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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12 NORTH VALLEY DISTRICT – CHATSWORTH COURTHOUSE

13
14 **DEPARTMENT OF CANNABIS
CONTROL,**

15
16 Plaintiff,

17 v.

18 **VERTICAL BLISS, INC., KUSHY PUNCH,
19 INC., CONGLOMERATE MARKETING,
20 LLC, MORE AGENCY, INC., RUBEN
KACHIAN a.k.a. RUBEN CROSS,
21 ARUTYUN BARSAMYAN, KEVIN
HALLORAN, MIKE A. TOROYAN and
22 DOES 1 through 30, inclusive,**

23 Defendants.

Case No. 20CHCV00560

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEPARTMENT OF CANNABIS
CONTROL'S MOTION FOR SUMMARY
JUDGMENT**

Date: December 5, 2022
Time: 08:30 A.M.
Dept: F49
Judge: The Honorable Stephen P.
Pfahler

Trial Date: January 30, 2023
Action Filed: September 23, 2020

RESERVATION NO. 590950777530

1 **TABLE OF CONTENTS**

2 **Page**

3 Introduction and Summary of Argument.....5

4 Factual Background and Discovery History7

5 Legal Standard.....12

6 Argument.....13

7 I. DCC is Entitled to Summary Judgment Because There are No Triable

8 Issues of Material Facts13

9 A. Defendants admitted to engaging in unlicensed commercial

10 cannabis activity in the State of California.....14

11 B. Defendants admitted to engaging in unlicensed commercial

12 cannabis activity for 527 days17

13 C. Defendants' admissions regarding annual gross revenue warranted

14 licensing fees of \$81,00018

15 II. Defendants are subject to civil penalties totaling \$128,061,000 pursuant to

16 Business and Professions Code section 2603819

17 Conclusion.....23

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Aguilar v. Atlantic Richfield. Co.
(2001) 25 Cal.4th 826, 855-56.....13

Quarry v. Doe I
(2012) 53 Cal.4th 9457

STATUTES

Business and Professions Code

§ 26001, subd. (al)6

§ 26001, subd. (ag)11

§ 26001, subd. (ah)11

§ 26001, subd. (an)15, 19

§ 26001, subd. (i)11

§ 26001, subd. (k)14, 15

§ 26010.75

§ 26011.522

§ 260125

§ 26038*passim*

§ 26038, subd. (a)*passim*

Code of Civil Procedure

§ 437c.....12

§ 437c, subd. (c).....13

§ 437c, subd. (o)(1).....13

Health and Safety Code

§ 11018.111

REGULATIONS

California Code of Regulations, Title 16

§ 50036

§ 5014, subd. (c)18

California Code of Regulations, Title 17

§ 40100, subd. (dd).11

§ 40100, subd. (ee).....11

§ 40100, subd. (j)11

§ 40102, subd. (a)6

§ 40150, subd. (b)(7)18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

(continued)

Page

LEGISLATION

Proposition 64: The Control, Regulate, and Tax Adult Use of Marijuana Act7, 22
Assembly Bill 141, Budget Act of 2021: Department of Cannabis Control:
Safety and Quality Assurance.....5

1 **INTRODUCTION AND SUMMARY OF ARGUMENT**

2 On September 23, 2020, California Department of Public Health (hereinafter, “CDPH”) and
3 Bureau of Cannabis Control, the predecessor agencies to Plaintiff Department of Cannabis
4 Control (hereinafter, “Plaintiff” or “DCC”)¹, filed a complaint, alleging that Defendants “engaged
5 in unlicensed commercial cannabis activity” in the State of California, in violation of Business
6 and Professions Code section 26038.² Specifically, Defendants engaged in a commercial
7 enterprise to illegally manufacture large quantities of cannabis products and illegally distribute
8 the products into the consumer market stream.

9 While DCC has actively engaged in litigating this case, Defendants Vertical Bliss, Inc.,
10 Kushy Punch, Inc., Conglomerate Marketing, LLC, and More Agency, Inc., Ruben Kachian
11 (a.k.a. “Ruben Cross”), Arutyun Barsamyan, and Mike A. Toroyan (hereinafter “Defendants”)
12 have all but abandoned their defense of this case.³ Defendants have failed to appear at court
13 hearings, failed to respond to motions, and failed to respond to discovery. (Declaration of Deputy
14 Attorney General Michael Yun in Support of the Motion (hereinafter, “Yun Decl.”), ¶¶ 6-7; RJN,
15 Exhibits A-H.) Based on these failures, this Court granted DCC’s seven motions and issued
16 orders deeming DCC’s requests for admissions to Defendants admitted, and recognized that
17 Defendants have not meaningfully participated in the litigation of their case. (RJN, Exhibits A,
18

19 ¹ On July 12, 2021, Assembly Bill 141 was passed and became operative, and created the
20 Department of Cannabis Control. Prior to that time, the regulation of commercial medicinal and
21 adult use cannabis was the responsibility of the Bureau of Cannabis Control, the California
22 Department of Food and Agriculture’s CalCannabis Division, and the California Department of
23 Public Health’s Manufactured Cannabis Safety Branch (see former Bus. & Prof. Code, § 26012,
24 subd. (a)(2) repealed by Stats AB 141 reg sess. 2021-2022 § 11). The Department of Cannabis
25 Control is the legal successor of these agencies in relevant respects. (Bus. & Prof. Code, §
26 26010.7.) On January 21, 2022, Plaintiff filed with the Court “Stipulation to Substitution of
27 Parties and Proposed Order,” wherein all parties stipulated and agreed that the proper Plaintiff in
28 this action is the Department of Cannabis Control which substitutes the previous named Plaintiffs
of California Department of Public Health and Bureau of Cannabis Control. On February 8,
2022, the Court signed the Order granting the substitution. (Plaintiff’s Request for Judicial
Notice in Support of DCC’s Motion for Summary Judgment (hereinafter, “RJN”), Exhibit I.)

² All references are to the Business and Professions Code, unless otherwise indicated.

³ This Motion for Summary Judgment is not filed against Defendant Kevin Halloran.

