

**DEPARTMENT OF EXCISE AND LICENSES
CITY AND COUNTY OF DENVER, COLORADO**

RECOMMENDED DECISION

IN THE MATTER OF MARIJUANA BUSINESS LICENSES ISSUED TO AJS FEDERAL LLC; AJS EVANS LLC; SWEET LEAF LLC; DGP 38TH LLC; HERBAL WELLNESS; FEDERAL CORRIDOR LLC; DGP WALNUT LLC; DGP SMITH LLC; AND DGP ELATI LLC; ALL DOING BUSINESS AS SWEET LEAF:

RETAIL MARIJUANA STORE LICENSES:

**BUSINESS FILE #2017-BFN-0002513, AJS FEDERAL LLC, 468 S. FEDERAL BLVD.
BUSINESS FILE #2013-BFN-1068876, DGP ELATI LLC, 4125 N. ELATI STREET
BUSINESS FILE #2015-BFN-0002743, HERBAL WELLNESS, 4400 E. EVANS AVE.
BUSINESS FILE #2013-BFN-1069648, DGP 38TH LLC, 2647 W. 38TH AVE.
BUSINESS FILE #2013-BFN-1069644, DGP WALNUT, 2609 WALNUT STREET
BUSINESS FILE #2013-BFN-1070077, SWEET LEAF LLC, 5100 W. 38TH AVE.
BUSINESS FILE #2013-BFN-1069504, DGP SMITH LLC, 7200 E. SMITH ROAD**

RETAIL MARIJUANA CULTIVATION FACILITY LICENSES:

**BUSINESS FILE #2013-BFN-1070425, SWEET LEAF LLC, 136 N. YUMA STREET
BUSINESS FILE #2013-BFN-1069645, DGP WALNUT, 2609 WALNUT STREET
BUSINESS FILE #2013-BFN-1068877, DGP ELATI, 4125 N. ELATI STREET
BUSINESS FILE #2013-BFN-1068879, DGP ELATI, 4715 N. COLORADO BLVD.
BUSINESS FILE #2015-BFN-0007352, HERBAL WELLNESS, 1475 S. ACOMA STREET**

MEDICAL MARIJUANA CENTER LICENSES:

**BUSINESS FILE #2010-BFN-1045792, DGP WALNUT, 2609 WALNUT STREET
BUSINESS FILE #2010-BFN-1045809, SWEET LEAF LLC, 5100 W. 38TH AVE.
BUSINESS FILE #2015-BFN-0008409, AJS FEDERAL LLC, 468 S. FEDERAL BLVD.
BUSINESS FILE #2010-BFN-1045627, HERBAL WELLNESS, 4400 E. EVANS AVE.
BUSINESS FILE #2014-BFN-0003315, AJS EVANS, 4379 N. TEJON STREET
BUSINESS FILE #2010-BFN-1048434, DGP 38TH LLC, 2647 W. 38TH AVE.**

MEDICAL MARIJUANA OPTIONAL PREMISES CULTIVATION LICENSES:

**BUSINESS FILE #2014-BFN-0004042, AJS FEDERAL LLC, 136 N. YUMA STREET
BUSINESS FILE #2012-BFN-1061861, SWEET LEAF LLC, 136 N. YUMA STREET
BUSINESS FILE #2014-BFN-0004770, DGP 38TH LLC, 124 N. YUMA STREET
BUSINESS FILE #2015-BFN-0000384, FEDERAL CORRIDOR INC, 1475 S. ACOMA ST.
BUSINESS FILE #2012-BFN-1060600, HERBAL WELLNESS, 1475 S. ACOMA ST.
BUSINESS FILE #2014-BFN-0003959, AJS EVANS LLC, 1011 W. 45TH AVE.
BUSINESS FILE #2012-BFN-1060642, DGP WALNUT, 2609 WALNUT STREET**

MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURING LICENSE:

BUSINESS FILE #2013-BFN-1068155, SWEET LEAF LLC, 136 N. YUMA STREET

A hearing was held on March 14, 15, 20, 22, April 3, 4, and 10, 2018, pursuant to an Order to Show Cause issued on January 2, 2018, by the Director of the Department of Excise and Licenses (“the Department”) regarding alleged violations of city and state laws and regulations by the above-named Respondents, doing business as Sweet Leaf (collectively referred to as “Respondents” or “Sweet Leaf”), with respect to their above-listed retail marijuana store licenses, retail marijuana cultivation facility licenses, medical marijuana center licenses, medical marijuana optional premises cultivation licenses, and a medical marijuana-infused products manufacturing license, for various locations within the City and County of Denver. An Order of Summary Suspension concerning these licenses was issued by the Director on December 14, 2017 and remains in effect pending a final decision in this matter.

Respondents were represented at the hearing by attorneys Tom Downey, John Jennings and Kira Suyeishi. There was no appearance by an owner or manager of the Respondents at the hearing. The City of Denver was represented by Assistant City Attorneys Su Cho, Emela Jankovic and Marley Bordovsky.

After reviewing the evidence admitted at the hearing, and applying existing law, I enter the following findings of fact, conclusions of law, and recommended decision.

1. The Denver Retail Marijuana Code, §§ 6-200 through 6-220, article V, chapter 6 of the Denver Revised Municipal Code (“D.R.M.C.”), governs the licensing of retail marijuana businesses in the City and County of Denver.
2. The Denver Medical Marijuana Code, §§ 24-501 through 24-515, article XII of chapter 24 of the D.R.M.C., governs the licensing of medical marijuana businesses in the City and County of Denver.
3. Disciplinary actions against retail marijuana business licenses are subject to D.R.M.C. § 6-219, and disciplinary actions against medical marijuana business licenses are subject to D.R.M.C. § 24-514. Both ordinances incorporate the provisions of D.R.M.C. chapter 32 for suspension, revocation and other licensing sanctions.
4. The Complaint alleges that “from November 2016 until December 2017, at various licensed marijuana businesses, the Respondents knowingly conducted numerous sales to the same person, within a very short period of time, of up to one ounce of marijuana per sale. Thus Respondent[s] knowingly dispensed, distributed, and assisted [their] customers to unlawfully possess more than one ounce of marijuana...” The Complaint as amended alleges that by these actions, Respondents violated C.R.S. § 18-18-406 and Regulation R 402(C)(3), 1 CCR 212-2, of the Colorado Department of Revenue Marijuana Enforcement Division (“MED”).
5. C.R.S. § 18-18-406(2)(b)(I) makes it a crime to “knowingly...sell, distribute, or possess with intent to... sell, or distribute marijuana or marijuana concentrate; or attempt, induce, attempt to induce, or conspire with one or more other persons, to...sell, distribute, or possess with intent to...dispense, sell, or distribute marijuana or marijuana concentrate”

except as otherwise authorized by law. C.R.S. § 18-18-406(4) and (5)(a)(I) make it a crime to possess more than one ounce of retail marijuana.

6. MED Rule R 402(C)(3), 1 CCR 212 2, that was in effect in 2017 provided as follows¹:

A Retail Marijuana Store and its employees are prohibited from selling more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product during a sales transaction to a consumer....

7. The burden of proof is upon the City to establish by a preponderance of the evidence violations of city or state law by the Respondents or any of their agents, servants or employees.
8. A central issue in this case is finding as a matter of fact what constitutes a “transaction” that is subject to the quantity limitation of selling one ounce of retail marijuana. I find that multiple transfers (*i.e.*, sales) of marijuana to the same customer that are each one ounce, in some instances as discussed in this Recommended Decision, constitute a single transaction rather than multiple transactions.

Summary of evidence and findings of fact

9. City’s Exhibits C-1 through C-109, and C-111 through C-133, and C-135 through C-176 were admitted into evidence. Exhibit C-176 is a photo of a Sweet Leaf security guard and his MED badge. All other exhibits are identified in the City’s Witness and Exhibits List dated March 1, 2018. City’s Exhibit C-177 was offered but not admitted into evidence.
10. The City’s witnesses included 21 Denver police officers who made undercover purchases of marijuana at Sweet Leaf dispensaries or investigated marijuana crimes arising out of Sweet Leaf purchases, including interviewing suspects, Sweet Leaf employees, and neighbors of the dispensaries; two employees of the State Marijuana Enforcement Division, and a financial crimes investigator at the State Department of Revenue; and four neighbors of Sweet Leaf dispensaries.
11. Respondents’ Exhibit R-2, a red-line copy of part of MED Rule R 402, and Exhibit R-3, a red-line copy of part of MED Rule M 403, were admitted into evidence. Respondents’ Exhibit R-1 was offered but not admitted into evidence.

¹ The version of MED Rule R 402(C) that was in effect from July 1, 2016 through December 31, 2016, and applied to alleged violations in November and December 2016, also prohibited a retail marijuana store and its employees from selling more than one ounce of retail marijuana during “a single sales transaction” to a Colorado resident, and prohibited selling more than a quarter ounce of retail marijuana during “a single sales transaction” to a non-resident. The significance of the amendments to MED Rule R 402 is discussed *infra*.

12. Respondents' witnesses were two law school professors, Jordan Wellington and Sam Kamin, and Denver Assistant City Attorney Marley Bordovsky.
13. The case caption names nine entities as Respondents doing business as Sweet Leaf which hold various combinations of the 26 marijuana licenses at issue here. All Respondents are under common ownership by three individuals: Matthew Aiken, Christian Johnson, and Anthony Sauro.

Sweet Leaf dispensary, 2647 West 38th Avenue, sales in 2016

14. In November 2016, the Denver Police Department received complaints by the neighbors living near the Sweet Leaf marijuana dispensary at 2647 West 38th Avenue, Denver, who reported observing many instances of people who exited the dispensary with a container that appeared to be marijuana that they left in their cars and then re-entered the dispensary for another purchase. The neighbors observed the same individuals walking back and forth between the dispensary and their cars many times throughout the day, and the neighbors also reported seeing many out-of-state license plates on the vehicles of these purchasers.
15. Denver Police Officers conducted a surveillance operation at Sweet Leaf, 2647 West 38th Avenue on November 28, 2016, between 2:45 pm and 4:15 pm. Officers observed an individual, later identified as Joseph Scott (also known as Cornell Ellis), who entered and exited the Sweet Leaf dispensary ten times, and each time upon exiting, he placed a container in his vehicle. Mr. Scott was arrested by Denver police officers on November 28, 2016, and searches of his vehicle and residence pursuant to a search warrant were conducted the following day.
16. Photographs of the items seized pursuant to the search warrant are in evidence as Exhibits C-10 through C-19. The photos show 34 marijuana containers with the Sweet Leaf logo that were seized from Mr. Scott's vehicle, and about 30 re-packaged clear plastic bags of marijuana. Denver Police determined that the marijuana found in Mr. Scott's vehicle weighed 980.6 grams or the equivalent of 2.16 pounds. The marijuana found at Mr. Scott's residence weighed 3385 grams or the equivalent of 7.46 pounds. Police seized \$17,200 in cash from Mr. Scott's vehicle.
17. The receipts of marijuana purchases that were seized pursuant to the search warrant document that on November 28, 2016, Mr. Scott purchased ten ounces of marijuana, in one-ounce amounts from Sweet Leaf, at 2647 West 38th Avenue, at the following times: 10:31 am, 10:40 am, 10:45 am, 11:31 am, 11:54 am, 12:59 pm, 1:10 pm, 3:09 pm, 3:37 pm, 4:06 pm. Exhibit C-10.
18. Mr. Scott was interviewed by Denver police officers on November 28, 2016, and his video and audio recorded interview is in evidence as Exhibit C-20. Mr. Scott was given a Miranda advisement prior to making his statement and he waived his rights. He made the following statements. Mr. Scott has a medical marijuana card. He has purchased marijuana at the Sweet Leaf retail marijuana store at 2647 West 38th Avenue. Sweet Leaf does not operate a medical marijuana center at that location. Mr. Scott is a "medical member" of

Sweet Leaf which allowed him to purchase medical marijuana from a Sweet Leaf retail marijuana store, and to pay the lower price for medical marijuana. Sweet Leaf employees at 2647 West 38th Avenue have told him that he can buy one ounce of marijuana at a time and then leave the premises and put the marijuana in his car and then come back into the dispensary and purchase more marijuana. The employees have told him to park his car outside of the view of the Sweet Leaf security cameras. Sweet Leaf was offering a 10% discount for marijuana if the purchaser donated a blanket, a coat, or food for the homeless or needy. Mr. Scott purchased two pounds of marijuana at Sweet Leaf on November 28, 2016. He bought marijuana at Sweet Leaf on five or six days between September and November 2016 and his average amount purchased in one day was two pounds of marijuana. He only bought marijuana at Sweet Leaf, and he bought marijuana to get high. There are at least five budtenders at Sweet Leaf (employees who sell marijuana) who have sold him more than one ounce of marijuana in a day.

19. Based upon Mr. Scott's purchases of marijuana on November 28, 2016, at Sweet Leaf, he was charged in Denver District Court Case No. 2016 CR 7853 with two felony counts of violating C.R.S. § 18-18-406(2)(b)(I), possession with intent to distribute marijuana, and with two felony counts of violating C.R.S. § 18-18-406(4)(a), possession of more than twelve ounces of marijuana. Mr. Scott pled guilty to one count of possession of marijuana in violation of C.R.S. § 18-18-406(4)(a), a class four felony, and on August 14, 2017, he was sentenced to one year in the Colorado Department of Corrections. Exhibit C-21.
20. I find the facts summarized in paragraphs 15-17 to be true concerning Mr. Scott's purchase of more than twelve ounces of marijuana at Sweet Leaf on November 28, 2016, and I find the facts summarized in paragraph 19 to be true concerning his criminal conviction.
21. Denver Police Detective Aaron Kafer testified that after the neighbors' complaints to the Denver Police Department and the arrest of Mr. Scott, and prior to the first undercover operation at Sweet Leaf on December 7, 2016, the Denver Police Department installed a High Activity Location Observation ("HALO") camera to monitor and record activity outside of the Sweet Leaf dispensary at 2647 West 38th Avenue.
22. On December 7, 2016, Denver Police officers conducted an undercover operation at Sweet Leaf, 2647 West 38th Avenue. Police Detective Jeffrey Masciangelo working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased seven ounces of marijuana in one-ounce amounts within 75 minutes, which are shown in the body camera recording in evidence as Exhibit C-22. The Sweet Leaf receipts document that he purchased one-ounce amounts of marijuana at the following times on December 7, 2016: 12:08 pm, 12:20 pm, 12:30 pm, 12:43 pm, 12:53 pm, 1:03 pm, 1:23 pm. (Exhibits C-23 through C-30). The product that he purchased tested positive for marijuana at the police crime lab.
23. The body camera recording (Exhibit C-22) and the detective's testimony show that Sweet Leaf employee Kenneth Holderfield sold marijuana to Detective Masciangelo twice (the third and sixth sales), and Sweet Leaf employee Chris Arneson sold marijuana to him twice (the fourth and fifth sales). The other sales were made by different budtenders. Detective

Kafer, who was working in plain clothes that day in the same unmarked vehicle with Detective Masciangelo, testified that as he was parked in the unmarked vehicle, a security guard from Sweet Leaf approached the vehicle and told them that they would not be allowed to re-enter Sweet Leaf unless they moved their vehicle outside of the view of the security camera.

