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3 STATE OF OREGON  
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
5 DIVISION OF FINANCIAL REGULATION

6 In the Matter of:

Case No. S-16-0007

7 Cannacea, LLC, and Tisha Siler,

8 Respondents.

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FINAL ORDER TO CEASE AND  
DESIST, DENYING USE OF  
EXEMPTIONS, AND ASSESSING  
CIVIL PENALTIES

**HISTORY OF THE CASE**

11 On July 28, 2016, the Department of Consumer and Business Services, Division  
12 of Financial Regulation (the Division), issued an Order to Cease and Desist, Order  
13 Denying Use of Exemptions, Proposed Order Assessing Civil Penalties, and Notice of  
14 Right to an Administrative Hearings (Notice) to Cannacea LLC and Tisha Siler  
15 (Respondents). On August 16, 2016, Respondents, through attorney Frank Elasser,  
16 requested a hearing. On April 2, 2017, the Division referred the hearing request to the  
17 Office of Administrative Hearings (OAH). On April 12, 2017, Mr. Elasser notified the  
18 Division that he no longer represented Respondents.

16 The OAH assigned the case to Senior Administrative Law Judge (ALJ) Joe L.  
17 Allen. On April 26, 2017, the OAH received a letter from Senior Assistant Attorney  
18 General Joanna Tucker Davis, on behalf of the Division, requesting that the matter be  
19 assigned to a different ALJ. On May 10, 2017, then-Presiding ALJ John M. Mann<sup>1</sup>  
20 granted the request and reassigned the matter to Senior ALJ Monica A. Whitaker.

19 On June 1, 2017, ALJ Whitaker held a telephone prehearing conference.  
20 Respondents did not appear. Ms. Tucker Davis represented the Division. ALJ Whitaker  
21 scheduled deadlines for filing prehearing motions, exhibits, and witness lists, and  
22 scheduled the hearing for October 10 through 12, 2017.

22 On July 25, 2017, the Division filed its Motion for Summary Determination  
23 (Motion). Respondents did not file a response by the established deadline. ALJ  
24 Whitaker closed the record on August 9, 2017 and took the matter under advisement. ALJ  
25 Whitaker considered the Division's Motion and its supporting Exhibits A1 through A7 in  
26 making a ruling on the Motion.

<sup>1</sup> Mr. Mann is now the Chief ALJ.



1 On August 17, 2017, ALJ Whitaker issued a Ruling on Motion for Summary  
2 Determination and Proposed Order (Proposed Order). ALJ Whitaker concluded that all of  
3 the issues were decided and granted summary determination in favor of the Division.  
4 Respondents did not timely file exceptions to the Proposed Order.

5 Now, therefore, having reviewed the entire record in this matter, the Director  
6 issues the following Issues on Summary Determination, Statement of Undisputed Facts,  
7 Conclusions of Law, Opinion and Orders, consistent with that proposed by OAH.

### 8 ISSUES ON SUMMARY DETERMINATION

9 1. Whether there are any genuine issues as to any material facts and, if not,  
10 whether the Division is entitled to a favorable ruling as a matter of law. OAR 137-003-  
11 0580.

12 2. Whether Respondents sold securities to investors without a license, in violation  
13 of ORS 59.165(1).

14 3. Whether Respondents offered and sold unregistered securities to investors, in  
15 violation of ORS 59.055.

16 4. Whether Respondents made untrue statements of material fact in connection  
17 with the sale of securities, in violation of ORS 59.135(2).

18 5. Whether Respondents engaged in acts which operated as fraud or deceit on  
19 persons, in violation of ORS 59.135(3).

20 6. Whether Respondents made false statements or reports to the Director,<sup>2</sup> in  
21 violation of ORS 59.135(4).

22 7. Whether the Division may order Respondents to cease and desist. ORS  
23 59.245.

24 8. Whether the Division may deny Respondents the use of exemptions to the  
25 securities registration requirements. ORS 59.045.

26 9. Whether the Division may assess a civil penalty against Respondents. ORS  
59.995.

### STATEMENT OF UNDISPUTED FACTS

#### *Background*

1 Cannacea LLC (Cannacea) is an Oregon limited liability company that was  
2 formed on or about July 18, 2014. Cannacea's principal business is a marijuana  
3 dispensary. Cannacea's principal business address listed with the Oregon Secretary of

<sup>2</sup> "Director" means the Director of the Department of Consumer and Business Services. ORS 59.015(3)



1 State is 10735 NE Halsey St., Portland, Oregon 97220. Tisha Siler (Siler) was the CEO  
2 and controlling member of Cannacea, and owned 85 percent of the Class A membership  
3 shares in Cannacea. Neither Siler nor Cannacea have ever been licensed as an investment  
4 adviser representative or broker-dealer in Oregon, and Siler has never been licensed as a  
5 broker-dealer salesperson in Oregon. (Exs. A1 at 1-2; A1 Affidavit Ex. A at 1; A1  
6 Affidavit Ex. C at 1, 17.) Cannacea's Amended and Restated Operating Agreement (the  
7 Operating Agreement) placed the management and control of Cannacea, as well as the  
8 responsibility for handling investor funds, with Siler and other managers of Cannacea.  
9 (Ex. A1 Affidavit Ex. C.)

6 *Green Rush Consulting, LLC*

7 2. On August 1, 2014, Siler hired Green Rush Consulting, LLC (Green Rush), a  
8 California marijuana consulting business,<sup>3</sup> to draft a private placement memorandum  
9 (PPM) for Cannacea, which Siler planned to use to raise money from investors to open a  
10 marijuana dispensary in Oregon. Zeti Ceti, also known as Alan Saunders, Jr., is the  
11 controlling member of Green Rush. (Ex. A2 at 1.)