1 and C-H.) Specifically, the Court found that each “Defendant has apparently abandoned the
2 action and/or apparently demonstrates no intent to comply with the court order. . .”⁴ It is these
3 orders which now serve as the indisputable evidentiary basis for this Motion for Summary
4 Judgment (Motion).⁵

5 The undisputed facts, which have been admitted, establish that Defendants Ruben Kachian
6 (“Kachian”), Arutyun Barsamyan (“Barsamyan”), and Mike A. Toroyan’s (“Toroyan”)
7 association with Defendants Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate Marketing,
8 LLC, and More Agency, Inc. (hereinafter “Business Entity Defendants”) were as “OWNER[s]”⁶
9 and/or Chief Executive Officer (CEO).⁷ Moreover, the Business Entity Defendants have admitted
10 to engaging in both unlicensed commercial cannabis manufacturing and unlicensed distributor
11 activities within Los Angeles County for a total of 527 days.⁸ In addition to these indisputable

12 _____
13 ⁴ RJN, Exhibits B, C, D, E, F, G, and H, consisting of Court’s Orders granting Plaintiff’s
14 Motions for Sanctions against the seven Defendants. Moreover, with respect to Defendant
15 Kachian, the Court found he “has abandoned any defense of the action.” (RJN, Exhibit B.)

15 ⁵ RJN, Exhibits A, B, C, D, E, F, G, and H; Separate Statement of Undisputed Material
16 Facts in Support of DCC’s Motion for Summary Judgment (hereinafter, “SSUMF”); Yun Decl.,
17 Exhibits 1, 2, 4, 6, 8, 10 and 12.

17 ⁶ Under “DEFINITIONS” in Plaintiff’s Requests for Admissions (hereinafter, “RFA”) to
18 Defendants Kachian, Barsamyan, and Toroyan, served on June 14, 2021, “OWNER” was defined
19 as “(1) person with an aggregate ownership interest of 20 percent or more in the person required
20 to hold a COMMERCIAL CANNABIS LICENSE or a licensee, unless the interest is solely a
21 security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a
22 member of the board of directors of a nonprofit; (4) the trustee(s) and all persons who have
23 control of the trust and/or the commercial cannabis business that is held in trust; (5) an individual
24 entitled to a share of at least 20 percent of the profits of the commercial cannabis business; or (6)
25 an individual who will be participating in the direction, control, or management of the person
26 required to hold a COMMERCIAL CANNABIS LICENSE, including a general partner of a
27 commercial cannabis business that is organized as a partnership, a non-member manager or
28 managing member of a commercial cannabis business that is organized as a limited liability
company, and an officer or director of a commercial cannabis business that is organized as a
corporation, as identified in Business and Professions Code section 26001, subdivision (a), Cal.
Code Regs., tit. 16, section 5003, and Cal. Code Regs., tit. 17, section 40102, subdivision (a)”;
Yun Decl., Exhibits 1, 10, and 12.

⁷ SSUMF Nos. 1-7, and 40-48.

⁸ SSUMF Nos. 10-11, 13-14, 18-19, 21-22, 26-27, 29-30, 34-35 and 37-38.

1 facts by way of Defendants’ admissions, Declarations in Support of the Motion for Summary
2 Judgment further confirm there is no defense to the only cause of action set forth in the
3 complaint. As a result of these findings, and pursuant to the calculation provided by section
4 26038, subdivision (a),⁹ Defendants are subject to civil penalties of up to three times the amount
5 of the license fee for each day of violation. In total, and as detailed below, Defendants are subject
6 to **civil penalties in the amount of \$128,061,000 (one hundred twenty-eight million sixty-one**
7 **thousand dollars).**

8 As established by Defendants’ admissions alone, there are no triable issues as to any
9 material fact. As further established by the admissions, Defendants are subject to civil penalties
10 in the amount of \$128,061,000. As a result, and for the reasons set forth herein, DCC respectfully
11 requests that the Court enter summary judgment against the seven Defendants, and order civil
12 penalties as requested.

13 **FACTUAL BACKGROUND AND DISCOVERY HISTORY**

14 On March 14, 2018, California Department of Public Health – Manufactured Cannabis
15 Safety Branch (CDPH) notified Vertical Bliss, Inc. by way of letter to Kachian as the Chief
16 Executive Officer, that a complaint had been received regarding its operations. (Declaration of
17 Eileen Del Rosario in Support of the Motion (hereinafter, “Del Rosario Decl.”), ¶ 4.)
18 Specifically, the letter stated that Vertical Bliss, Inc. was engaged in the unlicensed
19 manufacturing of cannabis edibles and vape cartridges. (*Ibid.*; Declaration of Laura Meeks in
20 Support of the Motion (hereinafter, “Meeks Decl.”), ¶ 5, Exhibit A: “Cease and Desist Letter”)

21
22 ⁹ Business and Professions Code section 26038 has been amended by the State Legislature
23 four times since its introduction as an initiative measure in Prop 64, § 6.1, that was approved on
24 November 8, 2016. The version of section 26038 that was in effect from June 27, 2017 to July
25 11, 2021 [covering the dates of violation in this case from April 23, 2018 to October 2, 2019] is
26 attached in the RJN as Exhibit K. It is Plaintiff’s position that the new versions of the section do
27 not apply retroactively to the range of dates of violation in this case. In California, a statute is
28 presumed to operate prospectively, not retroactively. (*Quarry v. Doe I* (2012) 53 Cal.4th 945,
955.) In construing statutes, there is a presumption against retroactive application unless the State
Legislature plainly directed otherwise by means of express language of retroactivity. Nothing in
the subsequent legislative amendments of section 26038 that took effect on July 12, 2021,
January 1, 2022, and June 30, 2022, indicates any legislative intent of retroactive application.

1 Kachian was directed to immediately cease all activity that violated state cannabis laws and
2 provided information on how to acquire a license to legally operate a commercial cannabis
3 business within the State of California. (*Ibid.*)

4 On August 16, 2018, CDPH staff met Kachian in a business complex in Canoga Park,
5 California, for the purpose of discussing how Vertical Bliss, Inc. could apply for a license to
6 operate in the licensed commercial cannabis market. (Del Rosario Decl., ¶ 5.) Thereafter, on
7 December 24, 2018, CDPH issued a temporary, Type-6 manufacturing license (License No.:
8 CDPH-T00001177) to Vertical Bliss, Inc. DBA Kushy Punch, for the address 20500 Nordhoff
9 Street, Chatsworth, CA 91311 (Licensed Premises). (Del Rosario Decl., ¶ 6.) On the California
10 Secretary of State Statement of Information form, Ruben Kachian was registered as the Chief
11 Executive Officer for Vertical Bliss, Inc. (*Ibid.*; Meeks Decl., ¶ 6.)

