

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CANNABIS REGULATORY AGENCY

In the Matter of

Sky Labs, LLC
License No.: PR-000121

ENF Nos.: 21-00144, 21-00249,
21-00496, & 22-00296

FIRST SUPERSEDING FORMAL COMPLAINT

The Cannabis Regulatory Agency (“Complainant”) files this first superseding formal complaint against Sky Labs, LLC (“Respondent”) alleging upon information and belief as follows:

1. The Cannabis Regulatory Agency (CRA) is authorized under the Medical Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*, and Executive Reorganization Order No.2019-2, MCL 333.27001, to investigate alleged violations of the MMFLA and administrative rules promulgated thereunder, take disciplinary action to prevent such violations, and impose fines and other sanctions against applicants and licensees that violate the MMFLA or rules.

2. Section 402(12) of the MMFLA provides that the expiration of a license does not terminate the CRA’s authority to impose sanctions on the license.

3. Section 206(c) of the MMFLA provides that the administrative rules must ensure the health, safety, and security of the public and integrity of the marihuana facility operations.

^[1] Executive Reorganization Order 2019-2 created the Marijuana Regulatory Agency (MRA) as a Type I agency within the Department of Licensing and Regulatory Affairs (LARA). MCL 333.27001(1)(a)(d). On April 13, 2022, the MRA became the Cannabis Regulatory Agency (CRA). The CRA exercises its statutory powers, duties, and functions independent of LARA’s direction. MCL 16.103.

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4. Respondent's conduct as described below is a risk to public health and safety and/or the integrity of marihuana facility operations.

FACTUAL ALLEGATIONS AND INTENDED ACTION OF THE CRA

5. Respondent holds an active state operating license under the MMFLA to operate a medical marijuana processor in the state of Michigan.

6. Respondent operated at 9421 N. Dort Hwy, Mt. Morris, Michigan 48458 at all times relevant to this complaint.

7. Following an investigation, the CRA determined that Respondent violated the MMFLA and/or administrative rules promulgated thereunder as set forth below:

a. ENF: 21-00144

- i. On December 16, 2020, Respondent submitted a retest request to the CRA for twelve statewide monitoring system (Metr) packages (vape carts) which failed compliance testing for the chemical residue Bifenthrin at 0.4 or higher. The twelve packages are listed below:

1. 1A4050100008C3D000007748,
2. 1A4050100008C3D000007749,
3. 1A4050100008C3D000007750,
4. 1A4050100008C3D000007754,
5. 1A4050100008C3D000007757,
6. 1A4050100008C3D000007783,
7. 1A4050100008C3D000008134,
8. 1A4050100008C3D000008135,
9. 1A4050100008C3D000008136,
10. 1A4050100008C3D000008137,
11. 1A4050100008C3D000008138,
12. 1A4050100008C3D000008139.

- ii. Bifenthrin is a chemical residue banned by the CRA from use in the cultivation and production of marijuana products.

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- iii. The distillate used to make the marijuana products previously passed safety compliance testing and did not contain banned chemicals (or this level of banned chemicals) before Respondent used it to create the vape carts at issue.
- iv. Respondent is in violation of Mich Admin Code R 420.206(4), which states the agency shall publish a list of banned chemical residue active ingredients that are prohibited from use in the cultivation and production of marihuana plants and marihuana products to be sold or transferred in accordance with the acts or these rules.

b. ENF: 21-00249

- i. On April 5, 2021, Respondent's Metrc package tag 1A4050100008C3D000014427 (vape carts) failed safety compliance testing for Vitamin E Acetate, a target analyte banned for inhalation by the Food and Drug Administration (FDA).
- v. During the investigation to determine the origin of the Vitamin E Acetate, the CRA discovered the record of formulation (ROF) used in the production of the concentrate did not include the minimum requirements. The Certificate of Analysis (COA) for the terpenes used to manufacture the concentrate did not include all ingredients and their concentrations.
- vi. Respondent did not quarantine the product while undergoing testing. The product was moved from where the original samples were taken and then into the kitchen for remediation.
- vii. Respondent is in violation of Mich Admin Code, R 420.304(2), which states that if a testing sample is collected from a marihuana business for testing in the statewide monitoring system, that marihuana business shall quarantine the marihuana product that is undergoing the testing from any other marihuana product at the marihuana business. The quarantined marihuana product must not be packaged, transferred, or sold until passing test results are entered into the statewide monitoring system.
- viii. Respondent is in violation of Mich Admin Code, R 420.403(6), which states inactive ingredients must be approved by the FDA for the intended use, and the concentration must be less than the maximum concentration listed in the FDA Inactive Ingredient database for the intended use.

