

STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

IN THE MATTER OF:

Case No. 2024-001

Blue Whale Enterprises Inc.,
License No. CCD-2022-0219,

SETTLEMENT AGREEMENT

WHEREAS, Blue Whale Enterprises Inc. (“Respondent”) is a business entity licensed pursuant to the Cannabis Regulation Act, 26-2C-1 *et seq.* NMSA 1978 (“CRA”) and is subject to jurisdiction of the Cannabis Control Division (“Division”) of the Regulation and Licensing Department (“Department”), and the rules promulgated by the Division according to the Act, 16.8.1 *et seq.* NMAC (“Rules”).

WHEREAS, the Division received formal complaints alleging that Respondent has violated the Act and the Rules promulgated thereto;

WHEREAS, the Division found sufficient evidence to refer the matter to its counsel and request that a Notice of Contemplated Action (“NCA”) be issued against Respondent;

WHEREAS, an NCA was issued pursuant to the Uniform Licensing Act, 61-1-1 *et seq.* NMSA 1978 (“ULA”), which stated that the Division had sufficient evidence which, if not rebutted or satisfactorily explained, would justify the Department taking disciplinary action against Respondent up to and including license revocation;

WHEREAS, Respondent is willing to resolve this matter without the need for, and time and expense of, a formal hearing to be conducted; and

WHEREAS, the Division’s administrative prosecutor believes that this proposed Settlement Agreement (“Agreement”) is appropriate and in the best interest of the Department and the State:

THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. Authority:** Respondent acknowledges that the Division has the statutory, administrative, and regulatory authority and thereby jurisdiction to investigate and adjudicate allegations of violations of the Act, pursuant to 26-2C-8(A) and (B) NMSA 1978. Respondent, at all times material to the allegations set forth in the citation(s), was licensed under the Act and is subject to the disciplinary authority of the Division. Therefore, the Division has disciplinary authority over the Respondent and the subject matter. Upon execution of this Agreement,

Respondent releases the Division from any and all claims potentially arising out of the Division's decision to investigate the complaint and take the actions described herein, and other than as set forth in this Agreement.

2. **Voluntary Agreement:** Respondent enters into this Agreement knowingly and voluntarily, without duress or coercion, and after a full opportunity to consult an attorney. Respondent understands that if they reject this agreement the Division will conduct a formal evidentiary hearing which could result in the Division imposing discipline that is more or less severe than the sanctions considered herein.
3. **Division Approval:** This Agreement requires approval by the Division. If the Division rejects this Agreement, the Division may proceed with a full evidentiary hearing on a date scheduled by the Division in a subsequent notice. If the Division rejects this Agreement, the terms of this Agreement or statements made by the Respondent in support of this Agreement shall not be used against Respondent in a subsequent hearing. The approval shall be effective the date this Agreement is signed by the Division Director.
4. **Violations:** Respondent acknowledges that this disciplinary action is for violations cited in Case Number 2024-001 and is related to the statutory and regulatory provisions under the Act and the related rules and regulations of the New Mexico Administrative Code, 16.8.1 *et seq.* NMAC.
5. **Waivers:** If this Agreement is accepted by the Division, Respondent agrees to waive any and all rights under the Uniform Licensing Act, Sections 61-1-1 through -35 NMSA 1978 (as amended through 2024), including but not limited to the right to an evidentiary hearing, the right to discovery, the right to present evidence, the right to call and cross examine witnesses, and the right to judicial review. Respondent's waiver of these rights, as related to the citations referenced in Section 4 of this Agreement, is made knowingly, intentionally, and voluntarily.
6. **Discipline:** The Respondent understands that this Agreement constitutes formal disciplinary action by the Division against the Respondent. Respondent understands and acknowledges the Division's schedule of civil monetary penalties found in 16.8.12.13 NMAC which provides that each violation of the rules and regulations may result in fines from one thousand dollars (\$1,000) to ten thousand dollars (\$10,000) per violation and may also include suspension or revocation of a license. The Rules also provide that any portion of the penalties described in 16.8.12.13 NMAC may be enhanced or suspended, depending on the particular facts and circumstances of the individual case. *See*, 16.8.12.13(B) NMAC.
7. **Conditions of Settlement:** The Division shall take no further action against Respondent with respect to the matters specifically identified in the NCA for Case No. 2024-001, provided Respondent complies completely with the following:
 - Respondent shall pay the Division a fee of fifty thousand dollars (\$50,000.00) for five (5) violations as outlined within the NCA, including allowing a minor that is not a qualified medical patient onto the licensed premises, promoting the over consumption of cannabis products, allowing the unauthorized consumption of cannabis products on the licensed