12 On December 27, 2018, CDPH received an application for a Type-6 annual manufacturing
13 license (Application Number: APL-1329) for Vertical Bliss, Inc. for the Licensed Premises. (Del
14 Rosario Decl., ¶ 7; Meeks Decl., ¶ 7.) On June 27, 2019, CDPH issued a provisional Type-6
15 manufacturing license (License No.: CDPH-10003574) and BCC issued a distribution license
16 (License No.: C11-0000544-LIC) to Vertical Bliss, Inc., for the Licensed Premises. (Del Rosario
17 Decl., ¶ 13; Meeks Decl., ¶ 8.)

18 On October 2, 2019, Department of Consumer Affairs' Division of Investigation
19 (hereinafter, "DCA")¹⁰ executed a search warrant at addresses, 8415 and 8427 Canoga Avenue,
20 Canoga Park, California (Unlicensed Premises), locations where it was suspected that unlicensed
21 commercial cannabis activity was occurring. (Del Rosario Decl., ¶ 14.)

22 Between October, 2019, and February, 2020, CDPH inspected and conducted investigations
23 of the Defendants' Licensed Premises, which led to (1) the discovery of significant discrepancies
24 between the quantity of edibles Defendant Vertical Bliss, Inc. was manufacturing, and the
25 quantity that was being reported for regulatory compliance testing and retail sale, (2) the embargo
26 and eventual voluntary condemnation and destruction of cannabis products, and (3) the revocation

27 ¹⁰ At this time, the Bureau of Cannabis Control, a predecessor to the DCC, was an agency
28 within the Department of Consumer Affairs.

1 of Defendant Vertical Bliss, Inc.’s manufacturing and distributor licenses for the Licensed
2 Premises. (Del Rosario Decl., ¶¶ 15-35.) CDPH determined that Defendants Kushy Punch,
3 Conglomerate Marketing, LLC, More Agency, Vertical Bliss, Inc., and each entity’s owners and
4 employees, engaged in illegal commercial cannabis activity at the Unlicensed Premises for at
5 least 527 calendar days between April 23, 2018, and October 2, 2019. (Del Rosario Decl., ¶¶ 36-
6 51; Meeks Decl., ¶ 9, (a)-(h).) Based on these findings, this action was filed on September 23,
7 2020.

8 On June 14, 2021, DCC propounded Requests for Admissions, Set One. (Yun Decl.,
9 Exhibits 1, 2, 4, 6, 8, 10, and 12; Declaration of DAG Ethan Turner (hereinafter, “Turner Decl.”),
10 ¶ 2.) At the time, all seven Defendants were represented by Browne, George, Ross, O’Brien,
11 Annaguey & Ellis, LLP (hereinafter, “BGR”). (Turner Decl., ¶ 2.) On July 27, 2021, Margarita
12 Salazar (hereinafter, “Salazar”) substituted in as counsel of record for Defendant Kachian. (*Id.* at
13 ¶ 4, Exhibit 1.) Between July 19, 2021 and October 13, 2021, all of the Defendants, except
14 Kachian, and DCC agreed to four (4) discovery extension requests. (*Id.* at ¶¶ 3-7.) The six
15 Defendants then produced discovery responses on November 1, 2021, one week after the parties’
16 agreed upon production date of October 26, 2021. (*Id.* at ¶ 8.) The responses were comprised
17 exclusively of boiler plate objections. (*Ibid.*) Defendant Kachian did not provide any discovery
18 responses. (Yun Decl. at ¶ 8.)

19 On November 5, 2021, counsel for DCC sent a meet and confer email to counsel for the six
20 Defendants asserting that the Defendants’ responses did not meet the minimum standards
21 required under the Code of Civil Procedure. (Turner Decl. at ¶ 9.) On November 15, 2021,
22 counsel for the six Defendants represented that efforts to secure substantive responses to DCC’s
23 discovery requests were ongoing. (*Id.* at ¶ 10, Exhibit 2.) Regarding the boiler plate objections,
24 counsel for the six Defendants stated the objections were served “simply to preserve them” and
25 admitted that they “otherwise did not have verified responses to provide.” (*Ibid.*) On December
26 21, 2021, Salazar substituted in as counsel of record for the six Defendants and continued to
27 represent Defendant Kachian, who did not provide any discovery responses. (*Id.* at ¶ 12, Exhibits
28 4-9; Yun Decl. at ¶ 8.) On December 21, 2021, counsel for DCC informed Salazar via email that

1 her new clients, the six Defendants’ discovery responses failed to comply with the requirements
2 of the Civil Discovery Act, and requested to meet and confer on December 22, 2001. (Turner
3 Decl. at ¶ 13, Exhibit 10.)

4 On January 5, 2022, during the meet and confer, Salazar stated she would speak with her
5 clients and that she would provide supplemental responses to Form Interrogatories, Set One,
6 Requests for Admissions, Set One, and Requests for Production, Set One, by noon on Friday,
7 January 21, 2022. (Turner Decl. at ¶ 15, Exhibit 12.)

8 On January 12, 2022, counsel for Plaintiff sent a follow up email to Salazar regarding the
9 outstanding discovery matters discussed during the January 5, 2022 meet and confer, but received
10 no correspondence from Salazar. (Turner Decl. at ¶ 16, Exhibit 13.) Between January 10, 2022
11 and July 21, 2022, Plaintiff served on Salazar and filed with the Court a Motion to Compel
12 Discovery against Defendant Kachian and separate Motions to Compel Further Responses as to
13 Defendants Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate Marketing, LLC, More
14 Agency, Inc., Arutyun Barsamyan, and Mike A. Toroyan to seek responses to RFAs. (RJN,
15 Exhibit A; Yun Decl. at ¶¶ 3-5.) Despite the Court’s orders requiring Defendants to provide
16 discovery responses, they failed to do so. (Yun Decl. at ¶¶ 3-5 and 8, Exhibits 14 and 15; also see
17 Turner Decl. at ¶¶ 18-19.)