12 3. The Developmental and Consulting Services Agreement for Private Placement  
13 Memorandum (the Agreement) between Siler and Green Rush required Siler to provide  
14 Green Rush with certain information relating to her business and capital requirements,  
15 including the nature of the business, biographies of all the principals, details of the  
16 investment options, and other information that might be crucial to the development of the  
17 PPM. Over the months following entry of the Agreement, Siler provided Green Rush  
18 with extensive information relating to herself, her proposed business, and the investment  
19 options she planned to offer. All information that Green Rush received relating to Siler  
20 and Cannacea was either provided directly by Siler or through other individuals with the  
21 acknowledgement and approval of the information by Siler. (Ex. A2 at 1-2.)

22 4. The information provided by Siler to Green Rush included, but was not limited  
23 to, the following:

- 24 a. That Oregon regulators contacted and specifically invited Siler to open  
25 one or more marijuana dispensaries in Oregon;
- 26 b. That Siler expected state regulators to consult her when developing  
regulations under Measure 91 (Oregon recreational marijuana bill) and  
determining how to apply the regulations in both the recreational and  
medical marijuana market; and
- c. That Oregon regulators offered Siler a possible position on the Oregon  
Liquor Control Commission panel that would create the framework for the  
Oregon recreational marijuana program.

(Ex. A2 at 2.)

<sup>3</sup> Green Rush provides consulting services relating to the marijuana industry, including, but not limited to, assistance with state licensing applications nationwide. (Ex. A2 at 1.)



1 5. In or around late September or early October 2014, Siler contacted Ceti to  
2 report that she had been granted six marijuana dispensary licenses from the Oregon  
3 Health Authority (OHA). As evidence of these licenses, on October 27, 2014, Siler  
4 emailed Ceti a copy of a letter, dated October 16, 2014, that was purportedly from OHA's  
5 Medical Marijuana Dispensary Program (MMDP) (herein the MMDP letter), which  
6 stated:

7 Mrs. Siler,

8 We are happy to inform you that your provisional license #MMD 74855 has  
9 been approved, as well as your designated PFR, Deborah Burgess. Your  
10 PFR will be receiving the official documentation from the OHA  
11 immediately following this letter at the address provided, and your official  
12 Certificate of Registration will be mailed once the security provisions have  
13 been met and verified. Your date of final compliance for this license will be  
14 December 18<sup>th</sup>, 2014.

15 We would like to thank you for considering Oregonians in your practice,  
16 and look forward to having you as a valuable asset to our State.

17 As per our previous conversation, we will allow you up to 6 (six) dispensary  
18 licenses without measured due process via the OMMP. We can utilize the  
19 same data originally provided within the application previously received,  
20 with the added locational zoning, coding, and security information. Please  
21 note that at this time we are currently discussing the possibility of  
22 temporarily closing the application process pending the results of the  
23 coming elections on November 4<sup>th</sup>, 2014. We highly advise you to proceed  
24 forth before this time, if possible.

25 Welcome to Oregon!

26 Regards,

Linda Hammond, Deputy Chief Operating Officer  
Health Authority, Oregon

(Exs. A2 at 2; A2 Affidavit Ex. A at 3.)

27 6. After Siler emailed Ceti the MMDP letter, she and Ceti discussed the letter  
28 several times by phone, as it was "the ace in the hole" that gave Siler a competitive  
29 advantage and needed to be highlighted in the information provided to prospective  
30 investors. (Ex. A2 at 2.) Green Rush completed multiple drafts of a PPM for Siler to  
31 review and comment on. Siler represented on multiple occasions that she had received  
32 and reviewed the drafts. It was Ceti's understanding that Siler was the only person with  
33 the authority to revise and ultimately approve the PPM. (*Id.*) On November 20, 2014,  
34 Siler emailed Ceti, stating:



1 Forwarding you back the draft (which is looking EXCELLENT!!) with  
2 notations in red. Pay specific attention to the section on THCv...you will  
3 get it.:-) Also, will get the estimates as soon as I can! Believe me, I am on  
4 it. I am expecting it today. Will call ya in just a bit too.

5 Tish

6 (Ex. A2 Affidavit Ex. B at 1; emphasis in original.) The email had an attachment titled  
7 “DraftCannacea Botanicals pitch book v6.docx” that contained significant notations in  
8 red, as well as typed comments. (*See Id.* at 2-76.)

9 7. Following the November 20, 2014 email, Siler and Ceti had a detailed phone  
10 conversation relating to the THCv reference in the email, as the information related to a  
11 proprietary strain of marijuana that Siler claimed to have developed that would give her a  
12 competitive advantage in the marijuana industry, so it was important to include  
13 information regarding the strain in the PPM and other materials used to solicit investors.  
14 (Ex. A2 at 2.)

15 8. Green Rush sent Siler a version of the PPM labeled “CannaceaPPM1,” as well  
16 as a version of the PPM dated November 14, 2014. (Ex. A2 at 2; A2 Affidavit. Ex. C; A2  
17 Affidavit. Ex. D.)

18 9. Green Rush sent the PPM to one prospective investor in its network, who was  
19 put in contact with Siler to talk more about the investment and complete investment  
20 transactions. (Ex. A2 at 2.)

21 10. Green Rush did not negotiate or assist with the execution of any investment  
22 transactions, and did not receive, hold, or transmit any investment funds for Siler or  
23 Cannacea. (Ex. A2 at 3.)