24. I find the facts summarized in paragraphs 22 and 23 to be true concerning Detective Masciangelo's purchase of seven ounces of marijuana at Sweet Leaf on December 7, 2016.
25. On December 14, 2016, another undercover operation was conducted at Sweet Leaf, 2647 West 38th Avenue. Police Detective Masciangelo working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in one-ounce amounts within one hour, which are shown in the body camera recording in evidence as Exhibit C-31. The Sweet Leaf receipts document that he obtained one-ounce amounts of marijuana at the following times on December 14, 2016: 1:18 pm, 1:38 pm, 1:55 pm, 2:07 pm, and 2:16 pm. (Exhibits C-32 through C-37). The product that he purchased tested positive for marijuana at the police crime lab. The body camera recording (Exhibit C-31) and the detective's testimony show that the budtender making the first sale told the detective that if he left the dispensary after making a purchase, and returned without the product, he could buy more marijuana. The detective's first two purchases were from the same budtender, and other sales were made by different budtenders. I find the facts summarized in this paragraph to be true.
26. Denver Police conducted another surveillance operation at Sweet Leaf, 2647 West 38th Avenue, on December 14, 2016, between 12:50 pm and 5:17 pm. Officers observed an individual, later identified as Adama Njie (also known as Jason Macintosh), who entered and exited the Sweet Leaf dispensary 24 times, and each time upon exiting, he placed a marijuana container with the Sweet Leaf logo in his vehicle. Detective Kafer testified that he reviewed the HALO video from December 14, 2016 (Exhibit C-46), which shows Mr. Njie's first entry into the Sweet Leaf dispensary at 9:57 am, and his last entry at 5:57 pm. Mr. Njie was arrested by Denver police officers on December 14, 2016.
27. A search was conducted of Mr. Njie's vehicle pursuant to a search warrant. Photographs of the items seized from his vehicle are in evidence as Exhibits C-41 through C-45 and were further described in the testimony of Detective Kafer. Exhibit C-44 shows 49 containers of marijuana with the Sweet Leaf logo, and all but one have a purchase date of December 14, 2016 on the container label. Denver Police determined that the marijuana found in Mr. Njie's vehicle weighed three pounds. Exhibit C-45 includes three receipts from Walmart, which show purchases of 47 blankets on December 8, 2016; purchases of 68 blankets on December 9, 2016; and purchases of 68 blankets on December 13, 2016, used to obtain a discount at Sweet Leaf as explained in Mr. Njie's statement.
28. Mr. Njie was interviewed by Denver police officers on December 14, 2016, and his audio and video recorded interview is in evidence as Exhibit C-46. Mr. Njie was given a Miranda advisement prior to making his statements and he waived his rights. He made the following statements. Mr. Njie has held a "red card" (a medical marijuana card) for two or three

months. He is a “member” of Sweet Leaf which allows him to purchase medical marijuana at the Sweet Leaf retail marijuana store at 2647 West 38th Avenue. Sweet Leaf was offering a 10% discount for marijuana if the purchaser donates a coat or blanket to charity. Mr. Njie had blankets in the trunk of his car (shown in Exhibits C-42 through C-45) to use for the 10% discount at Sweet Leaf. Mr. Njie purchased 48 ounces of marijuana in one-ounce amounts on the day of his arrest. He has bought about one to two pounds of marijuana on previous days at Sweet Leaf, and he bought marijuana at Sweet Leaf about two or three times each week in the previous three weeks. Mr. Njie has re-sold marijuana to others, including people from out of town and to “non-members” of Sweet Leaf. Mr. Njie makes a profit of \$200 per pound when re-selling marijuana and he has made \$600 in one day by re-selling three pounds of marijuana, including sales of one pound each. He stated that he had between \$2500 and \$3500 in cash in his possession on the day of the interview. Sweet Leaf employees have told him that it is permissible to purchase one-ounce amounts of marijuana repeatedly if he leaves the Sweet Leaf store after each purchase. Sweet Leaf employees and a security guard have told him to keep his car outside of the view of the security cameras.

29. Based upon Mr. Njie’s purchases of marijuana on December 14, 2016 at Sweet Leaf, he was charged in Denver District Court Case No. 2016 CR 8237 with one felony count of violating C.R.S. § 18-18-406(2)(b)(I), possession with intent to distribute marijuana, and with one felony count of violating C.R.S. § 18-18-406(4)(a), possession of more than twelve ounces of marijuana or three ounces of marijuana concentrate. These counts were dismissed in a plea agreement in which Mr. Njie pled guilty to an added count of possession of a controlled substance in violation of C.R.S. § 18-18-403.5(1), (2)(a), a class four felony. On November 3, 2017, he was sentenced to three years of probation. Exhibit C-47.
30. I find the facts summarized in paragraphs 26 and 27 to be true concerning Mr. Njie’s purchase of more than twelve ounces of marijuana at Sweet Leaf on December 14, 2016, and I find the facts summarized in paragraph 29 to be true concerning his criminal conviction.
31. During the same surveillance operation on December 14, 2016, Denver police officers observed another individual, later identified as Joshua Reid, who entered and exited the Sweet Leaf dispensary 35 times, during the time of the surveillance between 12:50 pm and 5:53 pm. Mr. Reid was arrested by Denver Police officers.
32. A search was conducted of Mr. Reid’s vehicle pursuant to a search warrant. Photographs of the items seized from his vehicle are in evidence as Exhibits C-48 and C-49 and were further described in the testimony of Detective Kafer. Exhibit C-49 shows 44 containers of marijuana with the Sweet Leaf logo, and most of the labels have a purchase date of December 14, 2016. Denver Police determined that the marijuana found in Mr. Reid’s vehicle weighed 2.75 pounds.
33. Exhibit C-38 is a video recording made by Denver police detectives on December 14, 2016, while they were conducting the surveillance of the Sweet Leaf dispensary at 2647 West 38th Avenue. The video recording and the testimony of Detective Kafer show Mr. Reid

and Mr. Njie walking to their respective cars from the Sweet Leaf dispensary, and putting a canister in the trunk, and then removing a blanket from the trunk and immediately returning to the Sweet Leaf dispensary. Mr. Reid and Mr. Njie repeated these activities several times on the video recording. Detective Kafer testified that the same activities shown in the video also were observed by the surveillance detectives throughout the course of their surveillance and were captured by the HALO camera recording that Detective Kafer reviewed.

34. Based upon Mr. Reid's purchases of marijuana on December 14, 2016 at Sweet Leaf, he was charged in Denver District Court Case No. 2016 CR 8241 with one felony count of violating C.R.S. § 18-18-406(2)(b)(I), possession with intent to distribute marijuana, and with one felony count of violating C.R.S. § 18-18-406(4)(a), possession of more than twelve ounces of marijuana. Mr. Reid pled guilty to one count of possession of marijuana in violation of C.R.S. § 18-18-406(4)(a), a class four felony. On March 31, 2017, he was sentenced to two years of probation. Exhibit C-50.
35. I find the facts summarized in paragraphs 31 and 32 to be true concerning Mr. Reid's purchase of more than twelve ounces of marijuana at Sweet Leaf on December 14, 2016, and I find the facts summarized in paragraph 34 to be true concerning his criminal conviction.

Sweet Leaf dispensary sales in 2017, various Denver locations

36. On January 5, 2017, Denver Police officers conducted an undercover operation at a Sweet Leaf dispensary at 5100 West 38th Avenue in Denver. Police Detective Masciangelo working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased 14 ounces of marijuana in two hours and 45 minutes. Detective Masciangelo testified that most of these purchases were recorded on the body camera, but there were technical problems with the camera memory that resulted in a lack of recording for five purchases. The Sweet Leaf receipts document that he purchased one-ounce amounts of marijuana at the following times on January 5, 2017: 9:34 am, 9:44 am, 9:57 am, 10:11 am, 10:23 am, 10:32 am, 10:43 am, 10:56 am, 11:07 am, 11:15 am, 11:26 am, 11:40 am, 11:57 am, 12:10 pm (Exhibits C-72 and C-73). Detective Masciangelo testified that although the address on the receipts shown in Exhibit C-73 is at 2647 West 38th Avenue, the marijuana purchases were made at 5100 West 38th Avenue. The product that he purchased tested positive for marijuana at the police crime lab.
37. The body camera recording (Exhibit C-71) and the detective's testimony show that the detective made nine marijuana purchases from a female budtender named Crystal Morrow (the first, second, fourth, fifth, sixth, eighth, tenth, eleventh and thirteenth purchases) and five marijuana purchases from a budtender named Stuart Walker (the third, seventh, ninth, twelfth and fourteenth purchases). The detective testified that when he made the second purchase, Ms. Morrow recognized him as a repeat customer and asked him if he had a twin. When he made his fourth purchase, Ms. Morrow told him to park farther down the street. The detective testified that when he made the last purchase, Mr. Walker recognized him as

a repeat customer and knew which strain of marijuana he preferred. The security guard also told the detective to move his car out of view of the security camera.

38. I find the facts summarized in paragraphs 36 and 37 to be true concerning Detective Masciangelo's purchase of 14 ounces of marijuana at Sweet Leaf on January 5, 2017.
39. On February 23, 2017, Denver Police officers conducted an undercover operation at a Sweet Leaf dispensary, at 2609 Walnut Street in Denver. Police Detective Richard Spence working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased 16 ounces of marijuana between 10:02 am to 3:36 pm. Detective Spence testified that most of these purchases were recorded on the body camera, but there were technical problems that resulted in a lack of recording for three purchases. Detective Spence's testimony and the Sweet Leaf receipts show that he made one-ounce purchases of marijuana on February 23, 2017, at the following times: 10:02 am, 10:17 am, 10:42 am, 11:04 am, 11:14 am, 11:25 am, 12:23 pm, 12:37 pm, 12:50 pm, 1:00 pm, 1:21 pm, 2:07 pm, 2:31 pm, 2:58 pm, 3:15 pm, 3:36 pm (Exhibits C-59 and C-60). The product that he purchased tested positive for marijuana at the police crime lab.
40. The body camera recording (Exhibit C-58) and the detective's testimony show that the detective made three purchases from budtender Abel Alvarado (the first, ninth and fifteenth purchases); four purchases from budtender Joseph Gerlick (the second, third, fifth, and eighth purchases); two purchases from budtender John Oglesbee (the fourth and sixth purchases); two purchases from budtender Ian Ferguson (the fifth and seventh purchases); three purchases from budtender Timothy McCrory (the eighth, tenth and eleventh purchases); and five purchases from budtender Leanne Henley (the twelfth through sixteenth purchases). There were two budtenders who assisted with the fifth, eighth, and fifteenth purchases. The detective testified that when he made his thirteenth purchase, which was his second purchase from budtender Leanne Henley, she recognized him as a recent customer and welcomed him back and told him to come back soon.
41. I find the facts summarized in paragraphs 39 and 40 to be true concerning Detective Spence's purchase of 16 ounces of marijuana at Sweet Leaf on February 23, 2017.
42. On February 23, 2017, Denver Police officers conducted another undercover operation at a Sweet Leaf dispensary at 4400 East Evans Avenue in Denver. Police Detective Masciangelo working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased 11 ounces of marijuana in less than two hours which are shown in the body camera recording in evidence as Exhibit C-87. The Sweet Leaf receipts document that he made one-ounce purchases on February 23, 2017, at the following times: 9:18 am, 9:30 am, 9:39 am, 9:52 am, 10:02 am, 10:11 am, 10:23 am, 10:33 am, 10:46 am, 10:58 am, 11:06 am (Exhibits C-88 and C-89). The product that he purchased tested positive for marijuana at the police crime lab.
43. The body camera recording (Exhibit C-87) and the detective's testimony show that detective made five marijuana purchases from a female budtender named Natalie (the

fourth, sixth, eighth, tenth, and eleventh purchases) and two marijuana purchases from a budtender named Andrea Cutrer (the fifth and ninth purchases). The detective testified that Ms. Cutrer recognized him as a repeat customer when he made the second purchase from her.

44. I find the facts summarized in paragraphs 42 and 43 to be true concerning Detective Masciangelo's purchase of 11 ounces of marijuana at Sweet Leaf on February 23, 2017.
45. On April 11, 2017, Denver Police Officers conducted a surveillance operation at Sweet Leaf, 2609 Walnut Street, by monitoring the HALO camera installed at that location, and through live surveillance by Detective Kafer and another Denver police detective who recorded his observations with a hand-held video camera. Detective Kafer testified that when reviewing the HALO recording and the hand-held video camera recording (in evidence as Exhibit C-61), he observed an individual, later identified as Sergio Montero, who entered and exited the Sweet Leaf dispensary nine times, and each time upon exiting, he placed a container in his vehicle. Mr. Montero was arrested by Denver police officers and a search of his vehicle was conducted.
46. A photograph of the items seized from Mr. Montero's vehicle pursuant to a search warrant is in evidence as Exhibit C-63, and the seized items were further described in the testimony of Detective Kafer. Exhibit C-63 shows 15 one-ounce containers of marijuana with the Sweet Leaf logo. Eleven containers have labels with a purchase date of April 11, 2017 from the 2609 Walnut Street Sweet Leaf dispensary. Four containers have labels with the same date and the Sweet Leaf dispensary at 2647 West 38th Avenue.
47. Based upon Mr. Montero's purchases of marijuana on April 11, 2017 at Sweet Leaf, he was charged in Denver District Court Case No. 2017 CR 2560 with one count of violating C.R.S. § 18-18-406(4)(a), possession of more than twelve ounces of marijuana, a class four felony. Mr. Montero pled guilty to that count and was granted a deferred sentence which ends on May 24, 2018 (Exhibit C-64). Mr. Montero is a resident of the State of Texas as shown in his driver's license (Exhibit C-62), and the record of Denver District Court Case No. 2017 CR 2560 (Exhibit C-64).
48. I find the facts summarized in paragraphs 45 and 46 to be true concerning Mr. Montero's purchase of more than twelve ounces of marijuana at Sweet Leaf on April 11, 2017, and I find the facts summarized in paragraph 47 to be true concerning his criminal prosecution and guilty plea.
49. On May 12, 2017, Juan Montez was arrested by Denver police officers after a traffic stop, and a consent search of his vehicle was conducted. Photographs of the items seized from Mr. Montez's vehicle are in evidence as Exhibits C-92 through C-96, and the seized items were further described in the testimony of Detective Kafer. 42 containers of marijuana with Sweet Leaf labels were found in Mr. Montez's vehicle. 41 containers had labels with purchase dates of May 11, 2017, between the times of 4:48 pm and 9:52 pm, and were purchased at the Sweet Leaf Dispensary at 4400 East Evans Avenue. Exhibit C-92 is a photo of a box of marijuana flower that was removed by Denver Police officers from the

Sweet Leaf containers found in Mr. Montez's vehicle. The product in the vehicle tested positive for marijuana at the police crime lab and weighed 1.7 pounds.

