current, employees of Vertical Bliss, Inc show up on manufacturing records and employee notes acquired from the unlicensed premises.

Other personnel documents from the unlicensed location include:

- Conglomerate Marketing's Attendance Policy (Attachment #75)
- Conglomerate Marketing's Time Clock Policy (Attachment #76)
- Vertical Bliss, Inc.'s Non-Disclosure Agreement (Attachment #122)
- W-9 Tax information for Tom Gears (Attachment #123)
- Kushy Punch Employee Time-Off Requests (Attachment #124)

- Kushy Punch Employee Time Correction Forms (Attachment #125)

Employee signatures and names stated on the personnel documentation include Nancy Warner, Tom Gears, Douglas Conran, Ozzy Gomez, Sabino Jimenez, Gabriel Acosta, and Marco Caban.

Joseph Brock was a manufacturing employee of VB, according to VB's employee list. Joseph Brock is listed as a contact on shipping manifests provided by VB, an example is included as an attachment (Attachment #126). A manifest for material also identifies a "Brock Simera" (Attachment #127). An internet search of "Joseph Brock" lists relatives with the last name Simera, leading the Department to believe Joseph Brock and Brock Simera are the same person. Brock Simera is the contact for Conglomerate Marketing on the invoice for CBD isolate provided by VB (Attachment #71); he also appears on an invoice with an email address displaying the Kushy Punch domain name (Attachment #128). Other documents mentioning Brock's name also appears on a rental agreement for a forklift, listing Kushy Punch at 20500 Nordhoff Street as the renter but one of the unlicensed locations, 8427 Canoga Avenue, as the delivery location (Attachment #129). Additional references of Brock, from documents on the unlicensed premises, are included as attachments (Attachment #130).

Allison, believed to be Allison Cedarholm, appears on manufacturing records at the unlicensed premises. Employee notes reference "Allison" in the context of material requests and reimbursements; all references to Allison in notes from the unlicensed premises are included as an attachment (Attachment #131). Notes mentioning Uber reimbursements are likely for submission to either Allison or Merari (Attachment #132).

Based on the information obtained, the Department concludes that there is an established connection between the unlicensed premises in Canoga Park and formerly licensed Vertical Bliss Inc. premises in Chatsworth.

Submitted by:

Eileen Del Rosario
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Manufactured Cannabis Safety Branch

Reviewed by:

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**DECLARATION OF SERVICE BY U.S. Mail and E-Mail**

Case Name: **California Department of Public Health, et al. v. Vertical Bliss, Inc., et al.**
Case No.: **20CHCV00560**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **September 21, 2022**, I served the attached **DECLARATION OF EILEEN DEL ROSARIO IN SUPPORT OF DEPARTMENT OF CANNABIS CONTROL'S MOTION FOR SUMMARY JUDGMENT** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

| Party | Address |
|---|---|
| Margarita Salazar, Esq.<br>*Attorney for Defendants Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate Marketing, LLC., More Agency, Inc., Ruben Kachian, Arutyun Barsamyan, and Mike A. Toroyan* | Margarita Salazar, Esq.<br>Law Offices of Margarita Salazar<br>470 Third Avenue, Ste. 9<br>Chula Vista, CA 91910-4663<br>**E-mail Address**:<br>margarita@msalazarlaw.com |
| Ian Stewart<br>Wilson Elser Moskowitz Edelman & Dicker LLP<br>*Attorney for Defendant Kevin Halloran* | Wilson Elser Moskowitz Edelman & Dicker LLP<br>555 South Flower St. Ste. 2900<br>Los Angeles, Ca 90071<br>**E-mail Address**:<br>ian.stewart@wilsonelser.com |

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **September 21, 2022**, at San Diego, California.

Cecilia Apodaca
Declarant

Signature