18 Between January 10, 2022 and August 10, 2022, the Court granted all of DCC’s
19 subsequently filed motions to deem the RFAs admitted as to all seven Defendants named in this
20 Motion for Summary Judgment. (RJN, Exhibits A, C, D, E, F, G, and H; Yun Decl., Exhibits 1,
21 2, 4, 6, 8, 10, and 12.) By Orders of the Court, the seven Defendants’ admissions in this case are
22 as follows:

23 Defendant Ruben Kachian, a.k.a. “Ruben Cross”

24 1. Kachian was the Chief Executive Officer (CEO) of Vertical Bliss, Inc., More Agency,
25 Inc. and Kushy Punch, Inc. in the period from April 23, 2018 to October 2, 2019 (hereinafter,
26 “relevant period.”) (SSUMF Nos. 1-3.)

27 ///

28

1 2. Kachian was an “OWNER”¹¹ of Vertical Bliss, Inc., Kushy Punch Inc., More
2 Agency, Inc., and Conglomerate Marketing, LLC in the relevant period. (SSUMF Nos. 4-7.)

3
4 Defendants Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate Marketing, LLC, and More
5 Agency, Inc. (hereinafter, “Business Entity Defendants”)

6 1. The business entity Defendants leased and operated a business at the PREMISES¹² in the
7 relevant period. (SSUMF Nos. 8-9, 16-17, 24-25, and 32-33.)

8 2. When the business entity Defendants engaged in COMMERCIAL MANUFACTURING
9 CANNABIS ACTIVITY¹³ the PREMISES on 527 separate days in the relevant period, all of
10 them did not have a COMMERCIAL CANNABIS LICENSE to engage in COMMERCIAL
11 MANUFACTURING CANNABIS ACTIVITY at the PREMISES. (SSUMF Nos. 10-11, 18-19,
12 26-27, and 34-35.)

13
14 ¹¹ See Footnote 4.

15 ¹² “PREMISES” was defined as “8415 Canoga Avenue and 8427 Canoga Avenue, Canoga
16 Park, CA 91304,” under “DEFINITIONS” in the same Plaintiff’s RFAs to Defendants Vertical
Bliss, Inc., Kushy Punch, Inc., Conglomerate Marketing, LLC, and More Agency, Inc., served on
June 14, 2021. (Yun Decl., Exhibits 2, 4, 6, and 8.)

17 ¹³ Under “DEFINITIONS” in the same Plaintiff’s RFAs to Defendant Vertical Bliss, Inc. ,
18 Kushy Punch, Inc., Conglomerate Marketing, LLC, and More Agency, Inc. served on June 14,
2021, “COMMERCIAL MANUFACTURING CANNABIS ACTIVITY” was defined as
19 “compounding, blending, extracting, infusing, or otherwise making or preparing a CANNABIS
20 PRODUCT; the production, preparation, propagation, or compounding of CANNABIS or
CANNABIS PRODUCTS either directly or indirectly or by extraction methods, or independently
21 by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a
fixed location that packages or repackages CANNABIS or CANNABIS PRODUCT or labels or
22 relabels its container; to all aspects of the extraction process, infusion process, and packaging and
labeling processes, including processing, preparing, holding, and storing of CANNABIS
23 PRODUCTS; and also include[ing] any processing, preparing, holding, or storing of components
and ingredients of CANNABIS PRODUCTS, as identified in Business and Professions Code
24 section 26001, subdivisions (ag) and (ah), and Cal. Code Regs., tit. 17 section 40100,
subdivisions (dd) and (ee).” In the same document, “CANNABIS PRODUCT” was defined as
25 “CANNABIS that has undergone a process whereby the plant material has been transformed into
a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product
26 containing cannabis or concentrated cannabis or other ingredients, as identified in Business and
Professions Code section 26001, subdivision (i), Health and Safety Code, section 11018.1, and
27 Cal. Code Regs., tit. 17, section 40100, subdivision (j).” (Yun Decl., Exhibits 2, 4, 6, and 8.)
28

1 3. The gross revenue the business entity Defendants received from COMMERCIAL
2 MANUFACTURING CANNABIS ACTIVITY¹⁴ at the PREMISES in the relevant period
3 exceeded \$10,000,000. (SSUMF Nos. 12, 20, 28, and 36.)

4 4. When the business entity Defendants engaged in COMMERCIAL DISTRIBUTOR
5 CANNABIS ACTIVITY at the PREMISES on 527 separate days in the relevant period, all of
6 them did not have a COMMERCIAL CANNABIS LICENSE to engage in COMMERCIAL
7 DISTRIBUTOR CANNABIS ACTIVITY at the PREMISES. (SSUMF Nos. 13-14, 21-22, 29-
8 30, and 37-38.)

9 5. The gross revenue the business entity Defendants received from COMMERCIAL
10 DISTRIBUTOR CANNABIS ACTIVITY at the PREMISES in the relevant period exceeded
11 \$1,000,000. (SSUMF Nos. 12, 23, 31, and 39.)

12
13 Defendant Arutyun Barsamyan

14 1. Barsamyan was the CEO of Kushy Punch, Inc. in the relevant period. (SSUMF No.
15 40.)

16 2. Barsamyan was an “OWNER”¹⁵ of Vertical Bliss, Inc., Kushy Punch, Inc., More
17 Agency, Inc., and Conglomerate Marketing, LLC in the relevant period. (SSUMF Nos. 41-44.)

18
19 Defendant Mike A. Toroyan

20 1. Toroyan was an “OWNER”¹⁶ of Vertical Bliss, Inc., Kushy Punch, Inc., More
21 Agency, Inc., and Conglomerate Marketing, LLC in the relevant period. (SSUMF Nos. 45-48.)

22
23 **LEGAL STANDARD**

24 Code of Civil Procedure section 437c requires the trial court to grant summary judgment if
25 there is no triable issue as to any material fact, and the moving party is entitled to judgment as a

26 ¹⁴ See Footnote 13.

27 ¹⁵ See Footnote 4.

28 ¹⁶ See Footnote 4.