50. Exhibit C-91 is a summary of Mr. Montez's activities outside of the Sweet Leaf premises at 4400 East Evans Avenue that were captured on a HALO camera installed by the Denver Police Department to monitor the exterior of the premises. Exhibit C-91 lists 29 times that Mr. Montez entered and exited the Sweet Leaf dispensary on May 11, 2017 between the hours of 4:48 pm and 9:53 pm. Detective Kafer testified that the times listed in Exhibit C-91 for Mr. Montez arriving, entering the dispensary, and exiting the dispensary correspond to the times that he observed Mr. Montez on the HALO video recording.
51. Mr. Montez was interviewed by Denver police officers on May 12, 2017, and his audio recorded interview is in evidence as Exhibit C-96. Mr. Montez was given a Miranda advisement prior to making his statements and he waived his rights. Mr. Montez stated that he is a resident of New Mexico and that he traveled to Denver to purchase marijuana at the Sweet Leaf dispensary at 4400 East Evans Avenue on May 11, 2017. He stated that he has traveled to Denver to purchase marijuana at this dispensary once a month for three months, and then he returns to New Mexico and re-sells the marijuana or smokes it. He stated that the Sweet Leaf employees have commented that he comes in often and have joked with him about purchasing marijuana many times during the same day. He stated that each time he entered the premises he gave his identification to a Sweet Leaf employee at the reception desk who scanned his ID. On his first visit to Sweet Leaf, he was told by a security guard inside of the premises that he could purchase marijuana again at the dispensary if he returned to his car and drove around the block to be outside of the view of the dispensary security cameras. Mr. Montez stated that he brought \$6000 in cash to Denver, and he spent \$1700 for marijuana purchases.
52. I find the facts summarized in paragraphs 49 and 50 to be true and I find that Mr. Montez purchased more than one pound of marijuana at Sweet Leaf on May 11, 2017.
53. On June 23, 2017, Denver police officers conducted a surveillance operation at Sweet Leaf, 5100 West 38th Avenue. They observed a vehicle arriving at the dispensary six times, and each time an individual later identified as De Mario Garner was dropped off at the dispensary. Detective Joseph Delmonico testified that Mr. Garner entered and exited the Sweet Leaf dispensary six times. Denver police followed the vehicle, which had an Arkansas license plate (Exhibit C-79), and police made a traffic stop nearby. The driver of the vehicle, James Henry Rainey, consented to a search of the vehicle. A product that appeared to be marijuana was found in potato chip cans in the vehicle. Detective Delmonico testified that the product tested positive for marijuana and weighed 324 grams (about 11 ounces). Mr. Rainey provided a written statement to Detective Shanna Michael (Exhibit C-75), stating that he is from Arkansas. The passenger in the vehicle, Elisha McCoy, provided a written statement to Detective Delmonico (Exhibit C-74), stating that she and Rainey and Garner had travelled to Denver from Arkansas and were returning to Arkansas with the marijuana purchased at Sweet Leaf. Mr. Garner made a statement to Detective Delmonico that he had purchased marijuana six times at the Sweet Leaf dispensary at 5100 West 38th Avenue.

54. I find that Mr. Garner purchased six ounces of marijuana at Sweet Leaf, 5100 West 38th Avenue, on June 23, 2017.
55. On July 26, 2017, Denver police officers conducted an undercover operation at Sweet Leaf, 4125 North Elati Street. Police Detective Masciangelo working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased 13 ounces of marijuana in about 95 minutes. The detective testified that all purchases are shown in the body camera recording in evidence as Exhibit C-107, except the sixth purchase which was not recorded due to technical problems. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on July 26, 2017, at the following times: 10:47 am, 11:00 am, 11:08 am, 11:16 am, 11:25 am, 11:31 am, 11:39 am, 11:45 am, 11:52 am, 11:59 am, 12:06 pm, 12:14 pm, 12:22 pm (Exhibits C-108 and C-109). The product that he purchased tested positive for marijuana at the police crime lab.
56. The body camera recording (Exhibit C-107) and the detective's testimony show that the detective made four purchases from budtender Michael Pesavento (the first, seventh, eighth, and thirteenth purchases); three purchases from budtender Jacob Knost (the second, third and fifth purchases); four purchases from budtender Kirsten Delaney (the fourth, sixth, tenth, and twelfth purchases); and two purchases from budtender David Waigand (the fourth and eleventh purchases). The detective testified that Mr. Pesavento and Ms. Delaney recognized him as a repeat customer and asked him if he wanted to purchase the same strain of marijuana. The detective also testified that at the time of his second purchase, the Sweet Leaf security guard told him to park his car outside of the view of the dispensary security cameras.
57. I find the facts summarized in paragraphs 55 and 56 to be true concerning Detective Masciangelo's purchase of 13 ounces of marijuana at Sweet Leaf on July 26, 2017.
58. On August 3, 2017, Denver Police officers conducted an undercover operation at Sweet Leaf, 7200 East Smith Road. Police Detective Spence working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased six ounces of marijuana in about 80 minutes. Detective Spence testified that all purchases are shown in the body camera recording in evidence as Exhibit C-123, except the second purchase which was not recorded due to technical problems. The detective's testimony and the Sweet Leaf receipts show that he made one-ounce purchases of marijuana on August 3, 2017, at the following times: 11:26 am, 11:35 am, 12:00 pm, 12:08 pm, 12:15 pm, 12:45 pm (Exhibits C-124, C-125, C-126). The product that he purchased tested positive for marijuana at the police crime lab.
59. The body camera recording (Exhibit C-123) and the detective's testimony show that he made five purchases from budtender Deann Miller (the first, second, third, fourth and sixth purchases), and the fifth purchase from a male budtender. The detective testified that during the third, fourth and sixth purchases, Ms. Miller recognized him as a repeat customer, and each time asked him if he wanted to purchase the same strain of marijuana. The detective also testified that before his third purchase, the Sweet Leaf security guard

told him that if he left the premises after a purchase, he could return as often as he wanted to. The security guard also asked the detective to step outside of the dispensary after his sixth purchase, and pointed out the dispensary security cameras, and then told the detective that he needed to drive around the block and take his marijuana product home and then he could return to the dispensary for more marijuana.

60. I find the facts summarized in paragraphs 58 and 59 to be true concerning Detective Spence's purchase of six ounces of marijuana at Sweet Leaf on August 3, 2017.
61. On August 17, 2017, Denver Police Officers conducted a surveillance operation at Sweet Leaf, 4125 North Elati Street, Denver. Officers observed an individual, later identified as Christian Conde-Garcia, who entered and exited the Sweet Leaf dispensary 21 times, between 9:02 am and 12:58 pm. Detective Masciangelo observed Mr. Conde-Garcia leave the dispensary each time and return to his vehicle, then drive around a corner and return to the dispensary in about five to ten minutes. Mr. Conde-Garcia was arrested by Denver police officers and a search of his vehicle was conducted.
62. Exhibit C-111 is a summary of Mr. Conde-Garcia's activities outside of the Sweet Leaf premises at 4125 North Elati Street that were captured on a HALO camera installed by the Denver Police Department to monitor the exterior of the premises. Exhibit C-111 lists 21 times that Mr. Conde-Garcia entered and exited the Sweet Leaf dispensary on August 17, 2017 between the hours of 9:02 am and 12:58 pm. Detective Masciangelo testified that the times listed in Exhibit C-111 for Mr. Conde-Garcia arriving, entering the dispensary, and exiting the dispensary correspond to the times that he observed Mr. Conde-Garcia on the HALO video recording.
63. A photograph of the items seized from Mr. Conde-Garcia's vehicle is in evidence as Exhibit C-113, and the seized items were further described in the testimony of Detective Masciangelo. Exhibit C-113 shows 23 containers of marijuana with the Sweet Leaf logo. Detective Masciangelo testified that all containers had a label with the date of August 17, 2017 at the 4125 North Elati Street Sweet Leaf dispensary. He testified that there were seven other bags and containers of marijuana found in the vehicle, including four containers with the Sweet Leaf logo purchased on August 16, 2017 at the North Elati Street dispensary, and three other containers purchased on August 16, 2017 at the Sweet Leaf dispensary at 2647 West 38th Avenue. The Denver Police crime lab determined that the product found in Mr. Conde-Garcia's vehicle tested positive for marijuana. The marijuana in the bags weighed 12.6 grams, and the marijuana in the containers weighed 770.8 grams, which is a total of 1.94 pounds (Exhibit C-115). Mr. Conde-Garcia was driving a vehicle with a Nebraska license plate (Exhibit C-114).
64. I find the facts summarized in paragraphs 61-63 to be true concerning Mr. Conde-Garcia's purchases of marijuana at Sweet Leaf dispensaries on August 16 and 17, 2017. I find that Mr. Conde-Garcia purchased more than 12 ounces of marijuana on August 17, 2017 at the Sweet Leaf dispensary at 4125 North Elati Street.

65. On September 18, 2017, Denver Police Officers conducted a surveillance operation at Sweet Leaf, 7200 East Smith Road, Denver. Officers observed an individual, later identified as Young Lee, who entered and exited the Sweet Leaf dispensary ten times, between 9:05 am and 10:10 am. Mr. Lee was arrested by Denver police officers and a search of his vehicle was conducted. A photograph of the items seized from Mr. Lee's vehicle is in evidence as Exhibit C-127, and the seized items were further described in the testimony of Detective Masciangelo. Exhibit C-127 shows ten containers of marijuana with the Sweet Leaf logo. Denver Police determined that the marijuana found in Mr. Lee's vehicle weighed 9.8 ounces.
66. Based upon Mr. Lee's purchases of marijuana on September 18, 2017 at Sweet Leaf, he was charged in Denver District Court Case No. 2017 CR 6761 with one felony count of violating C.R.S. § 18-18-406(2)(b)(I),(III)(D), possession with intent to distribute marijuana, and with one count of violating C.R.S. § 18-18-406(4)(c), possession of more than two ounces of marijuana, a class two misdemeanor. Mr. Lee pled guilty to the misdemeanor count and was sentenced to 12 months of probation. Exhibit C-128.
67. I find the facts summarized in paragraph 65 to be true concerning Mr. Lee's purchase of 9.8 ounces of marijuana at Sweet Leaf on September 18, 2017, and I find the facts summarized in paragraph 66 to be true concerning his criminal conviction.
68. On December 7, 2017, Denver Police officers conducted another undercover operation at Sweet Leaf, 2647 West 38th Avenue. Police Detective Spence working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in 21 minutes. Detective Spence testified that all purchases are shown in the body camera recording in evidence as Exhibit C-51, except the fifth purchase which was not recorded due to technical problems. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on December 7, 2017, at the following times: 10:10 am, 10:16 am, 10:24 am, 10:27 am, 10:31 am (Exhibits C-52 through C-54). The product that he purchased tested positive for marijuana at the police crime lab. The body camera recording and the detective's testimony show that he made the second and third purchases from the same female budtender, and that the fifth purchase was sold by two other budtenders who were each involved in the first and fourth purchases. The detective testified that when he made the fifth purchase, the budtender recognized him as a repeat customer and asked him if he wanted to purchase the same strain of marijuana as his previous purchase. I find the facts summarized in this paragraph to be true concerning Detective Spence's purchase of five ounces of marijuana at Sweet Leaf on December 7, 2017.
69. On December 7, 2017, Denver Police officers conducted another undercover operation at Sweet Leaf, 2609 Walnut Street. Police Detective Spence working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in 35 minutes. Detective Spence testified that all purchases are shown in the body camera recording in evidence as Exhibit C-65, except the fifth purchase which was not recorded due to technical problems. The Sweet Leaf receipts of marijuana purchases document that he made one-ounce

purchases of marijuana on December 7, 2017, at the following times: 12:28 pm, 12:34 pm, 12:41 pm, 12:51 pm, 1:03 pm (Exhibits C-66 and C-67). The product that he purchased tested positive for marijuana at the police crime lab. The body camera recording and the detective's testimony show that he made the first four purchases from the same budtender, Trevor Ivy, and the fifth purchase was made from a different budtender. I find the facts summarized in this paragraph to be true concerning Detective Spence's purchase of five ounces of marijuana at Sweet Leaf on December 7, 2017.

70. On December 7, 2017, Denver Police officers conducted another undercover operation at Sweet Leaf, 4400 East Evans Avenue. Police Detective Jon Crowe working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in less than one hour which are shown in the body camera recording in evidence as Exhibit C-97. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on December 7, 2017, at the following times: 1:11 pm, 1:27 pm, 1:43 pm, 1:52 pm, and 2:00 pm (Exhibits C-98 and C-99). The product that he purchased tested positive for marijuana at the police crime lab. The body camera recording and the detective's testimony shown that his fourth and fifth purchases were from the same male budtender. Detective Crowe testified that this budtender recognized him as a repeat customer and asked him if he wanted to purchase a full ounce again. The detective also testified that each time he entered the dispensary he provided his identification to the same employee, and that upon one of his return visits that employee recognized him as a repeat customer and asked him if he was shopping again. I find the facts summarized in this paragraph to be true concerning Detective Crowe's purchase of five ounces of marijuana at Sweet Leaf on December 7, 2017.
71. On December 7, 2017, Denver Police officers conducted another undercover operation at Sweet Leaf, 7200 Smith Road in Denver. Police Detective Crowe working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in about one hour which are shown in the body camera recording in evidence as Exhibit C-129. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on December 7, 2017, at the following times: 11:04 am, 11:20 am, 11:36 am, 11:52 am, and 12:08 pm (Exhibits C-130 and C-131). The product that he purchased tested positive for marijuana at the police crime lab. The body camera recording and the detective's testimony show that his first, second, third and fifth purchases were made from the same female budtender. Detective Crowe testified that when he made the third purchase, the female budtender recognized him as a repeat customer and said, "welcome back." I find the facts summarized in this paragraph to be true concerning Detective Crowe's purchase of five ounces of marijuana at Sweet Leaf on December 7, 2017.
72. On December 7, 2017, Denver Police officers conducted another undercover operation at Sweet Leaf, 5100 West 38th Avenue. Police Detective Spence working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in 33 minutes. Detective Spence testified that all purchases are shown in the body camera recording in evidence as Exhibit C-80, except the fifth purchase which was not recorded due to technical

problems. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on December 7, 2017, at the following times: 9:05 am, 9:14 am, 9:23 am, 9:30 am, 9:38 am (Exhibits C-81 and C-82). The product that he purchased tested positive for marijuana at the police crime lab. The body camera recording and the detective's testimony show that his first, third and fifth purchases were made from the same female budtender, Abigail, and the second and fourth purchases were made from the same male budtender, Toby. I find the facts summarized in this paragraph to be true concerning Detective Spence's purchase of five ounces of marijuana at Sweet Leaf on December 7, 2017.