24 *The Oregon Health Authority*

25 11. Margaret Flerchinger (formerly Margaret Lut) has been employed with  
26 OHA’s Medical Marijuana Program (OMMP) (formerly the Medical Marijuana  
Dispensary Program, or MMDP) since February 2014. She was the Lead Compliance  
Specialist for the MMDP until October 2015, at which time the MMDP merged with the  
OMMP. Flerchinger is now OMMP’s Operations and Policy Analyst. The OMMP is  
responsible for registering, inspecting, regulating, and overseeing of medical marijuana  
facilities in Oregon. (Ex. A3 at 1.)

12. Flerchinger reviewed page 11 of Cannacea’s PPM, which states, in part:

Ms. Siler’s reputation attracted attention from regulators in Oregon who were looking to improve their cannabis program. Regulators contacted and specifically invited Ms. Siler to Oregon, stating that they would green light up to six of her medical dispensary applications so long as the facilities meet security requirements. This type of pre-approval is unheard of in the industry, and speaks to the stellar reputation Ms. Siler has earned.

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



1 Ms. Siler has formed and operates Cannacea LLC and Cannacea Botanicals  
2 LLC in Oregon. Cannacea LLC is a medical dispensing business that has  
3 already obtained a provisional license, which will become a full license on  
4 or before January 16, 2014. This dispensary is located in a highly desirable  
5 location in the Portland area. Cannacea Botanicals LLC is directed towards  
6 cultivating cannabis under Measure 91 regulations, providing Ms. Siler's  
7 proprietary strains to her Cannacea LLC dispensaries across the state. In  
8 addition to Cannacea's flagship dispensary in Portland, Ms. Siler intends to  
9 open additional dispensaries under both the medical and recreational  
10 regulations as subsidiaries of Cannacea LLC.

11 (Exs. A3 at 1; A3 Affidavit Ex. A at 2.) After reviewing this information, Flerchinger  
12 concluded that the statements contained in the PPM were false because Ms. Siler had  
13 never been invited to Oregon by OHA's MMDP; no applicant is ever given a green light  
14 on additional medical dispensary applications; and the first application was not accepted  
15 until March 3, 2014, making it impossible for a full license to be issued on or before  
16 January 16, 2014. (Ex. A3 at 2.)

17 13. Flerchinger also reviewed the October 16, 2014 MMDP letter purporting to  
18 be from the MMDP. Flerchinger noted that the letter was not on OHA letterhead and that  
19 the purported signer, Linda Hammond, would not have signed such a letter because she  
20 was not involved with the MMDP. In addition, Siler was never told that she would be  
21 "allowed up to six dispensary licenses without measured due process via the OMMP" as  
22 the letter stated. (Ex. A3 at 2.)

23 *The Investors*<sup>4</sup>

24 *a. KI*

25 14. KI learned of Siler and Cannacea through a friend, WB. After personally  
26 meeting with Siler in late 2014, WB conveyed the following statements, made by Siler, to  
KI:

a. That Siler had run a successful business in California and was planning to  
open a marijuana retail facility in Oregon to take advantage of the  
legalization of recreational marijuana;

b. That approximately 800 of Siler's patients in California would move to  
Oregon when she opened up a recreational marijuana retail facility in  
Oregon;

c. That Siler and Cannacea had received six licenses for marijuana  
dispensaries in Oregon, and that no other companies had received licenses  
for recreational marijuana dispensaries at that time; and

<sup>4</sup> The investors and other witnesses are identified by initials only, so as to protect their privacy in  
conformance with the Order to Cease & Desist issued by the Division on July 28, 2016.



1 d. That, due to her reputation, Siler was going to be invited by Oregon  
2 regulators to help develop the regulations relating to the recreational  
3 marijuana industry.

4 (Ex. A4 at 1.)

5 15. Siler's statements led KI to believe that Siler had a competitive advantage in  
6 the Oregon recreational marijuana dispensary market. KI relied on those statements in  
7 making her decision to invest in Cannacea. KI would not have invested with Siler and  
8 Cannacea if she had known Siler's statements were false. Siler provided KI instructions  
9 for wire transferring investment funds to Siler's bank account. On October 7, 2014, KI  
10 wire transferred \$50,000 to the bank account at MBank that Siler had set up for Cannacea  
11 in Oregon, per Siler's wire transfer instructions. (Exs. A1 Affidavit Ex. D at 2; A4 at 1.)

12 16. In exchange for her investment, KI received a three percent ownership  
13 interest in Cannacea Class A shares. To document KI's ownership, Siler sent KI a  
14 Cannacea Membership Certificate dated October 7, 2014. (Exs. A1 Affidavit E at 1; A4  
15 at 1.)

16 17. As an owner, KI was supposed to receive three percent of the profits  
17 generated from the Cannacea business when it began operating in Oregon. KI has never  
18 received any distributions from Siler or Cannacea. In September 2015, KI received a  
19 return of her principal investment in Cannacea after she threatened to sue Respondents  
20 for fraud. (Ex. A4 at 2.)

21 18. KI did not have any role, direct or indirect, in the Cannacea management or  
22 operations and did not have any control over how Siler used her investment funds. KI  
23 relied solely on the efforts and expertise of Siler and other managers of Cannacea to earn  
24 a profit on her investments. KI is not an accredited investor as that term is used by the  
25 Securities and Exchange Commission. Siler did not ask whether KI was an accredited  
26 investor and did not require KI to provide any evidence that she was an accredited  
investor. (Ex. A4 at 2.)

