

September 26, 2024

Ascend Mass, LLC
272 Friend Street
Boston, Massachusetts, 02114
MR282077

Case No. ENF-2023-0000001349

FINAL ORDER AND STIPULATED AGREEMENT

This Final Order and Stipulated Agreement (herein, "Order") between the Commonwealth of Massachusetts Cannabis Control Commission (the "Commission") and Ascend Mass, LLC ("Respondent") (together, the "Parties") is offered for the purposes of settlement and in lieu of further administrative action. The Commission finds that resolution of this matter serves the purposes of G.L. c. 94G, 935 CMR 500.360, and 935 CMR 500.500 because Respondent has accepted responsibility for the violations set forth in this Order, and further, where Respondent agrees to enhanced Commission oversight for a probationary period.

Accordingly, the Commission and Respondent stipulate to the following facts of record, applicable law, findings, and remedies:

Legislative, Statutory, and Regulatory Authority

1. The Commission has jurisdiction over the conduct and operations of licensed Marijuana Establishments and the subject matter herein pursuant to the provisions of the Commonwealth's marijuana laws, including G.L. c. 94G and 935 CMR 500.000 *et seq.*;
2. The Commission possesses all powers necessary or convenient to carry out and effectuate its purposes including conducting investigations to ensure compliance with Commission laws, imposing fines, or otherwise restricting a license for violations of G.L. c. 94G or any regulation promulgated by the Commission;
3. In accordance with its statutory mandate, the Commission has adopted regulations for the administration, clarification, and enforcement of laws regulating and licensing Marijuana Establishments which include:
 - a. Requirements for maintaining real time inventory. *See* 935 CMR 500.105(8)(b);
 - b. Requirements for ensuring that the record of each inventory includes, at a minimum, the date of the inventory, a summary of the inventory findings, and the names, signatures, and titles of the individuals who conducted the inventory. *See* 935 CMR 500.105(8)(d);
 - c. Requirements for ensuring that any distribution and acquisition of Marijuana and Marijuana Products is tracked in the Commonwealth seed-to-sale System of Record (Metre) in a form and manner determined by the Commission. *See* G.L. c. 94G, § 4(a½)(xiii); *see also* 935 CMR 500.105(8)(g);



- d. Requirements for having and following written Standard Operating Procedures. *See* 935 CMR 500.105(1).
4. Pursuant to its authority under G.L. c. 94G, § 4, the Commission may issue a Notice of Fines to show cause as to why a fine or other financial penalty against a Licensee should not be imposed for any acts or omissions determined to be in violation of the state Marijuana laws. *See* 935 CMR 500.360;
5. Respondent was subject to an investigation by Commission investigators (“Investigators”). From that investigation, the Commission alleges violations of Commission regulations, 935 CMR 500.000, relative to Respondent’s retail operations at its facility in Boston, Massachusetts (the “Boston Store”);
6. On March 21, 2024, the Commission issued a Letter of Enforcement Intent against Respondent;
7. On April 1, 2024, Respondent submitted a request for Informal Dispute Resolution, which stayed enforcement proceedings relative to the Notice of Fines;
8. On June 25, 2024 and July 2, 2024, Respondent engaged in Informal Dispute Resolution, the result of which is memorialized herein.

Facts of Record

9. **Respondent is a Marijuana Retailer located at 272 Friend Street, Boston, Massachusetts 02114, under License no. MR282077;**
10. Respondent applied for licensure on December 6, 2018. The Commission approved Respondent’s provisional retail license on January 9, 2020, and issued Respondent its final license on March 11, 2021. Respondent commenced retail operations on April 21, 2021;
11. Metrc is the Commission-designated Seed-to-sale System of Record that licensees must use to electronically track everything that happens to each Marijuana plant, from seed to cultivation, including the activities of all registered Marijuana Establishment Agents relative to the cultivation, manufacture, transport, sale and/or delivery of all Marijuana and Marijuana Products under a licensee’s custody and control;
12. On August 16, 2022, Bret Bender (“Bender”), Regional Vice President of Compliance for Respondent, emailed Commission Investigators to notify the Commission of inventory discrepancies discovered at the Boston Store following an internal audit;
13. On August 26, 2022, Bender sent Investigators a follow-up incident report detailing the inventory discrepancies, including several inventory-related mistakes and failure to follow Respondent’s Inventory and Recordkeeping SOP (the “Inventory SOP”);