73. On December 7, 2017, Denver Police officers conducted another undercover operation at Sweet Leaf, 4125 North Elati Street. Police Detective Spence working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in less than one hour which are shown in the body camera recording in evidence as Exhibit C-116. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on December 7, 2017 at the following times: 10:58 am, 11:04 am, 11:15 am, 11:40 am, 11:54 am (Exhibits C-117 and C-118). The product that he purchased tested positive for marijuana at the police crime lab.
74. The body camera recording (Exhibit C-116) and the detective's testimony show that he made the first four purchases from the same budtender, Jesse Marcus, and that a budtender named Cody assisted with the fourth purchase and he also sold the fifth purchase. Detective Spence testified that when he made his second purchase, the Sweet Leaf security guard asked him if he had left the premises before returning for his second purchase. When the detective made his third purchase, the security guard told him that other customers had reported seeing undercover police officers parked outside of the dispensary.
75. When Detective Spence made these purchases, the Sweet Leaf budtender provided him with the Amendment 64 notice which is given routinely to customers. The Amendment 64 notice is shown in the photograph in Exhibit C-118. It states in part:

Recreationally it is illegal to possess more than one ounce of cannabis at a time! So we recommend you only purchase in a day what you are allowed to have on you.

76. I find the facts summarized in paragraphs 73-75 to be true concerning Detective Spence's purchase of five ounces of marijuana at Sweet Leaf on December 7, 2017.

Sweet Leaf dispensary sales in 2017, Aurora location

77. On October 5, 2017, Denver Police officers conducted an undercover operation at Sweet Leaf, 15200 East 6th Avenue, Aurora, Colorado. Police Detective Spence working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased 16 ounces of marijuana in less than six hours. Detective Spence testified that the purchases are shown in the body camera recording in evidence as Exhibit C-164, except that four purchases were not recorded due

to technical problems. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on October 5, 2017, at the following times: 9:34 am, 9:51 am, 10:06 am, 10:19 am, 11:19 am, 11:38 am, 11:55 am, 12:14 pm, 12:45 pm, 1:21 pm, 1:41 pm, 2:12 pm, 2:26 pm, 2:48 pm, 3:01 or 3:07 pm, 3:24 pm (Exhibits C-165 and C-166). The product that he purchased tested positive for marijuana at the police crime lab.

78. The body camera recording (Exhibit C-164) and the detective's testimony show that detective made four purchases from budtender Jonathan Sublette (the first, fifth, sixth, and seventh purchases); three purchases from budtender Peyton Hansen (the second, third, and fourth purchases); three purchases from budtender Maria Aguilera (the eighth, ninth and tenth purchases); three purchases from budtender Dana Velasquez (the fourteenth, fifteenth, and sixteenth purchases). Detective Spence testified that when he made subsequent purchases from budtenders Sublette, Hansen, and Velasquez, they recognized him as a repeat customer, and Mr. Sublette asked him if he wanted to buy the same strain of marijuana.
79. I find the facts summarized in paragraphs 77 and 78 to be true concerning Detective Spence's purchase of 16 ounces of marijuana at Sweet Leaf in Aurora on October 5, 2017.
80. On December 7, 2017, Denver Police officers conducted another undercover operation at Sweet Leaf, 15200 East 6th Avenue in Aurora. Police Detective Crowe working undercover in plain clothes entered Sweet Leaf with a hidden body camera which provided audio and video recording. The detective purchased five ounces of marijuana in 46 minutes, which are shown in the body camera recording in evidence as Exhibit C-167. The Sweet Leaf receipts document that he made one-ounce purchases of marijuana on December 7, 2017, at the following times: 9:21 am, 9:32 am, 9:41 am, 9:54 am, and 10:07 am (Exhibits C-168 and C-169). The product that he purchased tested positive for marijuana at the police crime lab.
81. The body camera recording (Exhibit C-167) and the detective's testimony show that he made the first and fifth purchases from the same male budtender, and that he made the second and third purchases from another male budtender. During the third purchase, the detective told the budtender that he had put the marijuana from his last purchase in his car. When he made his fifth purchase, the budtender recognized him as a repeat purchaser and asked him if he wanted the same strain of marijuana.
82. I find the facts summarized in paragraphs 80 and 81 to be true concerning Detective Crowe's purchase of five ounces of marijuana at Sweet Leaf in Aurora on December 7, 2017.

Sweet Leaf search warrants

83. On December 14, 2017, the date of the Order of Summary Suspension for all Sweet Leaf marijuana business licenses, Denver police executed search warrants at Sweet Leaf dispensaries, arrested employees pursuant to arrest warrants, and interviewed numerous Sweet Leaf employees and security guards.

84. Detective Kafer testified that a search warrant authorized access to SLACK messages exchanged between Sweet Leaf management and employees. SLACK is a business communication app which groups can use as an electronic bulletin board. Detective Kafer took photographs of SLACK messages viewed on a computer monitor at the Sweet Leaf corporate office at 1475 South Acoma Street (Exhibit C-136). Ashley Goldstein, the Sweet Leaf Retail Operations Manager who reported directly to the three Sweet Leaf owners, sent SLACK messages to dispensary managers on November 27, and December 5, 6, and 11, 2017 stating that EPC looping² was approved (Exhibit C-136, pp. 2, 4-6). The SLACK message from November 27, 2017 refers to EPC loopers as Royal Loyals.
85. Exhibit C-137 is a photograph of a SLACK text message sent by Ms. Goldstein to all Sweet Leaf dispensary managers and assistant managers in December 2017. The SLACK message stated as follows: “Looping is going to be going on until the new year most likely. Please talk it up with epc patients. We need med sales up and sign overs!” The photograph in Exhibit C-137 was taken by a Denver police officer on December 14, 2017, of the cell phone screen belonging to Cameron O’Horo, an assistant manager at the Sweet Leaf Aurora dispensary.
86. Exhibit C-138 is a photograph of a SLACK text message sent by Rachel Martinez, Sweet Leaf District Manager, in December 2017, stating that customers are allowed to loop with the blanket/coat drive discount. The photograph in Exhibit C-138 was taken by a Denver police officer on December 14, 2017, of the cell phone screen belonging to Leanne Henley, a budtender at the Walnut Street dispensary.
87. Detective Kafer testified that Exhibit C-143 is a Sweet Leaf corporate document seized at the Sweet Leaf corporate office which is dated April 13, 2017 and states that budtender Ian Ferguson reported to management that he could see customers “royal loyaling” on camera all day. Exhibit C-147 is a message from Ms. Goldstein dated June 23, 2017 stating that employees should not say anything when they recognize loopers, and only provide a copy of the Amendment 64 notice.

Summary of statements by Rachel Martinez, Sweet Leaf District Manager

88. Mr. Stephen Bratten is employed as a Special Agent with the Colorado Department of Revenue and his duties include the investigation of tax and financial crimes prohibited by title 39 of the Colorado Revised Statutes. On December 14, 2017, Mr. Bratten participated in the investigation with the Denver Police Department of the Sweet Leaf dispensary at 4125 North Elati Street. Mr. Bratten interviewed Rachel Martinez who identified herself as the District Manager for Sweet Leaf companies. Ms. Martinez was not under arrest, and her interview was not recorded.

² “EPC” refers to extended plant count medical marijuana patients, who had a physician recommendation for more than two ounces of medical marijuana. The term “looping” is explained by Rachel Martinez, Sweet Leaf District Manager, as the business practice of making multiple one-ounce transfers of marijuana to the same customer. See paragraph 89 below.

89. Mr. Bratten testified that Ms. Martinez made the following statements to him. She was employed by Sweet Leaf as the District Manager for three years, and she oversaw all Sweet Leaf dispensaries. She took direction from the three owners of Sweet Leaf, Matthew Aiken, Christian Johnson, and Anthony Sauro. A Sweet Leaf vice president instituted the practice of “looping” in 2016 which allowed retail customers at all dispensaries to purchase up to one ounce of marijuana at a time, and customers could make as many purchases as they wanted in a day, if the customers left the Sweet Leaf property after each purchase. When Sweet Leaf began the looping scheme, the company vice president instructed employees to stop retaining the names and personal information of customers. Prior to the looping scheme, Sweet Leaf restricted sales of retail marijuana to one ounce per day per customer.
90. The three owners have taken an active role in management of the companies. Ms. Martinez participated in weekly sales meetings with the three Sweet Leaf owners, and looping was discussed each week. The three owners encouraged and directed the practice of looping at all dispensaries. Sweet Leaf trainers instructed new employees to allow looping for retail customers making multiple purchases of one ounce of marijuana if the customer left the premises after each purchase.
91. Ms. Martinez estimated that about 30-50% of Sweet Leaf revenue was from looping. She stated that Sweet Leaf revenues ranged from \$5 million to \$10 million annually from recreational sales. Most customers who engaged in looping had out-of-state forms of identification.

Summary of statements by Sweet Leaf employees and agents

92. Denver police officers interviewed 22 Sweet Leaf employees who worked at six dispensaries in Denver: at 4125 North Elati Street, 4400 East Evans Avenue, 5100 West 38th Avenue, 2647 West 38th Avenue, 2609 Walnut Street and 7200 East Smith Road. Denver police officers also interviewed three employees at the Sweet Leaf dispensary in Aurora. All interviews were conducted on December 14, 2017, except the interview of Andrea Cutrer, which was conducted on February 6, 2018. Many of the interviews were audio and video recorded, or written statements were taken, which are shown in exhibits admitted into evidence.³
93. All employees stated that looping was a practice that occurred frequently at the Sweet Leaf dispensaries where they worked. They described looping as occurring when a customer made multiple purchases of one ounce of retail marijuana in the same day. The employees said that customers were provided with the Amendment 64 notice, and after making a purchase, customers were required to leave the store before returning to make another purchase. Many employees said that customers were required to leave the view of the security cameras before returning to make another purchase. Many employees said that looping was done by medical marijuana patients also. Many employees said that Sweet

³ The following exhibits are employee interviews or statements: C-55, C-68, C-69, C-70, C-84, C-85, C-100, C-102 through C-106, C-119 through C-122, C-161, C-171 through C-173.

Leaf provided training about looping as a Sweet Leaf business practice, and several employees said that they had been instructed about looping as a Sweet Leaf business practice by Sweet Leaf store managers and upper management.

94. Employees gave examples of the frequency of looping. Ms. Dubois observed regular recreational loopers who have bought one ounce of marijuana three to five times in a day, and she has observed regular medical marijuana loopers buying marijuana as many as ten times in a day at the East Evans dispensary. Mr. Lempke stated that looping is usually done by the same people, and he has observed looping seven times in one day at the dispensary at 5100 West 38th Avenue. Mr. Lempke believes that loopers are either re-selling marijuana or transporting it out-of-state. Ms. Littleton stated that she has observed one or two loopers each day, and she has seen the same looper making three or four purchases in a day at the North Elati Street dispensary. Mr. Marcus stated that he has observed the same looper buying marijuana all day long at the North Elati Street dispensary. Mr. Waigand stated that he has observed looping as many as 13 times in one day at the North Elati Street dispensary, Mr. Arneson stated that he has observed loopers buying marijuana at least ten times in a day, and he has sold 15 to 20 ounces of marijuana to a looper in a day at the dispensary at 2647 West 38th Avenue. Mr. Cantor stated that he has observed loopers at the dispensary at 2647 West 38th Avenue buying marijuana 17 times in one day. Mr. Ferguson has observed looping at the Walnut Street dispensary about twice a week, and he observed looping six or seven times a day. He also observed many out-of-state loopers, including people with ID's from Texas and Nebraska.
95. Ms. Henley stated that she has observed looping every day at the Walnut Street dispensary. She has observed an average of four to seven loopers a day, and they purchase one to two pounds of marijuana in a day. She has also observed looping of marijuana concentrates on Sundays when the concentrates are discounted by 20%. Sweet Leaf owners, Christian Johnson and Anthony Sauro, have come into the Walnut Street dispensary and told her that looping was okay.
96. Ms. Cutrer stated that looping happened every day and all day long at the 4400 East Evans Avenue dispensary. All budtenders sold marijuana to loopers. Budtenders checked the identification of every customer before making a sale of marijuana. She stated that at least half of the looper customers had out-of-state ID's. Ms. Cutrer made looping sales of medical marijuana to EPC customers, and some loopers made repeated purchases of one pound of marijuana, or even two pounds. When a shipment of marijuana arrived at the dispensary, the front desk employee called loopers to inform them of the shipment arrival. The largest purchasers were given priority, and some made four purchases before the dispensary ran out of product. Ms. Cutrer has made at least four sales of one pound each in the same day to a looper. Ten sales are the most that she has made in one day to a looper.
97. Mr. Arneson and Ms. Hale said that budtenders monitor the security cameras and ask the security guard to contact a looper who has not left the view of the security cameras before returning to the dispensary for more marijuana.