27 *b. BF*

28 19. In late 2014, BF had a phone conversation with Siler, at which time she told  
29 BF about the marijuana retail location she intended to open in Portland under the  
30 Cannacea name. In October 2014, BF traveled to Oregon to meet directly with Siler at  
31 her purported residence. During the phone conversation with Siler, and again during  
32 their in-person meeting in October 2014, Siler made the following representations to BF:

33 a. That the State of Oregon had invited Siler to move from California to  
34 Oregon to open one or more marijuana retail locations;

35 b. That the State of Oregon wanted Siler's marijuana facilities to serve as a  
36 model for the rest of the marijuana industry; and



1 c. That Siler and Cannacea had received six licenses for marijuana  
dispensaries in Oregon.

2 (Ex. A5 at 1.)

3  
4 20. During the October 2014 meeting, Siler also showed BF a copy of the  
5 October 16, 2014 letter purportedly from OHA's MMDP. Siler also provided BF with an  
investment packet, which included a document labeled "CannaceaPPM1," which  
6 included the following statements:

7 a. That Oregon regulators contacted and specifically invited Siler to open  
cannabis dispensaries in Oregon;

8 b. That Oregon regulators stated they would pre-approve or green light up  
to six marijuana dispensary licenses for Siler; and

9 c. That Siler expected Oregon regulators to consult her when developing  
10 regulations related to the recreational marijuana industry in Oregon, and that  
Oregon regulators offered Siler a possible panel position for the Oregon  
11 Liquor Control Commission as related to recreational marijuana regulations.

12 (Ex. A5 at 1-2.)

13 21. In a February 4, 2015 email to BF, Siler noted the following:

14 There are multiple investment types currently:

15 1. Cannacea, [LLC] Class B issuance – dispensary (this is the one I am  
16 sending you the offer for[;]

17 2. Cannacea [LLC] (whole company 1 [ ] million minimum)[;]

18 3. Cannacea Botanicals (whole company – 3 [ ] million minimum)[;]

19 4. Cannacea Incorporated (parent – Class A – 5 [ ] million minimum,  
20 preferably one single investment 10-20 [ ] million)[.]

21 (Ex. A5 Affidavit A at 2.)

22 22. Siler's statements and representations made BF believe that Siler had a  
competitive advantage in the Oregon recreational marijuana dispensary market. BF  
23 relied on Siler's statements in making his decision to invest in Cannacea. BF would not  
have invested with Siler and Cannacea if he had known Siler's statements were not true  
24 and that the MMDP letter was a fake document. (Ex. A5 at 2.)

25 23. On November 24, 2014, Siler sent BF instructions for wire transferring his  
investment funds to her bank account. On November 25, 2014, BF wire transferred  
26 \$50,000 to the bank account at MBank that Siler had set up for Cannacea in Oregon, per





1 Siler's wire transfer instructions. (Exs. A1 Affidavit D at 2; A5 at 2.)

2 24. In exchange for his investment, BF received a two percent ownership interest  
3 in Cannacea Class B shares. To document BF's ownership, Siler sent him a Cannacea  
4 Membership Certificate dated November 26, 2014. As an owner, BF was supposed to  
5 receive two percent of the profits generated from the Cannacea business when it began  
6 operating. BF has never received any distributions from Cannacea or Siler and has not  
7 received a return of his principal investment. (Exs. A1 Affidavit E at 2; A5 at 2.)

8 25. BF did not have any role, direct or indirect, in the Cannacea management or  
9 operations and did not have control over how Siler used BF's investment funds. BF  
10 relied solely on the efforts and expertise of Siler and other managers of Cannacea to earn  
11 a profit on his investment. BF is not an accredited investor as that term is used by the  
12 Securities and Exchange Commission. Siler did not ask BF whether he was an accredited  
13 investor and did not require him to provide any evidence that he was an accredited  
14 investor. (Ex. A5 at 2.)

15 *c. and d. RC and AS*

16 26. On or around February 5, 2015, BF forwarded the investment packet that he  
17 had received from Siler, including the PPM and a power point presentation that included  
18 a copy of the MMDP letter, to two of his acquaintances, RC and AS. (Ex. A5 at 2; see  
19 Ex. A5 Affidavit A.)

20 27. The statements made by Siler in the PPM and the PowerPoint presentation,  
21 including the MMDP letter of October 2014, made RC and AS believe that Siler had a  
22 competitive advantage in the Oregon recreational marijuana dispensary market. RC and  
23 AS relied on those statements in making their decisions to invest in Cannacea. If RC and  
24 AS had known Siler's statements were false and that the MMDP letter was a fake  
25 document, they would not have invested in Cannacea. (Exs. A6 at 2; A7 at 2.)

26 28. Siler, through BF, provided instructions for wire transferring RC's and AS's  
27 investment funds to her bank account. On February 9, 2015, RC transferred \$75,000 and  
28 AS transferred \$50,000 to the bank account at MBank that Siler had set up for Cannacea  
29 in Oregon, per Siler's wire transfer instructions. In exchange for his investment, RC  
30 received a 2.5 percent ownership interest and AS received a 1.6 percent ownership  
31 interest in Cannacea Class B Shares. To document RC's and AS's ownership interests,  
32 Siler sent them each a Cannacea Membership Certificate dated February 10, 2015. (Exs.  
33 A1 Affidavit D at 3 and 4; A1 Affidavit E at 3 and 4; A6 at 2; A7 at 2.)

34 29. As an owner, RC was supposed to receive 2.5 percent and AS was supposed  
35 to receive 1.6 percent of the profits generated from the Cannacea business after it began  
36 operations and was making a profit. Neither RC nor AS has received any distributions  
37 from Cannacea or Siler and neither has received a return of any of their principal  
38 investment. (Exs. A6 at 2; A7 at 2.)