1 matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield. Co.* (2001) 25
2 Cal.4th 826, 855-56 (“Aguilar”).) The moving party must “support[] the “motion” with evidence
3 including “declarations [or] admissions.” (Code Civ. Proc., § 437c, subd. (c).) “In moving for
4 summary judgment, a ‘plaintiff ... has met’ his ‘burden of showing that there is no defense to a
5 cause of action if’ he ‘has proved each element of the cause of action entitling’ him ‘to judgment
6 on that cause of action. Once the plaintiff ... has met that burden, the burden shifts to the
7 defendant ... to show that a triable issue of one or more material facts exists as to that cause of
8 action or a defense thereto. “[I]f a plaintiff who would bear the burden of proof by a
9 preponderance of evidence at trial moves for summary judgment, he must present evidence that
10 would require a reasonable trier of fact to find any underlying material fact more likely than
11 not[.]” (*Aguilar*, supra, at p. 851.)

12 The defendant ... may not rely upon the mere allegations or denials’ of his ‘pleadings to
13 show that a triable issue of material fact exists but, instead,’ must ‘set forth the specific facts
14 showing that a triable issue of material fact exists as to that cause of action or a defense thereto.’ ”
15 (*Aguilar*, supra, at p. 849 [citing Code Civ. Proc., § 437c, subd. (o)(1)].) “Summary judgment
16 law in this state no longer requires a plaintiff moving for summary judgment to disprove any
17 defense asserted by the defendant [...] [rather] [a]ll that the plaintiff need to do is to ‘prove []
18 each element of the cause of action.’ ” (*Id.* at 853.)

19 ARGUMENT

20 **I. DCC IS ENTITLED TO SUMMARY JUDGMENT BECAUSE THERE ARE NO TRIABLE** 21 **ISSUES OF MATERIAL FACTS**

22 Defendants’ admissions establish that they violated section 26038 when they “engaged in
23 unlicensed commercial cannabis activity.” Section 26038 in effect at the time this action was
24 filed stated, in pertinent part: “A person engaging in commercial cannabis activity without a
25 license as required by this division shall be subject to civil penalties of up to three times the
26 amount of the license fee for each violation. Each day of operation shall constitute a separate
27 violation of this section.” The admissions further establish that they committed such violations
28 on 527 separate days, and that the annual gross revenue from their illegal cannabis activities

1 exceeded \$11,000,000. This gross revenue amount forms the basis for the total civil penalties
2 sought by this Motion. Although Defendants’ admissions, now deemed admitted, are sufficient to
3 prove each element of the cause of action by preponderance of the evidence, Declarations of DCC
4 Custodian of Records Laura Meeks and Environmental Scientist Eileen Del Rosario further
5 strengthen DCC’s bases for summary judgment.

6 **A. Defendants admitted to engaging in unlicensed commercial cannabis**
7 **activity in the State of California**

8 Business Entity Defendants

9 Defendants Vertical Bliss, Inc., Kushy Punch Inc., Conglomerate Marketing, LLC, and
10 More Agency, Inc. have each admitted to engaging in (1) unlicensed commercial manufacturing
11 cannabis activity and (2) unlicensed commercial distributor cannabis activity. (SSUMF Nos. 10-
12 11, 13-14, 18-19, 21-22, 26-27, 29-30, 34-35, and 37-38; RJN, Exhibits D, E, F, and G; Yun
13 Decl., Exhibits 2, 4, 6, and 8 (RFA Nos. 4, 12, 19, and 27 in each Exhibit).)

14 “Commercial manufacturing cannabis activity” was defined in the RFAs served on the
15 Business Entity Defendants as including, but not limited to, “compounding, blending, extracting,
16 infusing, or otherwise making or preparing a cannabis product [...] packaging and labeling [...]
17 processing, preparing, holding, and storing of cannabis products.” (Yun Decl., Exhibits B, D, F,
18 and H under DEFINITIONS.) Admission to any one of the types of manufacturing activity
19 establishes “commercial cannabis activity” as referenced in section 26038, subdivision (a), and
20 which is further defined in section 26001, subdivision (k) to include “the cultivation, possession,
21 manufacture, distribution, processing, storing, laboratory testing, packaging, labeling,
22 transportation, delivery, or sale of cannabis and cannabis products[.]” (Bus. & Prof. Code,
23 § 26001, subd. (k); RJN, Exhibits J and K.)

24 “Commercial distributor cannabis activity” was defined in the RFAs served on the Business
25 Entity Defendants as including “the procurement, sale, and transport of cannabis and cannabis
26 products between parties required to hold a commercial cannabis license.” (Yun Decl., Exhibits
27 2, 4, 6, and 8 under “DEFINITIONS”.) Admission to any one of the types of distributor activity
28 defined in the RFAs, also, proves the element of “commercial cannabis activity” referenced in

1 section 26038, subdivision (a), and which is specifically defined in section 26001, subdivision (k)
2 to include “distribution, [...] transportation, delivery, or sale of cannabis and cannabis
3 products[.]” (Bus. & Prof. Code, § 26001, subd. (k); RJN, Exhibits J and K.)

4 Pursuant to section 26001, subdivision (an), a “person” as referenced in section 26038
5 includes “any individual, firm, partnership, joint venture, association, corporation, limited liability
6 company, estate, trust, [...] or any other group or combination acting as a unit [...]”.

7 Therefore, with the respective Business Entity Defendants’ admissions to engaging in
8 commercial cannabis manufacturing and distributor activities, DCC has established by
9 preponderance of the evidence that Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate
10 Marketing, LLC, and More Agency, Inc. “engaged in unlicensed commercial cannabis activity”
11 in violation of section 26038. (SSUMF Nos. 10-11, 13-14, 18-19, 21-22, 26-27, 29-30, 34-35,
12 and 37-38; RJN, Exhibits D, E, F, and G; Yun Decl., Exhibits 2, 4, 6, and 8 (RFA Nos. 4, 12, 19,
13 and 27 in each Exhibit).)