14. Respondent's Inventory SOP stated, "[t]he inventory manager agent shall use Metrc to conduct and document an audit of the daily inventory, monthly inventory, and a comprehensive audit at least once every year after the date of the previous comprehensive inventory check";
15. Respondent's Inventory SOP further stated that: "pursuant to 935 CMR 500.110(9)(a)(1), Ascend shall notify the Commission and the appropriate law enforcement authorities of any breach of security or other reportable incident... immediately, and in no instance more than 24 hours following the discovery of the breach or incident. This includes notification upon the discovery of any inventory discrepancies";
16. The incident report described several compliance issues that were discovered following Respondent's inventory audit. Respondent staff did not conduct monthly inventory audits since "at least May 2022" and audits that were performed were done using its Point of Sale (POS) system, LeafLogix (now known as Dutchie), instead of Metrc. As a result, staff failed to identify "synching [sic] errors" between LeafLogix and Metrc during operations. Further, Respondent staff did not investigate the inventory discrepancies to resolve them within 24 hours and did not notify the Commission of the discrepancies. Respondent staff also misrepresented the location of inventory in Metrc by placing inventory items into its virtual quarantine room when the physical products could not be located;
17. The discrepancies emerged because Marijuana and Marijuana Products were set aside for **pre-orders and were marked as sold. Sales staff then used the set aside pre-orders to fulfil** orders from walk-in customers. This practice resulted in sales staff refilling the pre-orders, sometimes from an entirely new product batch. This caused pre-ordered items to be recorded as sold, yet appear as physically present in the store;
18. Respondent staff also placed vendor sample products into a virtual quarantine room and dispensed these products to its employees;
19. On August 26, 2022, Respondent proffered an initial Plan of Correction to address inventory noncompliance, including instituting monthly inventory audit procedures effective August 26, 2022;
20. On September 1, 2022, Bender sent Investigators an update on Respondent's inventory reconciliation effort. Respondent had determined that its inventory discrepancies were due to errors in the receiving process, staff neglecting to virtually destroy products marked for waste, and staff improperly documenting product returns. Bender provided Investigators with the results of Respondent's internal assessment, estimating four hundred sixty-three (463) physical packages that Respondent could not reconcile with its virtual, Metrc inventory;



21. On October 27, 2022, Investigators conducted an unannounced inspection at the Boston store where they observed substantial Metrc deficiencies. Marijuana and Marijuana Products tracked in Respondent's virtual rooms—identified as "Batch Swap" and "Vault"—in Metrc could not be physically found onsite at the Boston store;
22. Furthermore, some Metrc packages reflected a negative inventory of varying amounts. Virtual inventory sales units were still not being transferred from LeafLogix to Metrc, which continued to cause inventory negative inventory counts;
23. Many product tags were not identified by the Metrc Radio Frequency Identification ("RFID") scanners due to LeafLogix failing to sync with Metrc. Some product batches had zero physical units onsite but did not reflect zero virtual units in Metrc. As a result, Investigators could not find Metrc tags onsite for product batches that appeared as active (*i.e.*, physically present) in Metrc;
24. Commission Investigators found that audits were still being conducted using LeafLogix inventory reports rather than Metrc reports, which led to the inventory records in Metrc remaining inaccurate;
25. Commission Investigators witnessed Respondent staff conducting transactions using one Metrc tag ID for all similar product type purchases. For example, when selling a pre-roll, Respondent staff would scan the same Metrc tag ID for that pre-roll sale regardless of the form of product, or product batch of origin rather than scanning the unique Metrc tag ID affiliated with each individual pre-roll product item. This led to erroneous unit counts for **virtual inventory in Metrc and LeafLogix**;
26. Investigators also observed violations of Respondent's SOPs on ID Verification and Limits on Sales (the "Verification SOP"), Storage and Waste (the "Waste SOP"), and Retail Security;
27. Respondent's Waste SOP provides that "Pursuant to 935 CMR 500.105(12)(d), no fewer than two Respondent agents must witness and document how the solid waste or organic material containing marijuana is handled on-site, including, but not limited to, the grinding up, mixing, storage, and removal from the establishment in accordance with 935 CMR 500.105(12). When marijuana waste products are disposed or handled, Respondent shall create and maintain a record of the date, the type and quantity disposed or handled, the manner of disposal or other handling, the location of disposal or other handling, and the names of the two Respondent agents present during the disposal or other handling, with their signatures... Where waste and finished products that cannot be sold may be vulnerable, marijuana that is outdated, damaged, deteriorated, mislabeled, or contaminated, or whose containers or packaging have been opened or breached, is stored in a separate area, until such products are destroyed";