premises without a cannabis consumption licenses, allowing public consumption of alcohol on the licensed premises without obtaining a public consumption liquor license and publicly displaying cannabis product outside of the retail area of the licensed premises. The fee is to be paid within thirty (30) days from the date of execution of this agreement.

- To reduce the impact of lost wages to its employees, in lieu of the CCD suspending all of Respondents' licensed cannabis business activities for fourteen (14) days as part of the total disciplinary penalties imposed for Case 2024-001, Respondent shall pay a fee of three hundred thousand dollars (\$300,000.00), which is equal to the average revenue that Respondent would lose during the suspension. The fee is to be paid in five (5) installments, the first payment of one hundred thousand dollars (\$100,000.00) is to be paid within thirty (30) calendar days from the date of execution of this agreement, the second payment of fifty thousand dollars (\$50,000.00) is to be paid within sixty (60) calendar days of the execution of this agreement, the third payment of fifty thousand dollars (\$50,000.00) is to be paid within ninety (90) calendar days of the execution of this agreement, the fourth payment of fifty thousand dollars (\$50,000.00) is to be paid within one hundred (100) calendar days of the execution of this agreement, and fifth payments of fifty thousand dollars (\$50,000.00) is to be paid within one hundred and twenty (120) calendar days of the execution of this agreement.
- If Respondent is found by the Division to have engaged in acts constituting any of the Violations identified in paragraph 2 of the NCA (Violations #1 through #5) within two (2) years from the date this agreement is executed, Respondent shall suspend all commercial cannabis operations in the State of New Mexico for a period of fourteen (14) calendar days to be effective beginning the date of a signed final decision and order by the Cannabis Control Division.
- In addition to the above, if Respondent is found by the Division to have engaged in an act or acts constituting Violation #1 as identified in the NCA [consumption of cannabis by a person under twenty-one (21) years of age on the licensed premise], or constituting Violation #2 as identified in the NCA [promoting the over consumption of cannabis or cannabis products] within two (2) years from the date this agreement is executed, Respondent will be assessed an automatic fine of one hundred thousand dollars (\$100,000.00) to be paid within thirty (30) calendar days from the date of the rendering of a final decision in conformance with the Uniform Licensing Act; 61-1-1 NMSA 1978, *et seq.*
- In addition to the above, if Respondent is found by the Division to have engaged in an act or acts constituting Violation #3 [failure to prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the


division], Violation #4 [failure to prohibit unlicensed public consumption of liquor on a licensed premise], or Violation #5 [display of cannabis or cannabis products outside of the retail area of a licensed premise] as identified in the NCA, within two (2) years from the date this agreement is executed, Respondent will be assessed an automatic fine of fifty thousand dollars (\$50,000.00) to be paid within thirty (30) calendar days from the date of the rendering of a final decision in conformance with the Uniform Licensing Act, 61-1-1 NMSA 1978, *et seq.*