Summary of statements by Sweet Leaf security guards

98. Denver Police Sergeant Michael Mosco supervised the investigation on December 14, 2017, at 1475 South Acoma Street, where Sweet Leaf corporate offices and marijuana grows are located. Sgt. Mosco took a written statement from Victor Olea-Betancour, a Sweet Leaf security guard who was on duty. Mr. Betancour was given a Miranda advisement and he waived his rights. His written statement is in evidence as Exhibit C-160.
99. Mr. Betancour made the following statements in Exhibit C-160. He has been employed by S.A.S.S. Security to provide security services at six Denver Sweet Leaf dispensaries during 2017, including dispensaries at 2609 Walnut Street, 4125 North Elati, 4400 East Evans, 2647 West 38th Avenue, 5100 West 38th Avenue, 4379 North Tejon Street, and a Sweet Leaf dispensary in Federal Heights. Sweet Leaf managers at these dispensaries have told him that customers can make multiple purchases of marijuana flower and marijuana edibles in a day if they leave the premises and the view of the security cameras, and don't bring the previously purchased marijuana back to the store, before returning to purchase more marijuana. He has observed loopers from out-of-state.
100. Jeff Young, a Sweet Leaf security guard, was interviewed by Detective O'Bannon on December 14, 2017. An audio and video recording of this interview is in evidence as Exhibit C-83. Mr. Young made the following statements in his interview. He worked as a security guard at three Sweet Leaf dispensaries beginning in September 2016, when he was assigned to the dispensary at 2647 West 38th Avenue. He has also worked at Sweet Leaf dispensaries at 5100 West 38th Avenue and 4125 North Elati. He is familiar with the practice of looping which he described as customers purchasing more than one ounce of marijuana in a day. He has observed customers looping six to twelve times per day. He has observed looping by three to six people who regularly came to the dispensary at 2647 West 38th Avenue, about once a week or every other week. He also observed one or two loopers each week at 5100 West 38th Avenue dispensary. He has discussed looping with Sweet Leaf dispensary managers who told him that the practice was legal. Mr. Young stated that the Sweet Leaf practice was that loopers must leave the view of the security cameras and cannot park in the Sweet Leaf parking lot.
101. Mr. Crosby, a Sweet Leaf security guard, was interviewed by Denver Police Detective Jose Garcia on December 14, 2017, at the Sweet Leaf dispensary at 7200 East Smith Road. Mr. Crosby was not under arrest. He was familiar with the term looping, which he described as a customer who makes multiple purchases of marijuana in a day. Mr. Crosby was informed by the Sweet Leaf dispensary manager that looping was allowed if customers left the dispensary and the view of security cameras before returning to purchase more marijuana. Mr. Crosby had observed looping at the dispensary at 7200 East Smith Road.
102. Jeff Sterner, a Sweet Leaf security guard, was interviewed by Detective Delmonico on December 14, 2017. Mr. Sterner was not under arrest. An audio and video recording of this interview is in evidence as Exhibit C-56. A photograph of Mr. Sterner and his MED badge is evidence as Exhibit C-176. Mr. Sterner made the following statements in his

interview. He has been employed by S.A.S.S. Security to provide security services at all Sweet Leaf dispensaries since August 2017. He was familiar with the term looping, which he described as a customer who makes multiple purchases of marijuana in a day. Mr. Sterner was informed by Sweet Leaf dispensary managers that looping was allowed if customers left the dispensary and the view of security cameras and took the marijuana product home, before returning to purchase more marijuana. Mr. Sterner has observed looping at Sweet Leaf dispensaries on a daily basis, and there is an average of up to six loopers each day. He observed two loopers when he was on duty at the Aurora dispensary during the evening before his interview. Mr. Sterner monitors the dispensary security cameras when he is on duty and he checks to see if loopers leave the view of the security cameras before returning to the dispensary. He tells loopers to go home with their product and to wait 15-30 minutes before returning to make another marijuana purchase. Mr. Sterner recognizes loopers and their vehicles. Most loopers are from out-of-state. He has observed Mr. Brandt from Oklahoma who loops at both Sweet Leaf dispensaries on West 38th Avenue, and at the North Elati Street dispensary. Mr. Sterner has observed Mr. Brandt looping for two days on the weekends, and he makes about 15-20 purchases of marijuana each day. Mr. Sterner has also observed loopers from Nebraska and Wyoming. Mr. Sterner stated that looping is frequently discussed by Sweet Leaf budtenders, and that they are fully aware of out-of-state loopers, who present their out-of-state driver's licenses to the budtenders before making each purchase.

103. Evidence was also admitted about statements made by a confidential informant to Detective Kafer. The confidential informant was employed as a Sweet Leaf budtender at 2647 West 38th Avenue from August to October 2016, and then as a security guard beginning in October 2016, working first at the Aurora dispensary and then at 4370 North Tejon and 4400 East Evans Avenue and at the Federal Heights dispensary.
104. The confidential informant provided Detective Kafer with Sweet Leaf documents shown in Exhibits C-162 and C-163. These exhibits have photos of a Sweet Leaf document stating the prices of medical marijuana for "EPC" (extended plant count) customers for purchases of 1/4 pound, 1/2 pound and one pound of medical marijuana. A note on the document states that "[medical EPC customers] must leave entire parking lot. We will tell them our cameras go to the street! Legally they can only possess whatever their PC [physician certification] says. Do not refer to these patients as 'loopers.' Use 'the royal loyals.'" "Also EPC – can return. Law is 'per transaction'"
105. The confidential informant statements to Detective Kafer are consistent with statements made by other Sweet Leaf security guards and employees. The confidential informant described the same looping practice of retail and medical marijuana at all dispensaries where he worked. Security guards would tell loopers to leave the view of the security

cameras between purchases to show that they had left the premises. The confidential informant immediately recognized loopers and many of them were from out of state.⁴

Findings regarding Sweet Leaf looping scheme

106. Although the Colorado Rules of Evidence are not strictly applied in Department licensing matters (*see* C.R.E. 101), I find and conclude that the statements in Sweet Leaf corporate documents and SLACK messages, the statements by Sweet Leaf upper management, store managers, employees, and security guards, as summarized in paragraphs 83 to 102 above, are excluded from the definition of hearsay pursuant to C.R.E. 801(d)(2) because the statements are admissions by a party-opponent. Alternatively, I find and conclude that these statements are admissible under the criteria set forth in *Industrial Claims Appeal Office v. Flower Stop Marketing Corporation*, 782 P.2d. 13, 18 (Colo. 1989) because they are reliable, trustworthy, and possess probative value commonly accepted by prudent persons in the conduct of their affairs. Further, the statements about the Sweet Leaf looping practice are corroborated by substantial evidence cited in this Recommended Decision.
107. Based upon Sweet Leaf corporate documents and SLACK messages admitted into evidence, and all statements by Sweet Leaf personnel identified above, I find that Sweet Leaf owners, Matthew Aiken, Christian Johnson, and Anthony Sauro had knowledge of, and directed, a looping scheme of selling retail and medical marijuana at all Denver Sweet Leaf dispensaries in which Sweet Leaf artificially divided a single transaction by structuring multiple transfers of marijuana to customers to evade quantity limitations on the sale of retail and medical marijuana. I find that Sweet Leaf upper management, including Rachel Martinez and Ashley Goldstein, also had knowledge of, and directed, this looping scheme at all Denver Sweet Leaf dispensaries.
108. I find that looping of retail marijuana and medical marijuana were practices that occurred frequently at all Denver Sweet Leaf dispensaries. I find that Sweet Leaf employees were trained and instructed by management to promote looping of retail marijuana by making multiple one-ounce transfers of retail marijuana to the same customer as often as the customer requested more marijuana, and by making multiple transfers of medical marijuana in amounts of either two ounces or the patient's EPC physician-recommended ounce count, as often as the patient requested more marijuana. I find that retail and medical customers bought as much marijuana as they wanted, so long as the customers left the dispensary and the view of security cameras, and took their marijuana to their car or home, before returning to the dispensary to buy more marijuana.

⁴ Testimony by Detective Kafer about statements by a confidential informant are admissible under the criteria set forth in *Taylor v. Wallace*, 931 F.2d 698, 701 (10th Cir. 1991), citing *Mendoza v. Miller*, 779 F.2d 1287, 1293 (7th Cir. 1985). Nevertheless, these statements are not relied upon in the analysis herein.

Summary of testimony from Colorado Marijuana Enforcement Division employees

109. Mr. Kyle Lambert is the Deputy Director of the State Marijuana Enforcement Division and he has been employed by the MED for four years. He described the marijuana inventory tracking system known as Metrc, which is mandated by the MED for retail marijuana stores and medical marijuana centers. Marijuana licensees report marijuana sales on a daily basis to the MED through Metrc. The reporting includes the amount of marijuana sold by weight or quantity, and the amount of sales revenues. Licensees also report to the MED data for all medical marijuana patients, including patient identification number, and the physician-recommended plant count and ounce count for each patient.
110. Marijuana dispensaries typically maintain a secondary point-of-sale system that is used for their business needs, such as Flow Hub. The MED has authority to obtain sales data from a licensee's secondary point-of-sale system. In December 2017, the MED made a demand to Sweet Leaf for its records about its medical marijuana and retail marijuana operations, including point-of-sale data, which Sweet Leaf provided from Flow Hub.
111. Mr. Philip Martin has been employed by the MED as its Data Analysis Manager since October 2017, and prior to that he worked as an MED compliance investigator beginning in June 2017. Mr. Martin analyzed Sweet Leaf's Metrc data and its Flow Hub data which includes sale date, time, employee, and amount of product. Flow Hub data for retail marijuana sales also includes the check-in time for each customer, the state issuing the customer's ID, a unique sales identification number for each sale, the item category (e.g., the marijuana strain name), and the grams or units sold.
112. Exhibit C-175 is an Excel spreadsheet prepared by the MED which shows medical marijuana Patients A, B, C and E, who purchased more than their physician-recommended marijuana ounce count in one day.
113. Patient A made 30 purchases of medical marijuana in two-ounce amounts (56 grams) on August 4, 2017 at the Sweet Leaf medical marijuana center at 4379 Tejon Street. Employee Damian Riniker made six sales of medical marijuana in two-ounce amounts to Patient A in less than one hour on that day, between 10:15 am and 11:15 am. Employee Ian Maycroft made ten sales of medical marijuana in two-ounce amounts to Patient A in less than two hours, between 4:32 pm and 6:28 pm, with most sales only five to eight minutes apart, also on the date of August 4, 2017.
114. Patient B made 12 purchases of medical marijuana on April 27, 2017 at the Sweet Leaf medical marijuana center in Federal Heights. Employee Dylan Lunsford made two sales in 12-ounce amounts (336 grams) that were 24 minutes apart, between 11:33 am and 11:57 am; this employee made another sale of 12 ounces at 2:02 pm and then a sale of 6 ounces at 2:17 pm.
115. Patient C made 11 purchases of medical marijuana on November 27, 2017 at the Sweet Leaf medical marijuana center at 4400 East Evans Avenue. Employee Dustin Sweden made two sales in one-pound amounts (448 grams) that were 10 minutes apart, at 3:00 pm

and 3:10 pm. Employee Justin Fox made two sales in one-pound amounts that were also 10 minutes apart, at 5:26 pm and 5:36 pm.

116. Patient E made 10 purchases of medical marijuana in two-ounce amounts (56 grams) on May 9, 2017 at the Sweet Leaf medical marijuana center at 468 South Federal Boulevard in less than one hour. Employee Richard Piekarski made five sales of two ounces each, and employee Matthew Critean made five other sales of two ounces each.
117. Exhibit C-174 is the report prepared by Mr. Martin titled “Sweet Leaf Point of Sale and Metrc Analysis” for Sweet Leaf retail marijuana store licenses and medical marijuana center licenses. The scope of the analysis was focused on “identification of patterns, trends, or anomalies that would support the investigation into ‘Looping’ as a business model for Sweet Leaf licenses.” The analysis used data from January 2016 through December 2017, and only evaluated marijuana flower transactions.
118. Exhibit C-174, pages 2 through 7, reports the analysis of looping of medical marijuana at Sweet Leaf medical marijuana centers located at 4379 North Tejon Street, 4400 East Evans Avenue, 468 South Federal Boulevard.⁵ Mr. Martin testified that three other Sweet Leaf locations, at 2609 Walnut Street and at 2647 and 5100 West 38th Avenue, had medical marijuana licenses that were issued, but were not active. For medical marijuana patients, looping occurred either when a patient was sold more than the physician-recommended ounce count in a single transaction, or when a patient made multiple purchases at the same store in the same day which totaled more than their physician-recommended ounce count.
119. The report demonstrates that between June 1, 2016 and December 13, 2017, there were 1,067 instances of medical looping at 4379 Tejon Street, 666 instances of medical looping at 4400 East Evans Avenue, and 93 instances of medical looping at 468 South Federal Boulevard. At these three locations, 5,554.98 pounds of medical marijuana were sold in looping transactions, and the gross sales revenue totaled \$6,779,795.06. (Exhibit C-174, p. 3).
120. One example of looping by a medical marijuana patient in the report (Exhibit C-174, pp. 4-6), shows that Patient A engaged in looping on 137 days between March 3, 2017 and December 13, 2017, and made 1894 purchases of medical marijuana when looping, which is an average of 14 purchases per day. Patient A purchased a total of 446.64 pounds of marijuana, spending \$577,480.32.
121. For retail marijuana sales, Mr. Martin defined looping as a single customer who made multiple purchases in the same day at the same location that exceeded a total of one ounce of retail marijuana. Mr. Martin testified that the data in the report (Exhibit C-174, pp. 8-15) provides several indications of looping at Sweet Leaf retail dispensaries, including the percentage of one-ounce sales to residents compared to the total resident sales (p. 14), the percentage of one-ounce sales to non-residents compared to total non-resident sales (p. 14),

⁵ The report also analyzes looping of medical marijuana at a Sweet Leaf medical marijuana center in Federal Heights.

the minutes between one-ounce sales (p. 15), a low average sale price per pound compared to other dispensaries (p. 9), and a high average of pounds sold per day compared to other dispensaries (p. 10).

122. Mr. Martin testified that a typical retail dispensary sells various weights of marijuana flower, and for three Sweet Leaf dispensaries, at 4125 Elati Street, 2609 Walnut Street, and 2647 West 38th Avenue, one-ounce sales were a high percentage of total sales, which is an indication of looping. Mr. Martin testified that the minutes between one-ounce sales is a strong indicator of looping, and the data show that at three Sweet Leaf retail dispensaries, at 2609 Walnut Street, and at 2647 and 5100 West 38th Avenue, the average time between one-ounce sales was between four and eight minutes. (Exhibit C-174, pp. 8, 14, 15).
123. Mr. Martin testified that three Sweet Leaf retail dispensaries, at 2609 Walnut Street, and at 2647 and 5100 West 38th Avenue, sold marijuana for a significantly lower average price per pound than the Denver average, and sold significantly more average pounds per day than the Denver average. Mr. Martin testified that all of the data show the highest likelihood of looping for these three retail dispensaries.
124. The report also shows a dramatic increase in the pounds of marijuana flower sold per week at two retail locations at 4125 Elati Street and at 7200 East Smith Road, after Sweet Leaf purchased these two retail store licenses in April 2017 (Exhibit C-174, p. 12). Similarly, the report shows a significant drop in the average price per pound at these two retail locations after April 2017. These data are indications of looping at these locations.
125. Medical and retail marijuana cultivation facilities assign a unique number to a plant tag on every marijuana plant and report their plant inventory through Metrc. Licensees are required to log into Metrc every time they physically send or receive marijuana plants. Mr. Martin testified that about 99% of all retail marijuana grown in Sweet Leaf licensed cultivation facilities was transferred to Sweet Leaf retail stores. About 50% of all medical marijuana sold at Sweet Leaf centers was obtained from its medical marijuana cultivation facilities.