14 Furthermore, according to the DCC’s Custodian of Records, neither a cannabis
15 manufacturer license nor a cannabis distribution license was ever issued to the Unlicensed
16 Premises for the Defendants in this case. (Meeks Decl., ¶ 9, (a)-(h).) On October 2, 2019, CDPH
17 and DCA’s execution of a search warrant revealed the presence of employee notebooks,
18 equipment, and various documents belonging to the Business Entity Defendants at the Unlicensed
19 Premises. (Del Rosario Decl., ¶¶ 36-40.) The documents found included, but were not limited to,
20 “contracts, invoices, receipts, manifests, and delivery invoices [...] personnel like records,
21 [p]olicy [documents], [b]ills of [l]adding, a delivery order [...]” (*Id.* at ¶¶ 36-38.) Batch
22 production records bearing the Kushy Punch logo which identified Vertical Bliss, Inc. as the
23 manufacturer, bearing the names and signatures of known current and former employees of
24 Vertical Bliss, Inc. were also found at the Unlicensed Premises. (*Id.* at ¶ 40.)

25 The investigation revealed the “operations at the Unlicensed Premises mirrored that of the
26 Licensed Premises in process, equipment, and documentation[,] had the same system of
27 portioning cannabis concentrate into ‘pucks’ and attaching a traveler sheet to follow the product
28 through the manufacturing process.” (*Id.* at ¶ 39.) A “NANO” machine used to manufacture

1 cannabis gummies and capable of producing “approximately one thousand five hundred (1,500)
2 to one thousand eight hundred (1,800) blisters [of cannabis gummies] [...] in less than one and a
3 half hours” was found. (*Ibid.*) Another machine that functions “at a more efficient rate [than a
4 ‘NANO’ machine]” was also found at the Unlicensed Premises. (*Ibid.*) Large quantities of
5 packaged retail ready cannabis products called Kushy Punch T.K.O. were found at the Unlicensed
6 Premises. (*Id.* at ¶ 42.) Additionally, production and sales records seized by DCA evidenced
7 production of over 200,000 blisters of TKO. (*Ibid.*) Based on the investigation, CDPH
8 “concluded that products from the Unlicensed Premises were being packaged, labeled, and sold as
9 if they were made at the Licensed Premises.” (*Id.* at ¶ 40.)

10 Individual Defendants

11 The three individual Defendants, Kachian, Barsamyan, and Toroyan, have each admitted to
12 engaging in (1) unlicensed commercial manufacturing cannabis activity and (2) unlicensed
13 commercial distributor cannabis activity in the City of Canoga Park in the State of California, by
14 admitting that they are “OWNER[s]” of Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate
15 Marketing, LLC, and More Agency, Inc. (SSUMF Nos. 4-7 and 40-48; RJN, Exhibits A, C, and
16 H; Yun Dec, Exhibit 1 [as to Kachian] (RFA Nos. 8, 11, 14, and 17), Exhibit 10 [as to
17 Barsamyan] (RFA Nos. 1, 5, 8, 11, and 14), and Exhibit 12 [as to Toroyan] (RFA Nos. 2, 5, 8,
18 and 11).) By admitting that they are “OWNERS[s]” of the four Business Entity Defendants as
19 defined in the RFAs, the natural person Defendants each admitted that they were “[a] person with
20 an [...] ownership interest [...], the [CEO] [...], the trustee(s) and all persons who have control of
21 the trust and/or the commercial cannabis business that is held in trust, an individual entitled to a
22 share of at least 20 percent of the profits of the commercial cannabis business, or an individual
23 who will be participating in the direction, control, or management of the person required to hold a
24 commercial cannabis license, including a general partner of a commercial cannabis business that
25 is organized as a partnership, [a] managing member of a commercial cannabis business [...] and
26 or an officer or director of a commercial cannabis business that is organized as a corporation[.]”¹⁷

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¹⁷ *Ibid.*; see Footnote 4.

1 Each and any one of these admissions by the individual Defendants proves that they
2 “engaged in unlicensed commercial cannabis activity,” whether that is as an individual with an
3 “ownership interest,” “the [CEO],” “a trustee,” “an individual entitled to a share of at least 20
4 percent of the profits of the commercial cannabis business,” as “a general partner,” a “managing
5 member of a commercial cannabis business,” or “an officer or director of a commercial cannabis
6 business.” (*Id.*; Bus. & Prof. Code, § 26038, subd. (a); RJN, Exhibit K.) Here, there is no triable
7 issue as to whether the individual Defendants “engaged in unlicensed commercial cannabis
8 activity” as they all admit to being an owner, a CEO, a managing member, an officer, a director,
9 *and/or* a financial beneficiary of the business entities which have admitted to engaging in illegal
10 commercial cannabis activity. This evidence alone clearly demonstrates that the individual
11 Defendants engaged in unlicensed activity in violation of section 26038.

12 In addition, the declaration of Eileen Del Rosario provides further uncontroverted evidence
13 that the individual Defendants engaged in unlicensed commercial cannabis activity. Specifically,
14 during CDPH’s investigation there were ongoing communications with Defendants Kachian and
15 Toroyan in their capacity as active representatives of the Business Entity Defendants. (Del
16 Rosario Decl., ¶ 4-8, 22, 25-29, and 33.)

17 Indeed, the uncontroverted evidence against the seven Defendants leaves no triable issues
18 to any material facts that Defendants violated section 26038, subdivision (a), and are subject to
19 civil penalties of up to three times the amount of the license fee for each day of the violation(s).

20 **B. Defendants admitted to engaging in unlicensed commercial cannabis**
21 **activity for 527 days**

22 The number of days that the Defendants engaged in unlicensed cannabis activity is a factor
23 used to calculate the civil penalty. Pursuant to section 26038, subdivision (a), “[e]ach day of
24 operation [...] constitute[s] a separate violation.” Defendants Vertical Bliss, Inc., Kushy Punch
25 Inc., Conglomerate Marketing, LLC, and More Agency, Inc. have each admitted to (1) engaging
26 in unlicensed commercial manufacturing cannabis activity in the State of California on 527
27 separate days and (2) engaging in unlicensed commercial distributor cannabis activity in the State
28 of California on 527 separate days. (SSUMF Nos. 10-11, 13-14, 18-19, 21-22, 26-27, 29-30, 34-

1 35, and 37-38.) Based on these admissions, the Business Entity Defendants are liable for civil
2 penalties for each of the 527 days they engaged in unlicensed cannabis activity.