8. This Agreement is binding upon the Division and the Respondent only after it is signed by the Respondent and the attending order ("Order") validating the terms of the Agreement is signed by the Division Director or a designee.
9. This Agreement is a settlement of the New Mexico Regulation and Licensing Department – Cannabis Control Division, for Case Number 2024-001, and only for the specific allegations contained therein. This Agreement does not set precedent and only applies to the facts and circumstances of the referenced citation.
10. Upon fulfillment of the above requirements, the Division shall consider this matter closed and resolved unless violations of the agreed-upon terms listed in Section 7 are violated. However, the Division may consider these improper activities as evidence of a pattern of conduct in the event that similar or other violations are proven against the Respondent in the future. Additionally, Division may consider the fact that discipline was imposed through this Agreement and Order as a factor in determining appropriate discipline, which may include enhanced penalties as set forth in 16.8.12.13(B) NMAC, should any further violations be proven against Respondent in the future.
11. Respondent understands, acknowledges, and stipulates that any violations of this Agreement and/or failure to comply with the terms and conditions of this Agreement shall be separate and independent grounds for disciplinary action by the Division against Respondent and, at the discretion of the Division, shall constitute a violation of the Act. In the event Respondent fails to comply with any provisions of this Agreement, the Division may impose any and all lawful sanctions at its disposal including but not limited to revocation, suspension, or denial of Respondent's license, restrictions on the operation of their license, imposition of fees, penalties and costs and/or any other disciplinary action authorized pursuant to the New Mexico Cannabis Regulation Act and the New Mexico State Statutes.
12. Respondent affirmatively states that they have read this entire document and understands their responsibilities and duties in reference to the settlement of this matter. Respondent agrees and stipulates to all of the terms of this Agreement. Respondent knowingly, intentionally, and voluntarily enters into and executes this Agreement and affirms that no promises or representations have been made to them other than the terms and conditions expressly stated herein. Respondent understands that by signing this Agreement the following rights have been waived:
 - a. The right to a full administrative hearing as provided in Section 26-2C-8(E) NMSA 1978, as related to the citations reference in Section 4 of this Agreement; and

b. All rights to appeal this matter to the District Court for review.

13. Respondent acknowledges that if the terms are violated or Respondent fails to comply with the terms and conditions of this Agreement, the Division may impose the original penalties and fees in addition to charges for failure to comply with this Order, if applicable.

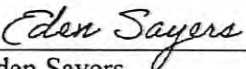
This Stipulated Agreement is effective on the date the Division Director or designee has approved and signed the Order.



Byron Butcher
Owner or Resident Agent for
Blue Whale Enterprises Inc.,

7/16/2024

Date



Eden Sayers
Administrative Prosecutor for the
Cannabis Control Division

7.16.2024

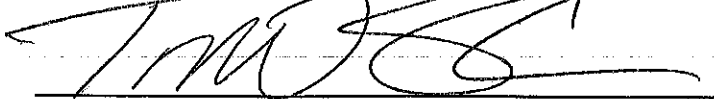
Date

ORDER OF THE DIVISION

THIS MATTER having come before the Cannabis Control Division and after review and careful consideration of the facts, finds that the terms of this Settlement Agreement, as reached by the parties stated above and indicated by their signatures, **IS ACCEPTED.**

IT IS SO ORDERED and upon completion of the terms as set forth in this Agreement, this matter shall be closed.

Signed on this 16 day of July, 2024.



Todd Stevens
Director, or Designee
Cannabis Control Division
NM RLD | Cannabis Control Division

DIVISION USE ONLY FINE DUE: \$ _____		Payments:	
Received on: _____	Receipt No. _____	Amount \$ _____	CHECK/MO/CC Balance: _____
Received on: _____	Receipt No. _____	Amount \$ _____	CHECK/MO/CC Balance: _____
Received on: _____	Receipt No. _____	Amount \$ _____	CHECK/MO/CC Balance: _____
Received on: _____	Receipt No. _____	Amount \$ _____	CHECK/MO/CC Balance: _____
Received on: _____	Receipt No. _____	Amount \$ _____	CHECK/MO/CC Balance: _____

Resolved: _____
Final Payment Received on: _____
Suspension Served on: _____