Summary of testimony from Sweet Leaf dispensary neighbors

126. Beverly Avila and Anthony Bullen are husband and wife who have resided at 3761 North Zenobia Street for 25 years. Their home is a half-block away from the Sweet Leaf dispensary at 5100 West 38th Avenue, on the corner of 38th and Zenobia. Sweet Leaf opened its dispensary several years ago, in the same location where a previous marijuana dispensary had operated. There were no problems with the previous dispensary and the neighborhood was quiet, with sufficient parking, and it was a safe place for their grandchildren to visit and play outside. After Sweet Leaf opened its dispensary, it was no longer safe for their grandchildren to play outside because of the behavior of Sweet Leaf customers. Ms. Avila and Mr. Bullen observed drug dealing on their block that occurred every day and throughout the day. They observed money and marijuana product in Sweet Leaf bags being exchanged in these drug deals. Ms. Avila observed one individual making 15 or 16 trips into and out of Sweet Leaf, and then re-selling marijuana to people in other

cars parked on the block. Most of the cars had out-of-state license plates. They observed Sweet Leaf employees and a security guard who were wearing badges, and Sweet Leaf customers, publicly consuming marijuana in their yard and in their neighbors' yards, and in the alley behind their home. The employees and customers were smoking joints or smoking from a pipe, and Ms. Avila and Mr. Bullen noticed the strong smell of marijuana. Sweet Leaf customers threw trash in the area. The customers and employees were confrontational and very disrespectful when they were asked to leave Ms. Avila's yard. Her grandchildren were harassed by Sweet Leaf customers, and Ms. Avila felt threatened by them, and she did not feel safe in her own home. About a year ago, a day care center opened next door to their home, and it was not safe for those children to play outside. Ms. Avila and Mr. Bullen have reported these problems seven or eight times to the Sweet Leaf manager and they have also made reports to the Denver Police Department. The situation was so bad that they considered moving. However, these problems have stopped since Sweet Leaf was closed in December 2017, and it is safe for their grandchildren to play outside. They want the dispensary to be closed permanently.

127. John McBevitt has resided at 3725 North Zenobia Street since 2001, and he also works from home. His home is about a half-block away from the Sweet Leaf dispensary at 5100 West 38th Avenue. The neighborhood was quiet before Sweet Leaf opened its dispensary. Mr. McBevitt has observed customers making repeated trips into and out of Sweet Leaf in the same day and returning to their vehicles with Sweet Leaf bags which they put in the trunk of the vehicle. He has observed this looping behavior by the same customers lasting for four to six hours or throughout the day. He has observed customers' license plates from Texas, Wyoming and Missouri. Mr. McBevitt has observed Sweet Leaf customers and a Sweet Leaf security guard publicly consuming marijuana. He described the Sweet Leaf customers as scary, and he described the problems caused by Sweet Leaf as a nightmare. Mr. McBevitt has two children, and he did not allow them to play outside because he was worried about their safety. There were also problems with customers littering in his yard, and daily parking problems caused by Sweet Leaf customers. Mr. McBevitt's neighbors had the same concerns about Sweet Leaf. The situation was so bad that he considered moving. However, these problems have stopped since Sweet Leaf was closed in December 2017. Mr. McBevitt now feels safe and he allows his children to play outside. After Sweet Leaf closed, Mr. McBevitt has observed the daycare center taking walks with the children in the neighborhood.

128. Patrick Johnson has owned the Urban Dispensary, a retail marijuana store at 2675 West 38th Avenue, since December 2009. His marijuana store is on the same block as the Sweet Leaf dispensary at 2647 West 38th Avenue, at the corner of Clay Street. Mr. Johnson has observed looping at the Sweet Leaf dispensary, when certain customers repeatedly entered the Sweet Leaf dispensary throughout the day and returned to their cars with product before re-entering the Sweet Leaf dispensary. Many of these cars had out-of-state license plates. Mr. Johnson has observed loopers making more than five trips in a day between the Sweet Leaf dispensary and their cars. Sweet Leaf customers created extremely dangerous traffic problems on Clay Street and caused damage to cars parked on that street. Some Sweet Leaf customers were argumentative, confrontational and combative and created a safety issue for the customers and employees of Urban Dispensary which resulted in the Urban

Dispensary security guard escorting its employees to and from their parked cars. These problems stopped after Sweet Leaf was closed in December 2017.

129. I find the Sweet Leaf neighbors, Beverly Avila, Anthony Bullen, John McBevitt and Patrick Johnson, to be credible, and I find the facts they testified about as summarized above to be true.

Revocation pursuant to D.R.M.C. § 32-22(8)

130. The Order to Show Cause cites D.R.M.C. § 32-22, Revocation, as the basis for discipline in this matter. D.R.M.C. § 32-22(8) provides as follows:

In addition to any other penalties prescribed by the Revised Municipal Code, the director may, on his own motion or on complaint, and after investigation and a show-cause hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license previously issued by him for any violation of any of the following provisions, requirements, or conditions:

(8) The licensee, or any of the agents, servants or employees of the licensee, have violated any ordinance of the city or any state or federal law on the premises or have permitted such a violation on the premises by any other person; provided, however, this paragraph shall not apply to permitted behavior on the premises concerning the possession, consumption, display, or use of cannabis or cannabis accessories as may otherwise be permitted by the Revised Municipal Code or state law;

131. D.R.M.C. § 32-30, Suspension, revocation and other sanctions, provides as follows:

- (a) For purposes of suspending or revoking any license or permit, the licensee or permittee shall be deemed to have permitted an act or condition if a reasonable licensee or permittee would have been aware of the act or condition and taken action to stop the act or eliminate the condition.
- (b) Any act or omission committed by any employee, agent, or independent contractor that occurs in the course of his or her employment, agency, or contract with the licensee shall be imputed to the licensee or permittee for purposes of imposing any suspension, revocation or other sanction on the licensee or permittee.

132. The version of MED Rule R 402(C)(3) which was effective during the time period relevant herein, prohibits a retail marijuana store and its employees from selling more than one ounce of retail marijuana flower during a “sales transaction” to a consumer.

133. On May 22, 2017, the MED issued a Statement of Position concerning its interpretation of what constitutes a single sales transaction subject to the quantity limitations of MED

R 402(C)(3). (Exhibit C-8).⁶ This Statement of Position is published on the MED website and states that:

What constitutes a ‘single sales transaction’ when determining compliance with Rule R 402(C), 1 CCR 212-2 is dependent on the facts and totality of circumstances of each individual case...Sales that are structured as multiple, stand-alone transactions may be viewed by the [MED] as an attempt to evade quantity limitations on the sale of Retail Marijuana, resulting in recommendation for administrative action.

134. The MED Statement of Position also clearly states that a person in possession of more than one ounce of retail marijuana or its equivalent is acting unlawfully, citing C.R.S. § 18-18-406 of the Colorado Criminal Code.

135. Subsequent to the violations alleged in this case, MED Rule R 402(C)(3) was amended effective January 1, 2018 to provide as follows:

A Retail Marijuana Store and its employees are prohibited from Transferring more than one ounce of Retail Marijuana flower or its equivalent in Retail Marijuana Concentrate or Retail Marijuana Product in a single transaction to a consumer. *A single transaction includes multiple Transfers to the same consumer during the same business day where the Retail Marijuana Store employee knows or reasonably should know that such Transfer would result in that consumer possessing more than one ounce of marijuana.* (emphasis added)

136. Thus, prior to January 1, 2018, the MED’s position was to evaluate the existence of a sales transaction subject to quantity limitations on a case-by-case basis, depending on “the facts and totality of circumstances of each individual case.” (Exhibit C-8). The rule amendment effective January 1, 2018, makes clear that multiple transfers to the same person during the same business day will be considered a single transaction if the retail marijuana store employee knows or reasonably should know that the transaction will result in the consumer possessing more than one ounce of marijuana.

137. Respondents argue that the City cannot prove that they violated MED Rule 402(C)(3) that was in effect prior to January 1, 2018, because the rule did not bar the sale of more than one ounce of retail marijuana per day; rather it barred any single sale of more than one ounce of retail marijuana. Respondents argue that there is no evidence of an individual sale of retail marijuana that exceeded one ounce, and hence they did not violate MED Rule R 402(C)(3). Respondents argue that their scheme of making multiple transfers of one ounce of retail marijuana to the same customer in the same day were separate transactions which did not violate MED Rule R 402(C).

⁶ The MED Statement of Position also cites C.R.S. § 12-43.4-402(3)(a)(I) of the Colorado Retail Marijuana Code which provides that: “A retail marijuana store may not sell more than one ounce of retail marijuana...during a single transaction to a person.”

138. While Respondents are correct that there is no evidence of an individual sale of retail marijuana that exceeded one ounce, their argument fails to recognize that the MED provided public notice that “sales that are structured as multiple, stand-alone transactions may be viewed...as an attempt to evade quantity limitations on the sale” of retail marijuana, depending upon the facts and circumstances of each individual case (Exhibit C-8). The evidence is clear in this case that Respondents implemented a looping scheme that was intended to evade quantity limitations on the sale of retail marijuana.
139. I find that the Sweet Leaf looping scheme fails to create separate transactions which are in compliance with MED Rule R 402(C). The practice of advising customers to leave the view of the security cameras before returning for another purchase shows consciousness of wrongdoing. The Amendment 64 notice to customers does not relieve Respondents of their obligation to limit the quantity of retail marijuana sold to customers.
140. It is necessary to determine as a matter of fact which sales of retail marijuana at issue in this case constitute a single sales transaction. The factors I have considered in determining whether multiple sales to the same customer constitute a single transaction include whether the multiple sales were made by the same Sweet Leaf budtender, the budtender’s knowledge of making multiple sales to the same customer that exceed the one-ounce limitation, and the proximity in time between multiple sales.

Sales of retail marijuana to undercover police officers violate MED Rule R 402(C)(3)

141. Applying the factors in the preceding paragraph, I find that the retail marijuana sales identified below, which were made to undercover police officers, constitute single transactions in violation of MED Rule R 402(C)(3) because the one-ounce sales were made by the same budtender to the same customer and were very close in time, usually less than 30 minutes between sales. I find that multiple one-ounce sales made in less than 30 minutes by the same budtender shows the budtender’s actual knowledge that he/she was selling more than one ounce of retail marijuana to the same customer and that the customer possessed more than one ounce of marijuana. Further, the evidence is undisputed that in some cases, budtenders made statements to the undercover officer indicating that the budtender recognized him as a repeat customer who had purchased one-ounce amounts of marijuana minutes earlier.
142. The evidence concerning the following transactions, including the police detectives’ testimony, the video camera recordings, and the receipts of marijuana purchases, is summarized in preceding paragraphs of this Recommended Decision. Furthermore, the evidence about these transactions is undisputed.
143. I find that each of the following 26 transactions exceeds the one-ounce sales limitation for retail marijuana and I conclude that these 26 transactions constitute 26 separate violations of MED Rule R 402(C)(3).

Premises at 2647 West 38th Avenue

- (i) On December 7, 2016, two sales of one ounce each of retail marijuana by the same budtender (Chris Arneson) at 12:43 pm and 12:53 pm to Detective Masciangelo constitute a single transaction.
- (ii) On December 7, 2016, two sales of one ounce each of retail marijuana by the same budtender (Kenneth Holderfield) at 12:30 pm and 1:03 pm to Detective Masciangelo constitute a single transaction.
- (iii) On December 14, 2016, two sales of one ounce each of retail marijuana by the same budtender at 1:18 pm and 1:38 pm to Detective Masciangelo constitute a single transaction.
- (iv) On December 7, 2017, two sales of one ounce each of retail marijuana by the same female budtender at 10:16 am and 10:24 am to Detective Spence constitute a single transaction.
- (v) On December 7, 2017, two sales of one ounce each of retail marijuana by the same budtender at 10:27 am and 10:31 am to Detective Spence constitute a single transaction. The budtender recognized him as a repeat customer.

Premises at 5100 West 38th Avenue

- (vi) On January 5, 2017, two sales of one ounce each of retail marijuana by the same budtender (Crystal Morrow) at 9:34 am and 9:44 am to Detective Masciangelo constitute a single transaction. Ms. Morrow recognized him as a repeat customer.
- (vii) On January 5, 2017, three sales of one ounce each of retail marijuana by the same budtender (Crystal Morrow) at 10:11 am, 10:23 am and 10:32 am to Detective Masciangelo constitute a single transaction.⁷
- (viii) On January 5, 2017, two sales of one ounce each of retail marijuana by the same budtender (Stuart Walker) at 10:43 am and 11:07 am to Detective Masciangelo constitute a single transaction.

⁷ There was an intervening sale by budtender Stuart Walker between the sales that are grouped together as budtender Crystal Morrow's first transaction and her second transaction. Arguably, all of Crystal Morrow's sales that morning could be considered as one transaction and one violation (rather than three), and both of Stuart Walker's transactions that day could be considered as one transaction and one violation (rather than two). Nevertheless, this alternate characterization does not affect the conclusion that Respondent's employees violated MED Rule R 402(C)(3) on January 5, 2017.

- (ix) On January 5, 2017, two sales of one ounce each of retail marijuana by the same budtender (Crystal Morrow) at 11:15 am and 11:26 am to Detective Masciangelo constitute a single transaction.
- (x) On January 5, 2017, two sales of one ounce each of retail marijuana by the same budtender (Stuart Walker) at 11:40 am and 12:10 pm to Detective Masciangelo constitute a single transaction. Mr. Walker recognized him as a repeat customer.
- (xi) On December 7, 2017, three sales of one ounce each of retail marijuana by the same budtender (Abigail) at 9:05 am, 9:23 am and 9:38 am to Detective Spence constitute a single transaction.
- (xii) On December 7, 2017, two sales of one ounce each of retail marijuana by the same budtender (Toby) at 9:14 am and 9:30 am to Detective Spence constitute a single transaction.

Premises at 2609 Walnut Street

- (xiii) On February 23, 2017, three sales of one ounce each of retail marijuana by the same budtender (Joseph Gerlick) at 10:17 am, 10:42 am and 11:14 am to Detective Spence constitute a single transaction.
- (xiv) On February 23, 2017, two sales of one ounce each of retail marijuana by the same budtender (John Oglesbee) at 11:04 am and 11:25 am to Detective Spence constitute a single transaction.
- (xv) On February 23, 2017, three sales of one ounce each of retail marijuana by the same budtender (Timothy McCrory) at 12:37 pm, 1:00 pm and 1:21 pm to Detective Spence constitute a single transaction.
- (xvi) On February 23, 2017, five sales of one ounce each of retail marijuana by the same budtender (Leanne Henley) at 2:07 pm, 2:31 pm, 2:58 pm, 3:15 pm and 3:36 pm to Detective Spence constitute a single transaction. Ms. Henley recognized him as a repeat customer.
- (xvii) On December 7, 2017, four sales of one ounce each of retail marijuana by the same budtender (Trevor Ivy) at 12:28 pm, 12:34 pm, 12:41 pm and 12:51 pm to Detective Spence constitute a single transaction.

Premises at 4400 East Evans Avenue

- (xviii) On February 23, 2017, five sales of one ounce each of retail marijuana by the same budtender (Natalie) at 9:52 am, 10:11 am, 10:33 am, 10:58 am, and 11:06 am to Detective Masciangelo constitute a single transaction.

- (xix) On February 23, 2017, two sales of one ounce each of retail marijuana by the same budtender (Andrea Cutrer) at 10:02 am and 10:46 am to Detective Masciangelo constitute a single transaction. Ms. Cutrer recognized him as a repeat customer.
- (xx) On December 7, 2017, two sales of one ounce each of retail marijuana by the same budtender at 1:52 pm and 2:00 pm to Detective Crowe constitute a single transaction. The budtender recognized him as a repeat customer.