3 Likewise, the individual Defendants, Kachian, Barsamyan, and Toroyan, as owners and
4 persons with direct control over the Business Entity Defendants, are also deemed to have engaged
5 in unlicensed commercial cannabis activity on 527 separate days in the State of California.

6 (SSUMF Nos. 4-7, 10-11, 13-14, 18-19, 21-22, 26-27, 29-30, 34-35, 37-38, and 40-48.)

7 Moreover, based on “the earliest referenced date on batch production records [at] April 23, 2018”
8 found at the Unlicensed Premises, as well as a notebook documenting the staff work schedule that
9 consists of weekdays and weekends, CDPH calculated the total length of the Defendants’ illegal
10 activity to be “527 calendar days.” (Del Rosario Decl. at ¶ 51.)

11 Here again, both the admissions of the Defendants and independent evidence gathered by
12 the DCC support that the seven Defendants “engaged in unlicensed commercial cannabis
13 activity” in the State of California for 527 days. There is no triable issue as to this fact when
14 determining the civil penalty that should be assessed in this case.

15 **C. Defendants' admissions regarding annual gross revenue warranted**
16 **licensing fees of \$81,000**

17 The Business Entity Defendants have each admitted they received gross revenue exceeding
18 \$10,000,000 and \$1,000,000, annually, from unlicensed commercial cannabis manufacturing and
19 distributor activities, respectively, during the relevant period. (SSUMF Nos. 12, 15, 20, 23, 28,
20 31, 36, and 39.) The admissions that their gross revenue from illegal manufacturing activities
21 exceeded \$10,000,000 subject them to an annual licensing fee of \$75,000. (Cal. Code Regs., tit.
22 17, § 40150, subd (b)(7); RJN, Exhibit L; SSUMF Nos. 12, 20, 28, and 36.) Additionally, the
23 admissions that the gross revenue resulting from illegal distributor activities exceeded \$1,000,000
24 subject them to an annual licensing fee of \$6,000. (Cal. Code Regs., tit. 16, § 5014, subd (c);
25 RJN, Exhibit M; SSUMF Nos. 15, 23, 31, and 39.)

26 As to the individual Defendants, they each engaged in illegal commercial cannabis activity
27 by virtue of their admitted ownership of, ownership interest in, and/or control and managing
28 power over, the Business Entity Defendants. For this reason, the license fees also apply to the

1 individual Defendants for purposes of calculating the civil penalties which section 26038 subjects
2 them to as “persons.” (Bus. and Prof. Code, §§ 26001, subd. (an); 26038, subd. (a), RJN,
3 Exhibits J and K.) Therefore, DCC has established that the seven Defendants are subject to total
4 licensing fees of \$81,000—consisting of \$75,000 for illegal manufacturing and \$6,000 for illegal
5 distribution—per violation, for purposes of calculating the civil penalties. (*Ibid.*; SSUMF Nos. 4-
6 7 12, 15, 20, 23, 28, 31, 36, and 39-48.)

7 Additionally, the following facts further confirm Defendants’ undisputed admissions as to
8 the gross revenue generated by their illegal activities. The DCA’s search of the Unlicensed
9 Premises found “Kushy Punch cannabis edibles that were packed and labeled in final form with
10 an estimated wholesale value of \$740,940 and estimated retail value of \$1,961,172” as well as
11 “additional [...] edibles in inventory that were in process and awaiting packaging and labeling.
12 (Del Rosario Decl., ¶ 44.) These facts, along with the manufacturing capacity, as noted above in
13 sub-argument A, regarding the “NANO” machine and another machine that functions “at a more
14 efficient rate” capable of producing “approximately one thousand five hundred (1,500) to one
15 thousand eight hundred (1,800) blisters [of cannabis gummies] [...] in less than one and a half
16 hours” found at the Unlicensed Premises, further confirm the gross revenue amounts accrued by
17 the Defendants. (Del Rosario Decl., ¶¶ 10, 11, and 39.) Based on the Defendants’ admissions
18 and the additional investigative evidence, there are no triable issues as to the licensing fees to
19 which the Defendants were subject and which form the basis of the civil penalty that should be
20 assessed in this case.

21 **II. DEFENDANTS ARE SUBJECT TO CIVIL PENALTIES TOTALING \$128,061,000**
22 **PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 26038.**

23 The Legislature determined that a person engaged in unlicensed cannabis activity is
24 “subject to civil penalties of up to three times the amount of the license fee for each violation.”
25 (Bus. & Prof. Code, § 26038, subd. (a).) As discussed above, the evidence establishes (1) that the
26 seven Defendants violated section 26038, (2) that they did so for 527 separate days of violation,
27 and (3) that they were subject to total licensing fees of \$81,000 for each day of commercial
28

1 cannabis activity operation. In accordance with section 26038,¹⁸ the \$81,000 license fee license
2 fee multiplied by three (totaling \$243,000) and further multiplied by 527 days of violation,
3 subjects the Defendants, jointly and severally, to up to **\$128,061,000 (one hundred twenty-eight**
4 **million and sixty-one thousand dollars)**, for the unlicensed commercial manufacturing and
5 distributor cannabis activities in which they engaged.

6 Under Business and Professions Code section 26038, once the violation of law and duration
7 of the violation have been established, as is the case here, the court has discretion to impose a
8 civil penalty of up to three times the amount of the license fee for each day of violation.
9 However, during the period when the illegal activity that is the subject of this case occurred, the
10 operative version of section 26038 did not set forth factors for the Court to consider when
11 exercising that discretion. Neither are there any published decisions awarding civil penalties
12 pursuant to section 26038. Therefore, DCC requests that this Court exercise its discretion to
13 impose the maximum civil penalty in light of Defendants' willful and egregious conduct, the
14 duration of the violations, their willful disregard of this Court's orders, and the harm their illegal
15 activity posed to the public.

16 1. Knowing and Egregious Conduct

17 The Defendants' conduct to engage in unlicensed commercial cannabis activity was done
18 knowingly, purposefully, and in total disregard of the law, therefore the maximum allowable civil
19 penalties are warranted for the following reasons.