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- ix. Respondent is in violation of Mich Admin Code, R 420.403(8)(c), which states that a producer shall keep formulation records for all marihuana products. These records, at a minimum, must include the recipe, any additional processing in order to be shelf stable, and test results for any ingredients used.

c. ENF: 21-00496

- i. On June 14, 2021, Respondent had three Metrc package tags fail safety compliance testing for multiple banned chemical residues at levels significantly above the allowable action limits as indicated below:

- ii. 1A4050100008C3D000022537-
Bifenazate = 1.326ppm; action limit is 0.2ppm
Bifenthrin = 2.722ppm; action limit is 0.2ppm
Carbaryl = 1.125ppm; action limit is 0.2ppm
Chlorfenapyr = 9.923ppm; action limit is 1ppm
Malathion = 10.747ppm; action limit is 0.2ppm
Myclobutanil = 1.235ppm; action limit is 0.2ppm

1A4050100008C3D000022538-
Bifenazate = 13.376ppm; action limit is 0.2ppm
Bifenthrin = 7.434ppm; action limit is 0.2ppm
Carbaryl = 0.884ppm; action limit is 0.2ppm
Chlorfenapyr = 13.526ppm; action limit is 1ppm
Malathion = 8.21ppm; action limit is 0.2ppm
Metalaxyl = 1.814 ppm; action limit is 0.2ppm
Myclobutanil = 1.613ppm; action limit is 0.2ppm

1A4050100008C3D000022539-
Bifenazate = 23.047ppm; action limit is 0.2ppm
Bifenthrin = 12.781ppm; action limit is 0.2ppm
Carbaryl = 1.299ppm; action limit is 0.2ppm
Chlorfenapyr = 12.99ppm; action limit is 1ppm
Malathion = 10.476ppm; action limit is 0.2ppm
Metalaxyl = 3.352ppm; action limit is 0.2ppm
Myclobutanil = 1.613ppm; action limit is 0.2ppm

- iii. Respondent is in violation of Mich Admin Code, R 420.206(4), which states the agency shall publish a list of banned chemical residue active ingredients that are prohibited from use in the cultivation and production of marihuana plants and marihuana products to be sold or transferred in accordance with the acts or these rules.

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d. ENF: 22-00296

- i. On December 7, 2021, and January 6, 2022, audits were requested for multiple Metrc packages tags (packages) from Respondent's inventory; these packages previously received full compliance testing.
- ii. On December 14, 2021, a sampling event occurred for the December 7, 2021, audit request.
- iii. The December 7, 2021, audit requested testing of vape carts for chemical residue, Vitamin E Acetate, and potency for the following packages:
 1. 1A4050100008C3D000007748 [-07748];
 2. 1A4050100008C3D000007749 [-07749];
 3. 1A4050100008C3D000007750 [-07750];
 4. 1A4050100008C3D000007754 [-07754];
 5. 1A4050100008C3D000007757 [-07757];
 6. 1A4050100008C3D000007783 [-07783];
 7. 1A4050100008C3D000008134 [-08134];
 8. 1A4050100008C3D000008135 [-08135];
 9. 1A4050100008C3D000008136 [-08136];
 10. 1A4050100008C3D000008137 [-08137];
 11. 1A4050100008C3D000008138 [-08138];
 12. 1A4050100008C3D000008139 [-08139].
- iv. The December 7, 2021, audit request indicated:
 1. Package [-08134]'s initial test results for Vitamin E Acetate resulted in findings of no Vitamin E Acetate; but, when tested again, the results indicated Vitamin E Acetate above the CRA action limit.
 2. Packages [-08135] and [-08136], initially failed for chemical residues but when tested again, passed for chemical residue.
 3. All the packages in the audit initially failed for only the chemical residue, Bifenthrin; however, when tested again, only two packages failed for Bifenthrin; [-07750] and [-07783].
 4. Additionally, the audit indicated, the packages that had failed for chemical residue when tested again, had detections for

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one or more of the following chemical residues: Bifenazate, Carbaryl, Chlorfenapyr, Hexythiazox, Myclobutanil, Spiromesifen, Tebuconazole, and Trifloxystrobin.

5. The audit indicated that the amount of Total THC and Total Cannabinoids were significantly lower than when the packages were initially tested.
 6. Additionally, the audit indicated that three vape carts comprising the sample for package [-08134], which failed for Vitamin E, were distinctly different.
 7. The three vape carts had uniquely different hues ranging from amber to dark yellow which would not be expected in a homogeneous liquid solution. The potency of each cart was measured separately and as a solution. The Total THC found between these three vape carts from the same batch are vastly different.
 8. The audit indicated that the packages tested first are not the same packages that were tested for the second time, and/or the packages were not in the same condition at the time of the second testing, even though all the products contained in the packages were sampled from the same Metrc package tag. Packages containing the same Metrc tag must contain the same product.
- v. On January 18, 2022, a sampling event occurred for the January 6, 2022, audit request.
- vi. The January 6, 2022, audit requested testing of distillate for chemical residue, Vitamin E Acetate, and potency. The testing included the following packages:
1. 1A4050100008C3D000022537 [-22537]
 2. 1A4050100008C3D000022538 [-22538]
 3. 1A4050100008C3D000022539 [-22539]
 4. 1A4050100008C3D000022844 [-22844]
 5. 1A4050100008C3D000022845 [-22845]
 6. 1A4050100008C3D000022846 [-22846]
 7. 1A4050100008C3D000023449 [-23449]
 8. 1A4050100008C3D000023450 [-23450]
 9. 1A4050100008C3D000023451 [-23451].