39 30. RC and AS did not have any role, direct or indirect, in the Cannacea  
40 management or operations and did not have any control over how Siler used their



1 investment funds. RC and AS relied solely on the efforts and expertise of Siler and other  
2 managers of Cannacea to earn a profit on their investments. RC and AS are both  
3 accredited investors as that term is used by the Securities and Exchange Commission.  
4 However, prior to their investments, Siler did not ask whether RC or AS was an  
5 accredited investor and did not require either to provide any evidence that they were  
6 accredited investors. (Exs. A6 at 2-3; A7 at 2-3.)

#### 7 *The Division's Investigation*

8 31. In or about September 2015, the Division began an investigation into  
9 Respondents' business activities. Division Financial Enforcement Officer Dorothy Bean  
10 issued a subpoena to Respondents as part of the investigation. (Ex. A1 at 1.)

11 32. As part of the investigation, Bean and Division investigator Dwayne Edsinga  
12 interviewed Siler on October 15, 2015. During the investigation, Bean presented Siler  
13 with a copy of the October 2014 MMDP letter that the Division had received from a  
14 Cannacea investor. Siler stated that she was aware of the existence of the MMDP letter  
15 and that the letter had been provided to more than one or more Cannacea investors prior  
16 to their investment. Siler further acknowledged that the MMDP letter was fraudulent, in  
17 full or in part, and falsely claimed that Green Rush, or an employee or agent of Green  
18 Rush, created or altered the MMDP letter without Siler's knowledge or permission. (Ex.  
19 A1 at 1-2.)

20 33. During Bean's October 15, 2015 interview with Siler, Bean asked Siler about  
21 the statements contained in the PPM dated November 14, 2014, including, but not  
22 limited, to the following:

- 23 a. That Oregon regulators contacted and specifically invited Siler to open  
24 cannabis dispensaries in Oregon;
- 25 b. That Oregon regulators stated they would "pre-approve" or "green light"  
26 up to six medical cannabis dispensary applications for Siler/Cannacea,  
"ensuring [Siler] would sail smoothly through the application process;"
- 27 c. That, given her experience, Siler "Expects that regulators may consult her  
28 when developing regulations under Measure 91 and determining how to  
29 apply similar regulations to the medical cannabis sector;" and
- 30 d. That Oregon regulators offered Cannacea and/or Siler a "possible panel  
31 position for the [Oregon Liquor Control Commission] which would create  
32 the framework for the Oregon recreational use program rollout and  
33 regulations."

34 (Ex. A1 at 2.) Siler did not deny any of the above statements and, at no point during the  
35 Division's investigation, did she claim that any of the above statements were true.  
36 Rather, Siler falsely claimed during the October 15, 2015 interview that she did not know  
what statement were included in the PPM, as Green Rush had created the PPM and she  
did not review the document before it was provided to investors. (*Id.*)



1 34. The Membership Certificates issued by Cannacea to the investors were not  
2 registered in Oregon. (Ex. A1 at 2.)

3 **CONCLUSIONS OF LAW**

4 1. There are no genuine issues as to any material facts and the Division is entitled  
5 to a favorable ruling as a matter of law.

6 2. Respondents sold securities to investors without a license, in violation of ORS  
7 59.165(1).

8 3. Respondents offered and sold unregistered securities to investors, in violation  
9 of ORS 59.055.

10 4. Respondents made untrue statements of material fact in connection with the  
11 sale of securities, in violation of ORS 59.135 (2).

12 5. Respondents engaged in acts which operated as fraud or deceit on persons, in  
13 violation of ORS 59.135(3).

14 6. Respondents made false statements or reports to the Director, in violation of  
15 ORS 59.135(4).

16 7. The Division may order Respondents to cease and desist.

17 8. The Division may deny Respondents the use of exemptions to the securities  
18 registration requirements.

19 9. The Division may assess a civil penalty against Respondents.

20 **OPINION**

21 *1. Standard of Review for Motion for Summary Determination*

22 OAR 137-003-0580 addresses motions for summary determination. It provides,  
23 in relevant part:

24 (6) The administrative law judge shall grant the motion for a summary  
25 determination if:

26 (a) The pleadings, affidavits, supporting documents (including any  
interrogatories and admissions) and the record in the contested case show  
that there is no genuine issue as to any material fact that is relevant to  
resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a  
matter of law.



1 (7) The administrative law judge shall consider all evidence in a manner  
2 most favorable to the non-moving party or non-moving agency.

3 (8) Each party or the agency has the burden of producing evidence on any  
4 issue relevant to the motion as to which that party or the agency would have  
5 the burden of persuasion at the contested case hearing.

6 \* \* \* \* \*

7 (12) If the administrative law judge's ruling on the motion resolves all  
8 issues in the contested case, the administrative law judge shall issue a  
9 proposed order in accordance with OAR 137-003-0645 incorporating that  
10 ruling \* \* \*.

11 The Division moved for summary determination asserting that Respondents  
12 offered and sold unregistered securities to investors; that Respondents sold securities to  
13 investors without a license; that Respondents made untrue statements of material fact in  
14 connection with the sale of securities; that Respondents made false statements or reports  
15 to the Director; that the Division may order Respondent to cease and desist; that the  
16 Division may deny Respondents the use of exemptions to the securities registration  
17 requirements; and that the Division may assess a civil penalty of \$40,000 against  
18 Respondents.