Premises at 4125 North Elati Street

- (xxi) On July 26, 2017, three sales of one ounce each of retail marijuana by the same budtender (Jacob Knost) at 11:00 am, 11:08 am, and 11:25 am to Detective Masciangelo constitute a single transaction.
- (xxii) On July 26, 2017, four sales of one ounce each of retail marijuana by the same budtender (Kirsten Delaney) at 11:16 am, 11:31 am, 11:59 am, and 12:14 pm to Detective Masciangelo constitute a single transaction. Ms. Delaney recognized him as a repeat customer.
- (xxiii) On July 26, 2017, three sales of one ounce each of retail marijuana by the same budtender (Michael Pesavento) at 11:39 am, 11:45 am, and 12:22 pm to Detective Masciangelo constitute a single transaction. Mr. Pesavento recognized him as a repeat customer.
- (xxiv) On December 7, 2017, four sales of one ounce each of retail marijuana by the same budtender (Jesse Marcus) at 10:58 am, 11:04 am, 11:15 am and 11:40 am to Detective Spence constitute a single transaction.

Premises at 7200 East Smith Road

- (xxv) On August 3, 2017, five sales of one ounce each of retail marijuana by the same budtender (Deann Miller) at 11:26 am, 11:35 am, 12:00 pm, 12:08 pm, and 12:45 pm to Detective Spence constitute a single transaction. Ms. Miller recognized him as a repeat customer.
- (xxvi) On December 7, 2017, four sales of one ounce each of retail marijuana by the same budtender at 11:04 am, 11:20 am, 11:36 am, and 12:08 pm to Detective Crowe constitute a single transaction. The budtender recognized him as a repeat customer.

Sales of retail marijuana to undercover police officers violate C.R.S. § 18-18-406(2)(b)(I)

144. The above 26 transactions involving undercover police officers constitute violations of C.R.S. § 18-18-406(2)(b)(I) if the budtenders knowingly made retail marijuana sales in amounts exceeding those otherwise authorized by law. When a criminal statute is applied

in a civil or administrative proceeding, the burden of proof is by a preponderance of the evidence. *Colorado Dog Fanciers, Inc. v. City and County of Denver*, 820 P.2d 644, 649 (Colo. 1991); *Snyder v. Colorado Podiatry Board*, 100 P.3d 496, 502 (Colo. App. 2004).

145. I conclude that the above 26 transactions with undercover officers are in quantities that violate MED Rule R 402(C)(3), and therefore are not otherwise authorized by law. I also conclude that the budtenders made the sales knowingly as defined by C.R.S. § 18-1-501(6) of the Colorado Criminal Code:

All offenses defined in this code in which the mental culpability requirement is expressed as ‘knowingly’ or ‘willfully’ are declared to be general intent crimes. A person acts ‘knowingly’ or ‘willfully’ with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists....

146. Therefore, I conclude that the above 26 transactions to undercover police officers constitute 26 separate violations of C.R.S. § 18-18-406(2)(b)(I).

147. I conclude that these 26 violations constitute a basis to revoke the retail marijuana store licenses at the above six locations and also to revoke the medical marijuana center licenses issued for the same addresses pursuant to D.R.M.C. § 32-22(8), because Respondents and their employees have violated state law, including MED Rule R 402(C)(3) and C.R.S. § 18-18-406(2)(b)(I), on the premises.

Marijuana crimes by customers

148. The evidence concerning marijuana crimes committed by Sweet Leaf customers at various Sweet Leaf dispensaries is summarized above.⁸ I conclude that each of the following crimes constitutes a separate basis to revoke Sweet Leaf licenses pursuant to D.R.M.C. § 32-22(8) because Respondents and their employees permitted a violation of state law on the premises by another person. I conclude that Respondents permitted these violations as provided in D.R.M.C. § 32-30(a):

[T]he licensee...shall be deemed to have permitted an act or condition if a reasonable licensee...would have been aware of the act or condition and taken action to stop the act or eliminate the condition.

149. I conclude that Sweet Leaf’s looping scheme to evade the quantity limitations of MED Rule R 402(C)(3) resulted in numerous customers possessing unlawful amounts of retail marijuana. Sweet Leaf’s scheme at the very least permitted the unlawful possession by its customers and its scheme was not the action of a “reasonable licensee.” Not only did Sweet

⁸ Statements by Mr. Scott (Exhibit C-20), Mr. Njie (Exhibit C-46), Mr. Montez (C-96), as summarized above, are admissible pursuant to C.R.E. 804(3) in that they are statements against interest, and the witnesses are unavailable. Nevertheless, these statements are not relied upon in the analysis herein.

Leaf fail to take action to stop the illegal purchases, but it actively aided and abetted the illegal purchases through its looping scheme.

150. A customer's possession of unlawful amounts of marijuana is not limited to possession on the customer's person. Possession of unlawful amounts of marijuana in the buyer's car or home is also a violation of C.R.S. § 18-18-406. *People v. Vigil*, 489 P.2d 593, 595-96 (Colo. 1971). The criminal convictions of Sweet Leaf customers, Mr. Scott, Mr. Njie, Mr. Reid, and Mr. Lee illustrate this point. Thus, Sweet Leaf's instructions to customers to take multiple one-ounce purchases of marijuana to their car or home does not relieve the customer of criminal liability, nor relieve Sweet Leaf of its duty not to sell unlawful amounts of marijuana.
151. There is undisputed evidence that on November 28, 2016, Joseph Scott had in his possession 2.16 pounds of marijuana in his vehicle, including 34 Sweet Leaf containers, and 7.46 pounds of marijuana in his residence. The evidence is also undisputed that Mr. Scott pled guilty to one count of possession of more than twelve ounces of marijuana in violation of C.R.S. § 18-18-406(4)(a) and was sentenced to one year in the Colorado Department of Corrections.
152. There is undisputed evidence that on December 14, 2016, Adama Njie had in his possession three pounds of marijuana in his vehicle in Sweet Leaf containers. The evidence is also undisputed that Mr. Njie was charged with two felony counts of possession with intent to distribute marijuana and unlawful possession of marijuana in violation of C.R.S. § 18-18-406, which were dismissed in a plea agreement, and that he pled guilty to one felony count of possession of a controlled substance, and that he was sentenced to three years of probation.
153. There is undisputed evidence that on December 14, 2016, Joshua Reid had in his possession 2.75 pounds of marijuana in his vehicle in 44 Sweet Leaf containers that were purchased at Sweet Leaf at 2647 West 38th Avenue on December 14, 2016. The evidence is also undisputed that Mr. Reid pled guilty to one count of possession of more than twelve ounces of marijuana in violation of C.R.S. § 18-18-406(4)(a) and was sentenced to two years of probation.
154. There is undisputed evidence that on April 11, 2017, Sergio Montero had in his possession in his vehicle eleven Sweet Leaf containers of marijuana from the Sweet Leaf dispensary at 2609 Walnut Street and four Sweet Leaf containers from the dispensary at 2647 West 38th Avenue, all purchased on April 11, 2017. The evidence is also undisputed that Mr. Montero pled guilty to one felony count of possession of more than twelve ounces of marijuana in violation of C.R.S. § 18-18-406(4)(a) and was granted a deferred sentence which ends on May 24, 2018.
155. There is undisputed evidence that on September 18, 2017, Young Lee had in his possession 9.8 ounces of marijuana in his vehicle in ten Sweet Leaf containers that he purchased at Sweet Leaf at 7200 East Smith Road on September 18, 2017. The evidence is also undisputed that Mr. Lee pled guilty to one misdemeanor count of possession of more

than two ounces of marijuana in violation of C.R.S. § 18-18-406(4)(c) and was sentenced to 12 months of probation.

156. There is undisputed evidence that on May 12, 2017, Juan Montez had in his possession 1.7 pounds of marijuana in his vehicle in 41 Sweet Leaf containers that were purchased at Sweet Leaf at 4400 East Evans Avenue on May 12, 2017. Although there is no evidence in the record of any criminal prosecution of Mr. Montez, I conclude that Mr. Montez possessed more than twelve ounces of marijuana in violation of C.R.S. § 18-18-406(4)(a).
157. There is undisputed evidence that on June 23, 2017, De Mario Garner had in his possession eleven ounces of marijuana purchased at Sweet Leaf at 5100 West 38th Avenue on June 23, 2017. Although there is no evidence in the record of any criminal prosecution of Mr. Garner, I conclude that Mr. Garner possessed six ounces of marijuana in violation of C.R.S. § 18-18-406(4)(c).
158. There is undisputed evidence that on August 17, 2017, Christian Conde-Garcia had in his possession 1.94 pounds of marijuana in 30 Sweet Leaf containers that were purchased on August 16 and 17, 2017 at Sweet Leaf at 4125 North Elati Street and 2647 West 38th Avenue. Although there is no evidence in the record of any criminal prosecution of Mr. Conde-Garcia, I conclude that Mr. Conde-Garcia possessed more than twelve ounces of marijuana in violation of C.R.S. § 18-18-406(4)(a).
159. I conclude that the eight crimes by customers which are described above constitute a basis to revoke the retail marijuana store licenses at the above six locations and also constitute a basis to revoke the medical marijuana center licenses issued for the same addresses pursuant to D.R.M.C. § 32-22(8) because Respondents and their employees permitted a violation of state law on the premises by another person.

Unlawful sales of medical marijuana

160. MED Rule M 403(D) prohibits a medical marijuana center and its employees from selling more than two ounces of medical marijuana during a “sales transaction” to a patient unless the medical marijuana center has documentation that the patient’s physician has approved more than two ounces of medical marijuana. MED Rule M 403(D) provides as follows:

Quantity Limitations On Sales. A Medical Marijuana Center and its employees are prohibited from selling more than two ounces of Medical Marijuana or its equivalent in Medical Marijuana-Infused Product during a sales transaction to a patient unless that patient has designated the Medical Marijuana Center as its primary center and supplied it with documentation from the patient's physician that allows the patient more than two ounces of Medical Marijuana or its equivalent in Marijuana-Infused Product.

161. The evidence establishes that Respondents implemented a looping scheme not only for their retail marijuana sales but also for medical marijuana sales. Respondents had a scheme at all medical marijuana centers to promote multiple transfers of medical marijuana to the

same patient in total quantities exceeding two ounces (or a greater amount authorized by the patient's physician), with several conditions. After making a purchase, patients were supposed to leave the medical marijuana center and the view of the store security cameras and take the marijuana to their car or home before returning to the center to make another purchase.

162. As with the above analysis regarding retail marijuana sales, I must determine as a matter of fact which sales of medical marijuana constitute a single transaction. The factors I have considered in determining whether multiple sales to the same patient constitute a single transaction include whether the multiple sales were made by the same Sweet Leaf budtender, the budtender's knowledge of making multiple sales to the same patient that exceed the two-ounce limitation or the patient's EPC ounce count, and the proximity in time between multiple sales.
163. Applying the factors in the preceding paragraph, I find that the medical marijuana sales below, which were identified by the MED's analysis of Sweet Leaf records (Exhibit C-175), constitute single transactions in violation of MED Rule M 403(D) because the two-ounce sales (or greater amount authorized by the patient's physician) were made by the same budtender to the same patient and were very close in time, usually less than 30 minutes between sales. I find that multiple one-ounce sales made in less than 30 minutes by the same budtender shows the budtender's actual knowledge that he/she was selling more than the patient's authorized medical marijuana amount, and that the patient possessed more than the authorized amount of medical marijuana. The evidence concerning these transactions is undisputed.
164. I find that each of the following six transactions exceeds the quantity limitation for sales of medical marijuana, and I conclude that the six transactions constitute six separate violations of MED Rule M 403(D).

Premises at 4379 Tejon Street

- (i) On August 4, 2017, employee Damian Riniker made six sales of medical marijuana in two-ounce amounts to Patient A in less than one hour on that day, between 10:15 am and 11:15 am, which constitute a single transaction.
- (ii) On August 4, 2017, employee Ian Maycroft made ten sales of medical marijuana in two-ounce amounts to Patient A in less than two hours, between 4:32 pm and 6:28 pm, with most sales only five to eight minutes apart, which constitute a single transaction.

Premises at 4400 East Evans

- (iii) On November 27, 2017, employee Dustin Sweden made two sales in one-pound amounts (448 grams) to Patient C that were 10 minutes apart, at 3:00 pm and 3:10 pm, which constitute a single transaction.

(iv) On November 27, 2017, employee Justin Fox made two sales in one-pound amounts to Patient C that were also 10 minutes apart, at 5:26 pm and 5:36 pm, which constitute a single transaction.

Premises at 468 South Federal Blvd.

(v) On May 9, 2017, employee Richard Piekarski made five sales of two ounces each to Patient E at 1:15 pm, 1:27 pm, 1:40 pm, 1:47 pm and 1:52 pm, which constitute a single transaction.

(vi) On May 9, 2017, employee Matthew Critean made five other sales of two ounces each to Patient E at 1:33 pm, 1:56 pm, 2:02 pm, 2:08 pm and 2:12 pm, which constitute a single transaction.

165. The above six transactions involving sales of medical marijuana constitute violations of C.R.S. § 18-18-406(2)(b)(I) if the budtenders knowingly made medical marijuana sales in amounts in excess of those otherwise authorized by law. I conclude that the above six transactions are in quantities that violate MED Rule M 403(D), and therefore are not otherwise authorized by law. I also conclude that the sales were knowingly made as defined by C.R.S. § 18-1-501(6) of the Colorado Criminal Code.

166. Therefore, I conclude that the above six transactions involving sales of medical marijuana constitute six separate violations of C.R.S. § 18-18-406(2)(b)(I).

167. I conclude that these six violations constitute a basis to revoke the medical marijuana center licenses at the above three locations. I also conclude that the violations in the sale of medical marijuana at 468 South Federal Boulevard constitute a basis to revoke the retail marijuana store license at that location pursuant to D.R.M.C. § 32-22(8), because Respondents and their employees have violated state law, including MED Rule R 402(C)(3) and C.R.S. § 18-18-406(2)(b)(I), on the premises.

Revocation pursuant to D.R.M.C. § 32-22(5)

168. The Order to Show Cause cites D.R.M.C. § 32-22, Revocation, as the basis for discipline in this matter. D.R.M.C. § 32-22(5) provides as follows:

In addition to any other penalties prescribed by the Revised Municipal Code, the director may, on his own motion or on complaint, and after investigation and a show-cause hearing at which the licensee shall be afforded an opportunity to be heard, suspend or revoke any license previously issued by him for any violation of any of the following provisions, requirements, or conditions:

(5) Any fact or condition exists which, if it had existed or had been known to exist at the time of the application for such license, would have warranted the director in refusing originally to issue such license;

169. In applying D.R.M.C. § 32-22(5) in this proceeding, I conclude that the ordinance authorizes the Department to revoke a license on the same grounds that would justify the denial of the license at the time that the application was originally submitted to the Department.
170. There are grounds for denial of an application for a retail marijuana store in D.R.M.C. § 6-212(c)(2) c., if a medical marijuana center at the same location “[has] been previously operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood.” Similarly, D.R.M.C. § 6-212(c)(2) d. provides that an application for a new retail marijuana store license may be denied if the issuance of the license “will adversely impact the health, welfare or public safety of the neighborhood.”
171. Identical grounds for denial of a medical marijuana center license are set forth in D.R.M.C. § 24-508.5(c)(2) c. and d. based upon past or future adverse impact on the health, safety or welfare of the neighborhood.