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vii. The January 6, 2022, audit request indicated:

1. At the time of the sampling event, Respondent presented eight batches of distillate in multiple jars.
2. Respondent presented the multiple jars with altered Metrc tag numbers to indicate they were the same batch.
3. The audit indicated, package [-22537] with the jar designation CAM-220119-091 passed for chemical residues, when all the other jars for that package failed.
4. The audit indicated, jars with package tags [-22537], [-22538], and [-22539] that initially failed for chemical residues failed for distinctly different chemical residues present when tested again.
5. Furthermore, the audit test results indicated when all the packages were tested for cannabinoids initially, Delta8-THC was not detected. When the same packages were tested at again, the following packages were found to contain Delta8-THC: [-22537], [-22846], [-23450] and [-23451].
6. The audit indicated that the packages tested first are not the same packages that were tested for the second time, and/or the packages were not in the same condition at the time of the second testing, even though all the products contained in the packages were sampled from the same Metrc package tag. Packages containing the same Metrc tag must contain the same product.
7. On January 19, 2022, the CRA requested 8 days (January 12, 2022– January 19, 2022) of video surveillance footage from Respondent. Specifically, all camera angles in the kitchen area and all camera angles in the trailer where vape carts are filled and packaged.
8. On February 16, 2022, Respondent provided the video surveillance footage to the CRA; however, none of the angles from the trailer where vape carts are packaged were viewable.

- viii. Respondent is in violation of Mich Admin Code, R 420.209(7), which states in part, each camera must be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the marihuana business and allows for the clear and certain identification of any person, including facial features, and activities, including sales or transfers, in all areas required to be recorded under these rules.
- ix. Respondent is in violation of Mich Admin Code, R 420.210(2), which states in part, a licensee shall immediately tag, identify, or record as part of a batch in the statewide monitoring system any marihuana product as provided in these rules.
- x. Respondent is in violation of Mich Admin Code, R 420.210(3) which states, a licensee shall not reassign or subsequently assign a tag to another package that has been associated with a package in the statewide monitoring system.
- xi. Respondent is in violation of Mich Admin Code, R 420.212(1) which states in part, all marihuana products must be identified and tracked consistently in the statewide monitoring system under these rules

THEREFORE, based on the above, the CRA gives notice of its intent to impose fines and/or other sanctions against Respondent's license, which may include the suspension, revocation, restriction, and/or refusal to renew Respondent's license.

Under MCL 333.27407(4) and Mich Admin Code, R 420.704(2), any party aggrieved by an action of the CRA suspending, revoking, restricting, or refusing to renew a license, or imposing a fine, shall be given a hearing upon request. A request for a hearing must be submitted to the CRA in writing within 21 days after service of this complaint. Notice served by certified mail is considered complete on the business day following the date of the mailing.

Respondent also has the right to request a compliance conference under Mich Admin Code, R 420.704(1). A compliance conference is an informal meeting at which

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Respondent has the opportunity to discuss the allegations in this complaint and demonstrate compliance under the MMFLA and/or rules. A compliance conference request must be submitted to the CRA in writing.

Hearing and compliance conference requests must be submitted in writing by one of the following methods.

By Mail: Department of Licensing & Regulatory Affairs
Cannabis Regulatory Agency
P.O. Box 30205
Lansing, Michigan 48909

In Person: Department of Licensing & Regulatory Affairs
Cannabis Regulatory Agency
2407 North Grand River
Lansing, Michigan 48906

By Email: CRA-LegalHearings@michigan.gov

If Respondent fails to timely respond to this formal complaint, a contested case hearing will be scheduled to resolve this matter.

Questions about this complaint should be directed to the Cannabis Regulatory Agency's legal section at (517) 284-8599 or CRA-LegalHearings@michigan.gov. The formal complaints filed against the Respondent on July 9, 2021, and December 1, 2021, are hereby WITHDRAWN and replaced in full by this superseding complaint.

Dated: 8/10/2022

By:

Alyssa A. Grissom	Digitally signed by Alyssa A. Grissom Date: 2022.08.10 16:07:30 -04'00'
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Alyssa A. Grissom
Legal Section Manager
Enforcement Division
Cannabis Regulatory Agency

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PROOF OF SERVICE

I hereby certify that on 08/11/2022, I mailed a copy of the First
Superseding Formal Complaint dated 08/10/2022 in the above
captioned case by certified mail (return receipt requested) to:

Sky Labs, LLC
9421 N. Dort Hwy
Mt. Morris, Michigan 48458

A courtesy copy was emailed on
August 10, 2022, to Respondent's attorney:

Chris Royce, chris.royce@pollicella.net

Abby Rae Brooks

Digitally signed by: Abby Rae Brooks
DN: CN = Abby Rae Brooks email =
BrooksA17@Michigan.gov C = US O = Marijuana
Regulatory Agency OU = Legal Section
Date: 2022.08.11 07:59:17 -04'00'

Abby Rae Brooks
Departmental Technician
Cannabis Regulatory Agency
Department of Licensing & Regulatory
Affairs

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