19 ALJ Whitaker reviewed the Division's Motion and its supporting exhibits and  
20 considered the facts of the case in a light most favorable to Respondents, the non-moving  
21 parties. For the reasons discussed in detail below, ALJ Whitaker ruled that the Division  
22 established that there are no genuine issues of material fact that are relevant to resolution  
23 of the legal issues as to which a decision is sought and that the Division is entitled to a  
24 favorable ruling as a matter of law.

25 2. *Selling securities to investors without a license, in violation of ORS 59.165(1)*

26 The Division bears the burden of proving its allegations by a preponderance of the  
evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices  
Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action);  
*Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a  
different standard, the standard of proof in administrative hearings is preponderance of  
the evidence). Proof by a preponderance of the evidence means that the fact finder is  
convinced that the facts asserted are more likely true than false. *Riley Hill General  
Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

Under ORS 59.015(19)(a), the term "security" includes stocks, bonds, notes, and  
numerous other instruments, including "investment contracts." Here, the transactions  
between Siler and the investors involved the sale of membership interests in Cannacea.  
The Oregon Supreme Court has held that membership interests are securities under the  
"investment contract" concept. *Pratt v. Kross*, 276 Or 483, 498 (1976) (holding that  
interests in limited partnerships are per se securities); *see also Computer Concepts v.  
Brandt*, 310 Or 706 (1990).



1 Under *Pratt*, a four-part test is used to determine whether a particular transaction  
2 involves an investment contract. This four-part test, commonly referred to as the  
3 “Howey test,” derives from *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946). In *Howey*,  
4 the investors bought orange groves and, by way of a service contract, entrusted the case  
5 of the groves to the Howey-in-the-Hills-Service Corporation (the Service Company). *Id.*  
6 at 296. The Service Company had “full discretion and authority over the cultivation of  
7 the groves and the harvest and marketing of the crops.” *Id.* Investors relied on the  
8 expertise of the Service Company to make a profit from the sale of the crops. Applying  
9 the *Howey* test to the sale of orange groves, the Supreme Court held that this arrangement  
10 constituted a security, thereby making the transaction subject to the registration,  
11 disclosure, and anti-fraud provisions of the Securities Act of 1933.

12 In *Pratt*, the Court modified the *Howey* test to determine whether a particular  
13 transaction involves an investment contract to require: (1) an investment of money (or  
14 money’s worth); (2) in a common enterprise; (3) with the expectations of a profit; (4) to  
15 be made through the management and control of others. *Pratt*, 276 Or at 498.

16 In Oregon, a common enterprise exists where there is horizontal or vertical  
17 commonality. A horizontal common enterprise exists where there is more than one  
18 investor and the investors’ funds are pooled, and, often, though not required, there is a  
19 pro-rata sharing of profits. See *Black v. Corporation Division*, 54 Or App 432, 441-442  
20 (1981). Vertical common enterprise requires that an investor be dependent on a  
21 promoter’s expertise to garner a profit. *Computer Concepts*, 310 Or at 715.

22 In the present matter, the Cannacea shares meet the *Howey* test. The investors  
23 invested a total of \$225,000 with Respondents, and the money was deposited via wire  
24 transfer into the bank account Siler had set up for Cannacea in Oregon. The funds were  
25 pooled or comingled for use by Respondents. Any profits that were generated by  
26 Cannacea were to be shared on a pro rata basis in proportion to the investors’ equity share  
in Cannacea. As such, horizontal commonality existed. Moreover, the investors  
depended on Siler’s expertise to generate a profit. As such, vertical commonality also  
existed. Finally, the investors expected to receive distributions (*i.e.* profit) in accordance  
with their equity share in Cannacea. All of the investors were passive investors because  
they had no direct or indirect role in the Cannacea management or operations and had no  
control<sup>5</sup> over how Respondents used their investment funds.

For these reasons, the Cannacea shares were securities.

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<sup>5</sup> “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. ORS 59.015(2).





1           ORS 59.165(1) provides:

2                   It is unlawful for any person to transact business in this state as a broker-  
3                   dealer or salesperson unless the person is licensed under the Oregon  
4                   Securities Law.

5           A “salesperson” means a person, other than a broker-dealer,<sup>6</sup> who represents or  
6           purports to represent a broker-dealer, issuer or owner of securities in effecting or  
7           attempting to effect in any manner transactions in securities. ORS 59.015(18)(a). The  
8           evidence establishes that Respondents were never licensed with the Division to sell<sup>7</sup>  
9           securities. Respondents’ sales of the Cannacea shares to the investors were in violation  
10           of ORS 59.165(1).

11           3. *Offering and selling unregistered securities to investors, in violation of ORS*  
12           59.055

13           ORS 59.055 provides:

14                   It is unlawful for any person to offer or sell any security in this state, unless:

15                   (1) The security is registered and the offer or sale is not in violation of any  
16                   rule or order of the Director of the Department of Consumer and Business  
17                   Services or any condition, limitation or restriction imposed by the director  
18                   upon such registration;

19                   (2) The security is exempt under ORS 59.025 or the sale is exempt under  
20                   ORS 59.035; or

21                   (3) The security is a federal covered security for which a notice has been  
22                   filed and fees have been paid under ORS 59.049.

23           As previously discussed, the Cannacea shares were securities. The evidence  
24           establishes that Respondents did not register Cannacea’s securities before offering or  
25           selling them in Oregon, in violation of ORS 59.055. While two of the investors, RC and  
26           AS, were accredited investors, Respondents cannot avail themselves of the exemption in  
27           ORS 59.035(5) because that exemption is only available where a transaction is “not part  
28           of an attempt to evade fraudulently any provision of the Oregon Securities Law.” As  
29           discussed below, the transaction did not meet this exemption.