28. At the inspection, Investigators found that not all Marijuana and Marijuana Products in the vault were being tracked and accounted for in Metrc, and wasted products were not being documented on waste logs or in Metrc;
29. Respondent's Verification SOP in effect on October 27, 2022, stated: "Agents shall conduct a visual inspection and utilize the IDVISOR V2 ID Scanner to verify the authenticity of a consumer's government-issued identification. Access to the premises shall not be granted to anyone who is unable to produce valid proof of identification... At the security area, an agent shall complete a visitor log. This record shall include the date, visitor's name, company, reason for visit, visitor badge number issued, time in and out, and agent initials... Authorized Visitors shall be issued a Visitor badge and escorted by an authorized Ascend agent at all times";
30. Respondent's Retail Security SOP in effect on October 27, 2022, stated that agents would verify customer IDs by visual inspection and ID scanner before granting access to the premises. The Retail Security SOP also provided that "[a]uthorized visitors (e.g., outside vendors, contractors, and visitors pursuant to 935 CMR 500.110(4)(e)) shall be positively identified outside and then directed to the security kiosk area. At the security area, an agent shall complete a visitor log";
31. At the inspection, Investigators found that customers' IDs were not checked until the customer reached the sales floor and visitors were allowed to enter the premises without being checked in to the visitor log;
32. **Respondent's Retail Security SOP further provided Respondent shall use the YourSix Security Solutions Platform to monitor and control all access points. "In addition to the identification badges worn by all agents, proximity card readers shall secure all Limited Access Areas and proximity access cards shall grant access to specific zoned areas according to employee job function."** The Retail Security SOP further stated: "During business hours and at other times as needed, a security agent shall be stationed outside the door of the store and shall determine the age and purpose of any individual seeking entry. Immediately upon entry to the building, all individuals (visitors, employees, vendors, etc.) shall proceed to the check-in kiosk area for identification verification and visitor badge issuance if applicable." The Retail Security SOP also required that "[s]ecurity Agents assigned outside shall manage the line for consumers and control all access into the facility";
33. At the inspection, Investigators found that the door leading from the security vestibule to the sales floor was unlocked. Additionally, the RFID readers that automatically lock the doors leading to the Limited Access Areas behind the registers, were inoperable;
34. No security personnel were present onsite and there was no "check in" area in the security vestibule. Further, Investigators observed outside vendors were not asked to sign into Respondent's visitor log prior to entering the facility to deliver Marijuana products and complete a cash courier pick-up;



35. On November 7, 2022, the Commission's Investigations and Enforcement department issued a Notice of Deficiency (NOD) to Respondent and cited 22 deficiencies, including Respondent's failure to follow its own SOPs and failure to maintain real-time inventory;
36. Respondent submitted an amended Plan of Correction on December 7, 2022, identifying two-hundred and two (202) unaccounted for Marijuana and/or Marijuana Products physically located at the facility. Additionally, another six-hundred eighty-nine (689) Marijuana and/or Marijuana Products that should have been present in the facility according to Metrc could not be located. This ultimately required a manual adjustment in Metrc to 0 to reconcile.