20 First, on March 14, 2018, just shy of *one month* prior to engaging in their unlicensed
21 commercial cannabis activity at the Unlicensed Premises, Defendants received a cease and desist
22 letter at the Licensed Premises from CDPH directing them to immediately cease all activity that
23 violated state cannabis laws and included information on how to acquire a license to legally
24 operate a commercial business within the State of California. (Del Rosario Decl., ¶ 4; Meeks
25 Decl., ¶ 5, Exhibit A; see also SSUMF Nos. 4-7, 10-11, 13-14, 18-19, 21-22, 26-27, 29-30, 34-35,
26 37-38, and 40-48.)

27 _____
28 ¹⁸ RJN, Exhibit K.

1 Second, even though Defendants eventually received both manufacturing and distribution
2 licenses at the Licensed Premises, the licenses were revoked and all of their cannabis products
3 were inventoried and placed under embargo for violations of state law. (Del Rosario Decl., ¶ 27.)

4 Third, the operations at the Unlicensed Premises mirrored that of the Licensed Premises in
5 process, equipment, and documentation, and it produced the same Kushy Punch brand edibles as
6 the Licensed Premises. (Del Rosario Decl., ¶¶ 39-40.)

7 Fourth, large quantities of packaged retail ready cannabis products called Kushy Punch
8 T.K.O. were found at the Unlicensed Premises. (Del Rosario Decl., ¶ 42.) Kushy Punch T.K.O.
9 is a cannabis infused gummy that has a tetrahydrocannabinol (THC) content of 20 mg per serving
10 and 200 mg per package, which exceeds the regulatory and statutory limits of 10 mg THC per
11 serving and 100 mg per package of cannabis edibles. (*Ibid.*) The regulatory and statutory limits
12 for THC content aim to reduce the risk of potential overconsumption and overdose by consumers
13 unaware or unfamiliar with the delayed effects from intentional and/or accidental ingestion. (*Id.*)
14 None of the unlicensed products, including the Kushy Punch T.K.O. products, had undergone
15 regulatory compliance testing requirements that screen products for pesticides, residual solvents,
16 heavy metals, microbial contamination, and physical contamination. (*Id.*)

17 Finally, Defendants conducted their knowing and deliberate unlicensed commercial
18 cannabis activity for a period of 527 calendar days, from April 23, 2018, through October 2,
19 2019. (Del Rosario Decl., ¶ 51; SSUMF Nos. 4-7, 10-11, 13-14, 18-19, 21-22, 26-27, 29-30, 34-
20 35, 37-38, and 40-48.) The length of Defendants' illegal enterprise demonstrates the
21 egregiousness of their conduct, and their utter disregard for the laws enacted to protect the public.
22 The unlicensed activity put the public health and safety at severe risk through the deliberate
23 bypassing of regulatory and statutory requirements that are designed to both assess and address
24 the risk of contamination and overall safety of cannabis products meant for public use and
25 consumption. (Del Rosario Dec., ¶ 52.)

26 Based upon the foregoing, this Court should assess the maximum allowable civil penalties.

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1 2. Legislative Mandate: Public Protection

2 A fundamental purpose of the licensing scheme created under Proposition 64 and
3 MAUCRSA is to require “[cannabis] businesses to follow strict environmental and product safety
4 standards” (Proposition 64 § 3, subd. (f); Ballot Pamp., Primary Elec. (Nov. 8, 2016) text of Prop.
5 64, p.3). The purpose of the scheme is reiterated and affirmed in that “The protection of the
6 public shall be the highest priority for the department . . . the protection of the public shall be
7 paramount.” (Bus. & Prof. Code, § 26011.5.) In deliberately sidestepping both state and local
8 regulatory requirements and knowingly violating applicable laws, the Defendants threatened
9 public safety by creating a pathway for untested cannabis and cannabis products to reach
10 consumers from unlicensed sources and manufacturing dangerous high-potency products for
11 which no license is available. (Del Rosario Decl., ¶¶ 42-46, 48-52.; Meeks Decl., ¶¶ 4 and 10.)

12 The facilities operated by the Defendants were not subject to inspection or approval by the
13 California Department of Public Health’s Manufactured Cannabis Safety branch. (Meeks Decl.,
14 ¶¶ 4, 5, 9 (a)-(h).) The Defendants were clearly aware of regulatory requirements, but
15 deliberately flouted them. (*Id.* at ¶ 5, Exhibit A; ¶¶ 6-8; Del Rosario Decl., ¶¶ 5, 15, 18-24, and
16 29-34.) The decision to operate an unlicensed facility and provide adulterated, misbranded, and
17 untested products to licensed and/or unlicensed retailers, as well as directly to consumers, was
18 driven solely by profit motive and was undertaken in reckless disregard of the safety of
19 consumers. (Del Rosario Decl., ¶¶ 5, 15, 18-24, 29-34, 39-44, 46, 48.)

20 In light of Defendants’ admissions as to their illegal conduct, the duration of such conduct,
21 and the revenue generated as a result of their unlicensed activities, there are no triable issues of
22 material facts and DCC is entitled to summary judgment and a civil penalty assessment in this
23 case. (SSUMF.) Based on the above-referenced aggravating factors in this case, Defendants
24 should be held accountable for the maximum amount of civil penalties allowable by law. DCC
25 respectfully requests that this Court impose the maximum civil penalties in the amount of
26 \$128,061,000.

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CONCLUSION

Based on the foregoing, DCC respectfully requests that this Court grant summary judgment in its favor and issue an order for civil penalties in the amount of \$128,061,000, as to Defendants Ruben Kachian (a.k.a. “Ruben Cross”), Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate Marketing, LLC, More Agency, Inc., Arutyun Barsamyan, and Mike A. Toroyan, jointly and severally.

Dated: September 21, 2022

Respectfully submitted,

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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 **MEMORANDUM OF POINTS AND AUTHORITIES 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. <i>Attorney for Defendants Vertical Bliss, Inc., Kushy Punch, Inc., Conglomerate Marketing, LLC., More Agency, Inc., Ruben Kachian, Arutyun Barsamyan, and Mike A. Toroyan</i>	Margarita Salazar, Esq. Law Offices of Margarita Salazar 470 Third Avenue, Ste. 9 Chula Vista, CA 91910-4663 E-mail Address: margarita@msalazarlaw.com
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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