30           <sup>6</sup> A “broker-dealer” means a person who engages, all of part of the time, in effective transactions in  
31           securities for the account of others or for the person’s own account. ORS 59.015(1).

32           <sup>7</sup> “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of, a security or interest  
33           in a security for value. Any security given or delivered with, or as a bonus on account of, a purchase of  
34           securities or any other thing shall constitute a part of the subject of the purchase and shall have been offered  
35           and sold for value. A gift of assessable stock by or for any issuer or promoter shall constitute a sale. ORS  
36           59.015(17)(a).

1 4, 5, and 6. Making untrue statements of material fact in connection with the sale  
2 of securities, engaging in fraud or deceit on person, making false statements or reports to  
the Director

3 ORS 59.135 provides, in part:

4 It is unlawful for any person, directly or indirectly, in connection with the  
5 purchase or sale of any security or the conduct of a securities business or for  
6 any person who receives any consideration from another person primarily  
for advising the other person as to the value of securities or their purchase or  
sale, whether through the issuance of analyses or reports or otherwise:

7 (1) To employ any device, scheme or artifice to defraud;

8 (2) To make any untrue statement of a material fact or to omit to state a  
9 material fact necessary in order to make the statements made, in the light of  
the circumstances under which they are made, not misleading;

10 (3) To engage in any act, practice or course of business which operates or  
11 would operate as a fraud or deceit upon any person; or

12 (4) To make or file, or cause to be made or filed, to or with the Director of  
13 the Department of Consumer and Business Services any statement, report or  
document which is known to be false in any material respect or matter.

14 As cited above, ORS 59.135(2) makes it unlawful for any person to make any  
15 untrue statement of a material fact, directly or indirectly, in connection with the sale of  
16 any security. A fact is material if there is a substantial likelihood that a reasonable person  
would consider it important in deciding whether or not to invest. *See Everts v. Hotmann*,  
64 Or App 145, 151 (1983). What constitutes the position of a “reasonable person” is a  
17 legal inference drawn from facts. *Id.*

18 Respondents made the following statements of fact, verbally and through the PPM  
19 and other documents, in connection with the sale of the Cannacea shares to the Investors:

20 a. That Oregon regulators contacted and specifically invited Siler to open  
cannabis dispensaries in Oregon;

21 b. That Oregon regulators stated they would “pre-approve” or “green light”  
22 up to six medical cannabis dispensary applications for Siler/Cannacea,  
“ensuring [Siler] would sail smoothly through the application process;”

23 c. That, given her experience, Siler “expects that regulators may consult her  
24 when developing regulations under Measure 91 and determining how to  
25 apply similar regulations to the medical cannabis sector;” and

26 d. That Oregon regulators offered Cannacea and/or Siler a “possible panel  
position for the [Oregon Liquor Control Commission] which would create

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Labor and Industries Building  
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Telephone: (503) 378-4387



1 the framework for the Oregon recreational use program rollout and  
2 regulations.”

3 (Exs. A1 at 2; A5 at 1-2.)

4 The evidence establishes that the above statements were untrue. Flerchinger, a  
5 former lead compliance specialist for the MMDP, confirmed that the MMDP letter was  
6 fraudulent. Siler never denied the falsity of the statements to the Division during the  
7 investigation; rather, she falsely claimed that she did not know what statements were  
8 included in the PPM because she had not reviewed it when in fact Siler had reviewed the  
9 PPM and provided her own revisions to the document to Green Rush.

10 The above evidence establishes that Respondents made false statements in an  
11 attempt to misrepresent to investors that Respondents had a competitive advantage in the  
12 Oregon recreational marijuana dispensary market, thereby making Cannacea shares a  
13 desirable investment opportunity. The investors relied on those false statements in  
14 deciding to invest with Respondents. For these reasons, the misrepresentations were  
15 material.

16 ORS 59.135(3) makes it unlawful for any person to engage in any act, practice, or  
17 course of business, directly or indirectly, in connection with the sale of any security,  
18 which operates or would operate as a fraud or deceit on any person. Respondents created  
19 and disseminated a fake MMDP letter and used that letter to entice the investors to invest  
20 in Cannacea shares. This constituted “an act which operates as a fraud or deceit upon”  
21 such investors, in violation of ORS 59.135(3).

22 ORS 59.135(4) makes it unlawful for any person, directly or indirectly, in  
23 connection with the sale of any security, to make or file, or cause to be made or filed, to  
24 or with the Director any statement, report, or document which is known to be false in any  
25 material respect or matter. Siler, individually or on behalf of Cannacea, provided  
26 multiple materially false statements and reports regarding the creation of the MMDP  
letter to the Director in the course of the Division’s investigation. The evidence  
establishes that it was Siler who emailed the MMDP letter to Green Rush for use in the  
PPM. Moreover, Siler asserted to the Division that she did not receive, review, or revise  
a copy of the PPM and was not aware of the misrepresentations contained therein.  
However, the evidence establishes that Siler did in fact receive at least one draft of the  
PPM, which she edited and revised. As such, Siler made a false statement to the Division  
when she said she did not receive, review, or revise a copy of the PPM. As such,  
Respondents violated ORS 59.135(4).

7. *Cease and desist*

ORS 59.245 provides, in part:

The Director of the Department of Consumer and Business Services:

\* \* \* \* \*





1 (4) If the director has reason to believe that any person has engaged, is  
2 engaging or is about to engage in any violation of the Oregon Securities  
3 Law, may issue an order, subject to ORS 59.295, directed to the person to  
4 cease and desist from the violation or threatened violation.