Applicable Law

36. The Commission, through its Acting Executive Director, and supported by facts and evidence, has determined that the following violations are substantially supported by the Facts of Record and the Commission's Findings:
 - a. Respondent failed to track the distribution of Marijuana and Marijuana Products in Metrc in violation of 935 CMR 500.105(8)(g);
 - b. Respondent failed to follow its Standard Operating Procedures in violation of 935 CMR 500.105(1)(a)(d) & (g);
 - c. Respondent's failure to conduct inventory audits, failure to maintain real time inventory, and failure to adhere to its SOPs amount to incompetent or negligent **operations in violation of 935 CMR 500.450(7)(f).**

Stipulated Findings

37. The Commission, through its Acting Executive Director, and Respondent have come to mutual agreement and understanding, and jointly propose to the Commission a resolution of the alleged violations in lieu of proceeding with an administrative hearing to determine the merits of such allegations;
38. The terms and conditions of this Order are expressly subject to ratification by the full Commission. Pursuant to G.L. c. 10, § 76, three Commissioners shall constitute a quorum and the affirmative vote of three Commissioners shall be required for ratification of this Order;
39. Respondent agrees to the stipulated findings set forth in Paragraphs 40 through 42, inclusive of all subparagraphs;
40. Respondent failed to maintain real-time inventory as specified by the Commission and in 935 CMR 500.105(8)(c). Respondent accepts responsibility for the following acts supported by the Facts of Record:



- a. Respondent staff failed to properly track and account for products pre-ordered by customers and products sold to walk-in customers;
- b. Respondent staff failed to complete monthly and yearly inventory audits;
- c. Respondent staff virtually moved Marijuana and Marijuana Products to quarantine in LeafLogix when the products could not be physically found in the store and performed inaccurate inventory adjustments;
- d. Marijuana and Marijuana Products tracked in Respondent’s virtual rooms—identified as “Batch Swap” and “Vault”—in Metrc could not be physically found onsite at the Boston store. Furthermore, some Metrc packages reflected a negative inventory of varying amounts;
- e. Respondent could not account for at least two hundred and two (202) Marijuana and/or Marijuana Products within the facility, with another six-hundred eighty-nine (689) Marijuana and/or Marijuana Products that should have been in the facility requiring an adjustment to zero in Metrc because the physical inventory could not be found on the Premises;
- f. Respondent acknowledges that these facts constitute a violation of 935 CMR 500.105(8)(c).

41. Respondent failed to have and follow a set of detailed written operating procedures in accordance with 935 CMR 500.105(1)(a)(d) and (g):

- a. On October 27, 2022, Respondent did not follow its Verification and Retail Security SOPs when it allowed customers to enter the premises without checking proof of identification and when it allowed external vendors to enter the facility **without requiring them to check into the Visitor log and obtain a Visitor badge;**
- b. On October 27, 2022, contrary to its Retail Security SOP, there were no security agents stationed outside of Respondent’s Boston store to control access into the facility, nor were there any security agents in the entrance vestibule to check customers in. In addition, the door to the Limited Access Areas had inoperable RFID readers which resulted in the doors being unlocked;
- c. On October 27, 2022, Respondent failed to follow its Waste SOP when it could not produce waste records to Commission Investigators;
- d. Respondent failed to adhere to its Inventory SOPs as Respondent staff did not notify the Commission within 24 hours regarding their failure to reconcile the inventory of pre-ordered bags. Further, Respondent staff misrepresented the location of inventory in Metrc by placing inventory items into its virtual quarantine room even when the physical products could not be located;
- e. Respondent did not follow its Inventory SOP when it failed to track all Marijuana and Marijuana Products using Metrc during a period from at least June 1, 2022, until August 26, 2022, and again on October 27, 2022, and failed to conduct daily or monthly inventory;
- f. Respondent staff failed to conduct audits using Metrc and instead used its Point-of-Sale system, LeafLogix, resulting in Respondent’s failure to identify synching errors between Metrc and Leaflogix;



- g. From June 1, 2022, to August 26, 2022, and again on October 27, 2022, Respondent failed to follow its SOPs in violation of 935 CMR 500.105(1)(a), (d), and (g).
42. Respondent's conduct constitutes incompetent operations in violation of 935 CMR 500.450(7)(f):
- a. Respondent exhibited a systemic failure to follow its SOPs, in particular related to security and inventory processes, which endangered public health, safety, and welfare;
 - b. The Respondent's ongoing challenges with inventory tracking and the lack of regular inventory audits led to several marijuana products being distributed without comprehensive seed-to-sale tracking;
 - c. Respondent's failure to conduct inventory audits, failure to maintain real time inventory, and failure to adhere to its SOPs amount to incompetent or negligent operations in violation of 935 CMR 500.450(7)(f).

Stipulated Remedy

43. In lieu of proceeding with an administrative hearing and subsequent proceedings, Respondent further agrees to the stipulated remedies and terms set forth in Paragraphs 44-48, inclusive of all subparagraphs;
44. Respondent agrees to pay a monetary fine in the amount of eighty-five thousand dollars **(\$85,000.00), made payable by check or money order to the Cannabis Control Commission Marijuana Regulation Fund;**
45. Payments shall be postmarked thirty (30) calendar days from the date this Order is ratified by Commission vote and be mailed to the following address:
- a. Via USPS:
Cannabis Control Commission
PO Box 412144
Boston, MA 02241-2144
 - b. Via Courier/Overnight:
Bank of America Lockbox Services
Cannabis Control Commission 412144
MA5-527-02-07
2 Morrissey Boulevard
Dorchester, MA 02125
46. Respondent shall submit to a twelve-month probationary period (the "probationary period") for license no. MR282742 which will take effect on the date this Order is ratified:



- a. Any substantial noncompliance with any Commission laws by Respondent during the probationary period may constitute full and adequate grounds for license suspension or revocation;
 - b. Prior to enforcing this provision, the department agrees to send Respondent a Letter of Warning giving notice of the alleged substantial noncompliance and providing an opportunity for Respondent to correct the deficiencies.
47. During the probationary period, Respondent shall identify an audit manager who will serve as primary point-of-contact and shall conduct a twice monthly audit of all the Marijuana and Marijuana Products at its Boston facility, for a total of twenty-four (24) inventory audits;
- a. The first audit report shall be due to the department on the 15th of each month, and the second audit report shall be due on the last day of each month;
 - b. The audit reports shall identify all inventory discrepancies in a clear and concise manner describing the nature of the discrepancy and any steps taken to resolve it;
 - c. The audit reports shall be generated in a form or manner acceptable to the lead investigator;
 - d. Respondent must continue to comply with regulatory requirements under 935 CMR 500.105(8).
48. Respondent shall complete the following continuing education before the end of the probationary period and must provide a certificate or other documentation demonstrating **completion of each course to the department within five days of completion unless such training has been completed within the past 20 days of the ratification of this agreement, in which case certification shall be provided to the department:**
- a. Respondent shall develop and conduct SOP training for its employees at its Boston location on: (1) inventory, (2) recordkeeping, and (3) reporting obligations to the Commission. Respondent shall provide a curriculum to the department for approval prior to engaging in the training;
 - b. All Respondent's employees, including Management, shall complete the Basic Core Curriculum for Responsible Vendor Training;
 - c. All Respondent's staff, including Management staff, shall take and complete the following courses: (1) the Massachusetts Metrc New Business Training; (2) the Metrc Learn training courses for Sales Journey Levels 1, 2, and 3; and (3) the Massachusetts Advanced Retailer Webinar;
 - d. Respondent's failure to comply with the stipulations under Paragraphs 43–48, inclusive of all subparagraphs, during the probationary period shall result in a written warning. If after the receipt of the written warning, Respondent fails to correct the deficiencies within the timeframe specified in the written warning, it shall result in an automatic penalty assessment of two thousand five hundred dollars (\$2,500.00) per defaulted obligation. Respondent waives its rights





pursuant to Commission regulations or Massachusetts law to contest any fines imposed pursuant to this paragraph, other than as provided in Paragraph 49.

49. Upon receiving a demand for payment from the Commission in accordance with Paragraph 48, inclusive of all subparagraphs, Respondent shall provide such payment by check or money order payable to the Cannabis Control Commission Marijuana Regulation Fund within 30 days. Payments for penalties assessed against Respondent pursuant to this Paragraph shall be mailed to the following address, as applicable:

Via USPS:

Cannabis Control Commission
PO Box 412144
Boston, MA 02241-2144

Via Courier/Overnight:

Bank of America Lockbox Services
Cannabis Control Commission 412144
MA5-527-02-07
2 Morrissey Boulevard
Dorchester, MA 02125