5 As discussed above, Respondents engaged in violations of the Oregon Securities  
6 Law. Under ORS 59.245(4), the Director may issue an order for Respondents to cease  
7 and desist from the violation or threatened violation. Respondents are ordered to cease  
8 and desist from offering and selling securities that are not registered in the State of  
9 Oregon; from transacting business in Oregon as a securities salesperson without a license;  
10 from offering and selling securities in violation of the anti-fraud provisions of ORS  
11 59.135; and from violating any provision of the Oregon Securities Law, including ORS  
12 Chapter 59 and Oregon Administrative Rules Chapter 441.

13 *8. Denying Respondents the use of exemptions to the securities registration*  
14 *requirements*

15 ORS 59.045 provides:

16 (1) The Director of the Department of Consumer and Business Services may  
17 by rule or order, as to any security or any type of security transaction:

18 (a) Deny, withdraw or condition the exemptions allowed by ORS 59.025  
19 and 59.035 if, in the director's opinion, the further sale of the security in this  
20 state would work a fraud or imposition upon the purchaser.

21 (b) Waive the conditions of ORS 59.035 (3)(b) and (12)(a)(B).

22 (c) Provide which exemptions may or may not be used in connection with  
23 other exemptions or provide procedures for determining which offerings are  
24 or are not integrated with other offerings within the same or other  
25 exemptions.

26 (2) The director may by order withdraw, condition or deny the use of any  
exemption by a person if the director has reason to believe that the person  
has engaged in or is about to engage in an act or practice constituting a  
violation of the Oregon Securities Law or that the use of any exemption by  
that person would work a fraud or imposition on purchasers.

(3) No person shall be liable under the Oregon Securities Law by reason of  
the withdrawal of an exemption under this section if that person sustains the  
burden of proof that that person did not know, and in the exercise of  
reasonable care could not have known of the withdrawal.

Under ORS 59.045, the Director may, by order, deny any person the use of any  
exemptions generally available under the Oregon Securities Law if, in the Director's  
opinion, the use of exemptions in the sale of securities in this state would work a fraud or  
imposition on the purchaser(s). The evidence demonstrates that Respondents' actions



1 constituted securities fraud. Allowing Respondents to rely on any securities exemption  
2 with respect to the sale of Cannacea shares to the investors, or with respect to any future  
3 sales of securities, would work a fraud or imposition on the purchaser(s). As such, under  
4 ORS 59.045 the Division may deny Respondents the use of the securities exemptions.

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9. *Assessing a civil penalty against Respondents*

ORS 59.995 provides:

(1) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than \$20,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(2) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed \$100,000.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) This section does not apply to a failure to file a notice and pay a fee pursuant to ORS 59.049 (1), (2) or (3), nor to a failure to file a notice and pay a fee pursuant to ORS 59.165 (7), nor to a failure to pay a fee pursuant to ORS 59.175 (8), nor to a violation of any rule adopted by the director under ORS 59.049 (1), (2) or (3), 59.165 (7) or 59.175 (8).

Under ORS 59.995, the Division is authorized to assess a civil penalty of up to \$20,000 per violation, with a maximum civil penalty of \$100,000 per violation. Here, the Division proposes \$40,000<sup>8</sup> in civil penalties, which is well within its authority under ORS 59.995. The evidence establishes that Respondents engaged in multiple violations of ORS 59.055, ORS 59.165(1), and ORS 59.135(2), (3), and (4). As such, a civil penalty of \$40,000 is appropriate, and is within the Division's authority.

**ORDERS**

Based on the foregoing, the Director issues the following ORDERS:

1. Respondents Cannacea, LLC and Tisha Siler are ordered to CEASE AND DESIST from:

<sup>8</sup> \$5,000 for violation of ORS 59.055;  
\$5,000 for violation of ORS 59.165;  
\$10,000 for violation of ORS 59.135(2);  
\$10,000 for violation of ORS 59.135(3); and  
\$10,000 for violation of ORS 59.135(4).



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- a. Offering and selling securities that are not registered in the State of Oregon;
- b. Transacting business in Oregon as a securities salesperson without a license;
- c. Offering and selling securities in violation of the anti-fraud provisions of ORS 59.135; and
- d. Violating any provision of the Oregon Securities Law, including ORS Chapter 59 and Oregon Administrative Rules Chapter 441.

2. Respondents, and any successor business entity or any business entity owned, operated or controlled by Respondents, are DENIED the use of any exemptions that would otherwise be available to them under ORS 59.025 or ORS 59.035, concerning persons, securities, or transactions exempt from the registration requirements of the Oregon Securities Law.

3. Respondents are hereby assessed a civil penalty in the amount of \$40,000 for violations of ORS 59.055, ORS 59.165, and ORS 59.135(2), (3), and (4).

4. In accordance with ORS 183.745(2), the civil penalty assessed herein shall become due and payable 10 days after the order becomes final by operation of law or on appeal.

AUTHORITY OF THE DIRECTOR TO SEEK OTHER  
REMEDIES UNDER OREGON LAW

This is a “Final Order” under ORS 183.310(6)(b). Subject to that provision, the entry of this Order does not limit other remedies that are available to the Director under Oregon law.

IT IS SO ORDERED this 21st day of September, 2017.

JEAN STRAIGHT, Acting Director  
Department of Consumer and Business Services

/s/ David Tatman  
David C. Tatman, Chief of Enforcement  
Division of Financial Regulation

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



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NOTICE OF RIGHT TO JUDICIAL REVIEW

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is in accordance with ORS 183.482(1) to the Oregon Court of Appeals.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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