50. Upon receiving a demand for payment from the Commission, Respondent shall provide such payment by check or money order payable to the Cannabis Control Commission Marijuana Regulation Fund within 30 days. Payment for penalties assessed against the **Respondent under this clause shall be mailed to one of the addresses listed in Paragraph 49;**
51. This Order may be admissible as evidence in any future hearing before the Commission or used in connection with any future licensure or administrative actions by the Commission;
52. Any issues relating to the underlying complaint and investigation that formed the basis for this Order against Respondent, and any defenses that Respondent may have to such complaint or investigation, shall not be at issue in a proceeding against Respondent for failing to comply with the terms of this Order;
53. Respondent agrees that the Commission may consider the Order and the facts and circumstances described therein in connection with review of an application for licensure, renewal of licensure, or suitability review;
54. Respondent acknowledges advisement of hearing rights and process of the proceedings and wishes to resolve all issues which were the subject of the investigation or in any way related to the investigation by entering into this Order;





55. If approved by the Commission and upon execution of all parties, this Order shall have the same force and effect as an order entered after formal hearing pursuant to 935 CMR 500.500(12), except that it may not be appealed. Failure to comply with the terms of this Order, including but not limited to failure to make a timely payment in accordance with Paragraph 50, may constitute the basis for further administrative action against Respondent;
56. Respondent acknowledges that the Commission advised Respondent of its opportunity to consult with an attorney of their choosing and Respondent represents that they have had an opportunity to do so prior to signing the Order. Respondent acknowledges that they have been given a reasonable period of time in which to consider the terms of this Order before signing it. Respondent acknowledges and confirms that they have entered into this Order voluntarily and of their own free will, without duress or coercion, and that they are competent to enter into this Order. Respondent acknowledges that they have carefully read and fully understand the meaning and intent of this Order;
57. Respondent further understands and knowingly and voluntarily waives the following rights:
 - a. The right to proceed with the adjudicatory proceeding;
 - b. The right to cross-examine witnesses, subpoena witnesses, present evidence and testify on Respondent's own behalf at that hearing;
 - c. The right to appeal this Order.
- 58. Respondent consents to the terms and conditions described herein and agrees to waive its right to judicial review of this Order pursuant to G.L. c. 30A, § 14;**
59. Upon execution by all parties, this Order shall represent the entire and final agreement of the parties. In the event that any provision of this Order is deemed unenforceable by a court of competent jurisdiction, such provision shall be severed, and the remainder of the Order shall be given full force and effect;
60. This Order shall be binding upon Respondent and shall inure to the benefit of the parties to this Order and their respective successors and assignees and shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts;
61. Upon ratification of this Order by the Commission, this Order shall become a permanent part of Respondent's record and shall be open to public inspection and disclosure pursuant to the Commission's standard policies and procedures or applicable law;
62. The Commission may reject the terms of this Order or otherwise deny ratification and entry of the Order. In such event, the terms of the Order shall be null and void, including but not limited to Respondent's admissions, and the parties may proceed to hearing;






63. This Order may be executed by e-mail and any signature delivered by either email or first-class mail shall be deemed to be as valid as an original signature;
64. All costs and expenses incurred by Respondent to comply with this Order shall be the sole responsibility of Respondent and shall not in any way be the obligation of the Commission; and
65. For purposes of addressing any future violations of the Order, the Commission regulations, 935 CMR 500.000, *et seq.*, shall include all later adopted regulations that are in effect at the time of the subsequent violation.

This Order is subject to ratification by the Commission. Upon ratification, this Order becomes binding on the Parties. Failure to comply with the above conditions may result in administrative action against Respondent up to any including suspension and/or revocation of registration.

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Ascend Mass, LLC

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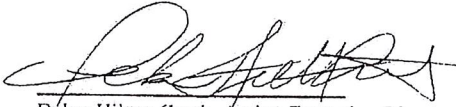
9/26/2024

Ascend Mass, LLC

Date Signed

Ratified by Commission vote (3 yes, 0 no, 0 abstain) on October 10, 2024.

Commonwealth of Massachusetts Cannabis Control Commission

 10/15/2024
Debra Hilton Creek, Acting Executive Director Date Signed