Sweet Leaf licensees had an adverse impact on the public health, welfare and safety of neighborhoods

172. I find substantial evidence that all Sweet Leaf retail marijuana stores and medical marijuana centers have been operated in a manner that adversely affected the public health, welfare and safety of the neighborhood.
173. I have concluded that there were eight crimes committed by Sweet Leaf customers arising out of marijuana purchases at various Sweet Leaf dispensaries in Denver. Criminal activity occurring at Sweet Leaf dispensaries has an obvious negative impact on the health, safety and welfare of the surrounding neighborhood.
174. I find that looping at multiple Sweet Leaf dispensaries resulted in marijuana sold at these dispensaries being diverted to the black market on repeated occasions in 2016 and 2017. I find that Mr. Montero from Texas, Mr. Montez from New Mexico, Mr. Garner from Arkansas, and Mr. Conde-Garcia from Nebraska, purchased large quantities of marijuana from Sweet Leaf dispensaries to re-sell in their home states. Rachel Martinez, Sweet Leaf District Manager, who oversaw all Sweet Leaf dispensaries stated that most customers who engaged in looping had out-of-state forms of identification. This statement was confirmed by Sweet Leaf employee Andrea Cutrer who stated that at least half of the looper customers had out-of-state ID’s. Similarly, Sweet Leaf employee Ian Ferguson stated that he has observed many out-of-state loopers, including people with ID’s from Texas or Nebraska. Mr. Betancour, a Sweet Leaf security guard, has observed loopers from out-of-state, and Mr. Sterner, another Sweet Leaf security guard, stated that most loopers are from out-of-state, and he identified Mr. Brandt from Oklahoma and loopers from Nebraska and Wyoming.
175. In findings of fact above, the three residential neighbors of the Sweet Leaf dispensary at 5100 West 38th Avenue described problems caused by Sweet Leaf and its customers that were intolerable. Mr. McBevitt described the situation as a nightmare. All residents

testified that they observed looping activity by Sweet Leaf customers, usually involving cars with out-of-state license plates, including Texas, Wyoming and Missouri. The residents also observed public consumption of marijuana by Sweet Leaf customers, employees and security guards. The residents described behavior of Sweet Leaf customers and employees that was confrontational and disrespectful, and they felt threatened. The residents testified that it was not safe for children to play outside, and one resident stated that she did not feel safe in her own home. All of these problems stopped when the Sweet Leaf dispensary was closed by the Order of Summary Suspension in December 2017.

176. In findings of fact above, Mr. Johnson, the owner of a retail marijuana store near the Sweet Leaf dispensary at 2647 West 38th Avenue, described similar problems. He also observed looping by Sweet Leaf customers with out-of-state license plates. Sweet Leaf customers created extremely dangerous traffic problems and some customers were argumentative and combative which created a safety issue for Mr. Johnson's customers and employees. All of these problems stopped when the Sweet Leaf dispensary was closed by the Order of Summary Suspension in December 2017.

177. I find and conclude that all of the problems described by the neighbors of both dispensaries demonstrate an obvious negative impact on the health, safety and welfare of the neighborhood which was caused by Sweet Leaf.

178. I conclude that the demonstrated adverse impact on the health, safety and welfare of the neighborhood would have been a ground for denial of all of the medical marijuana center licenses and retail marijuana store licenses if these facts and conditions had been known at the time of original licensure, pursuant to D.R.M.C. §§ 6-212(c)(2) c. and d., and 24-508.5(c)(2) c. and d.

179. Therefore, there is a ground to revoke these licenses pursuant to D.R.M.C. § 32-22(5), because the adverse impact on the health, safety and welfare is "a fact or condition... which, if it had existed or had been known to exist at the time of the application" for the retail marijuana store and medical marijuana center licenses "would have warranted the director in refusing originally to issue such license."

The grow licenses and MIP license

180. The Order to Show Cause seeks the revocation of seven medical marijuana optional premises cultivation facility licenses and one medical marijuana-infused products ("MIP") license at all locations: 136 North Yuma Street (two cultivation licenses and one MIP license), 1475 South Acoma Street (two cultivation licenses), 124 North Yuma Street, 1011 West 45th Avenue, and 2609 Walnut Street.

181. C.R.S. § 12.43.3-403(2) provides in part that "each optional premises cultivation licensee shall supply medical marijuana only to its associated licensed medical marijuana centers or licensed medical marijuana-infused product manufacturers."

182. MED Rule M 403(A) provides that a medical marijuana center must receive at least 70% of its total on-hand medical marijuana inventory from its dedicated optional premises cultivation operation or any other medical marijuana center.
183. Based upon Mr. Martin's testimony about MED records, which is undisputed, I find that about 50% of medical marijuana sold in Sweet Leaf centers was obtained from its medical marijuana grows.
184. I find that, as summarized above from the MED analysis in Exhibit C-174, there were 5,554.98 pounds of medical marijuana sold in looping transactions at three Denver Sweet Leaf medical marijuana centers, and the gross sales revenue totaled \$6,779,795.06, between June 1, 2016 and December 13, 2017.
185. MED Rule M 601(D) authorizes a MIP licensee to manufacture concentrates as well as edibles and ointments. MED Rule M 601(C) requires a MIP licensee to transfer its manufactured concentrates to a medical marijuana center and other marijuana licensees. It is a reasonable inference that the marijuana concentrates manufactured under Sweet Leaf's MIP license were transferred to Sweet Leaf medical marijuana centers where they were sold to patients.
186. MED Rule M 403(D) prohibits selling medical marijuana concentrates in amounts that exceed the equivalent of two ounces of marijuana flower during a sales transaction. Similarly, C.R.S. § 18-18-406(2)(b)(I) prohibits knowingly selling unlawful amounts of marijuana concentrates.
187. I find there is undisputed evidence that Sweet Leaf promoted looping of marijuana concentrates. Ms. Henley, a Sweet Leaf employee, observed looping of marijuana concentrates on Sundays at the Walnut Street dispensary when they are discounted by 20%.
188. The Order to Show Cause also seeks the revocation of retail marijuana cultivation facility licenses at five locations identified in the case caption: at 136 North Yuma Street, 2609 Walnut Street, 4125 North Elati Street, 4715 North Colorado Boulevard, and 1475 South Acoma Street.
189. Based upon Mr. Martin's testimony about MED records, which is undisputed, I find that about 99% of all retail marijuana grown in Sweet Leaf licensed cultivation facilities was transferred to Sweet Leaf retail stores.
190. Based upon the statements of Ms. Martinez, the Sweet Leaf District Manager, which are undisputed, I find that Sweet Leaf revenues from recreational marijuana sales ranged from \$5,000,000 to \$10,000,000 and that about 30-50% of Sweet Leaf revenue was from looping.
191. Respondents contend that there is no evidence of illegal sales of marijuana product occurring on the premises of any of the medical or retail marijuana cultivation facilities, or on the premises of the MIP license. However, sales to the public are not allowed from

medical and retail cultivation facilities and MIP manufacturing premises. C.R.S. §§ 12-43.3-403, 12-43.4-403, MED Rule M 601(C).

192. I conclude that all Sweet Leaf retail and medical marijuana cultivation licenses should be revoked pursuant to D.R.M.C. § 32-22(8), because the medical marijuana and retail marijuana that was grown in Sweet Leaf's licensed cultivation facilities was sold at Respondents' retail marijuana stores and medical marijuana centers in numerous transactions that violated state law as found in this Recommended Decision, including MED Rule R 402(C)(3), MED Rule M 403(D), and C.R.S. § 18-18-406(2)(b)(I).

193. I conclude that the MIP license should be revoked pursuant to D.R.M.C. § 32-22(8) because it is more likely than not that at least some of the marijuana concentrate manufactured under the MIP license was sold in looping transactions which exceeded authorized amounts and therefore violated MED Rule M 403(D) and C.R.S. § 18-18-406(2)(b)(I).

194. I conclude that D.R.M.C. § 32-22(4) provides an additional basis upon which to revoke all Sweet Leaf retail and medical marijuana cultivation facility licenses and the MIP license, to-wit:

The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any terms of the provisions pertaining to the license or any regulation or order lawfully made under and within the authority of the terms of the provisions relating to the license;

195. The Respondents holding the retail and medical marijuana cultivation facility licenses and the MIP license are under common ownership by three individuals: Matthew Aiken, Christian Johnson, and Anthony Sauro. These three individuals are the same owners of all licenses for the retail marijuana stores and the medical marijuana centers.

196. I conclude that D.R.M.C. § 32-22(4) authorizes the revocation of a license where the same licensee has violated provisions pertaining to its license or any regulation relating to the license. Unlike D.R.M.C. § 32-22(8), which provides that the violation must occur "on the premises," D.R.M.C. § 32-22(4) is not limited to violations occurring "on the premises." In this case, the retail and medical marijuana cultivation facility licenses and the MIP license are subject to revocation because this Recommended Decision has found that the same owners and licensees have sold retail and medical marijuana in numerous transactions that violated state law, including MED Rule R 402(C)(3), MED Rule M 403(D), and C.R.S. § 18-18-406(2)(b)(I).

197. I conclude that D.R.M.C. § 32-22(4) provides an additional basis upon which to revoke all Sweet Leaf retail marijuana store licenses and all medical marijuana center licenses.

Factors in aggravation

198. The Denver ordinances in Chapter 32 and in the Denver Medical and Retail Marijuana Codes do not expressly articulate specific factors to be considered in the determination of the appropriate disciplinary sanction upon finding a violation.
199. I conclude that relevant factors to be considered in the determination of a sanction are whether the violations were deliberate or willful, and whether the violations endangered the public health, safety and welfare to such an extent that emergency action was required by the issuance of an Order of Summary Suspension. *See* D.R.M.C. §§ 6-219(d) and 24-514(d).
200. While not controlling here, aggravating factors outlined in MED rules are also relevant to consider. MED Rule R 1307(A) for retail marijuana and MED Rule M 1307(A) for medical marijuana have the same considerations and provide that the most severe category of violation has an immediate impact on the health, safety and welfare of the public, and includes sales in excess of the relevant transaction limit and permitting diversion of marijuana outside the regulated distribution system.
201. Similarly, MED Rule R 1307(C) and Rule M 1307(C) identify aggravating factors of the willfulness and deliberateness of the violation, the likelihood of reoccurrence of the violation, and violations where the owner or manager is the violator or has directed an employee or other individual to violate the law.
202. There is substantial evidence of all of these aggravating factors. Respondents doing business as Sweet Leaf operated as a criminal enterprise, where Respondents' unlawful sales resulted in the proliferation of illegal marijuana that supplied criminal drug-dealing. Respondents' looping scheme was a willful and deliberate practice of evading quantity limitations on the sale of medical and retail marijuana.
203. The evidence of violations endangering the public health, safety and welfare has been discussed above. Sweet Leaf neighbors had good reason not to feel safe in their homes when Sweet Leaf was in operation.
204. There is also sufficient evidence to show that Sweet Leaf owners and upper management directed the looping scheme which resulted in the violations found in this Recommended Decision.

CONCLUSION

205. I conclude that all Sweet Leaf retail marijuana store licenses identified below should be revoked pursuant to D.R.M.C. § 32-22(4), (5) and (8).

**BUSINESS FILE #2017-BFN-0002513, AJS FEDERAL LLC, 468 S. FEDERAL BLVD.
BUSINESS FILE #2013-BFN-1068876, DGP ELATI LLC, 4125 N. ELATI STREET
BUSINESS FILE #2015-BFN-0002743, HERBAL WELLNESS, 4400 E. EVANS AVE.
BUSINESS FILE #2013-BFN-1069648, DGP 38TH LLC, 2647 W. 38TH AVE.**

**BUSINESS FILE #2013-BFN-1069644, DGP WALNUT, 2609 WALNUT STREET
BUSINESS FILE #2013-BFN-1070077, SWEET LEAF LLC, 5100 W. 38TH AVE.
BUSINESS FILE #2013-BFN-1069504, DGP SMITH LLC, 7200 E. SMITH ROAD**

206. I conclude that all Sweet Leaf medical marijuana center licenses identified below should be revoked pursuant to D.R.M.C. § 32-22(4), (5) and (8).

**BUSINESS FILE #2010-BFN-1045792, DGP WALNUT, 2609 WALNUT STREET
BUSINESS FILE #2010-BFN-1045809, SWEET LEAF LLC, 5100 W. 38TH AVE.
BUSINESS FILE #2015-BFN-0008409, AJS FEDERAL LLC, 468 S. FEDERAL BLVD.
BUSINESS FILE #2010-BFN-1045627, HERBAL WELLNESS, 4400 E. EVANS AVE.
BUSINESS FILE #2014-BFN-0003315, AJS EVANS, 4379 N. TEJON STREET
BUSINESS FILE #2010-BFN-1048434, DGP 38TH LLC, 2647 W. 38TH AVE.**

207. I conclude that all Sweet Leaf medical marijuana optional cultivation facilities licenses identified below should be revoked pursuant to D.R.M.C. § 32-22(4) and (8).

**BUSINESS FILE #2014-BFN-0004042, AJS FEDERAL LLC, 136 N. YUMA STREET
BUSINESS FILE #2012-BFN-1061861, SWEET LEAF LLC, 136 N. YUMA STREET
BUSINESS FILE #2014-BFN-0004770, DGP 38TH LLC, 124 N. YUMA STREET
BUSINESS FILE #2015-BFN-0000384, FEDERAL CORRIDOR INC, 1475 S. ACOMA ST.
BUSINESS FILE #2012-BFN-1060600, HERBAL WELLNESS, 1475 S. ACOMA ST.
BUSINESS FILE #2014-BFN-0003959, AJS EVANS LLC, 1011 W. 45TH AVE.
BUSINESS FILE #2012-BFN-1060642, DGP WALNUT, 2609 WALNUT STREET**

208. I conclude that Sweet Leaf's medical marijuana-infused products manufacturing license identified below should be revoked pursuant to D.R.M.C. § 32-22(4) and (8).

BUSINESS FILE #2013-BFN-1068155, SWEET LEAF LLC, 136 N. YUMA STREET

209. I conclude that all Sweet Leaf retail marijuana cultivation licenses identified below should be revoked pursuant to D.R.M.C. § 32-22(4) and (8).

**BUSINESS FILE #2013-BFN-1070425, SWEET LEAF LLC, 136 N. YUMA STREET
BUSINESS FILE #2013-BFN-1069645, DGP WALNUT, 2609 WALNUT STREET
BUSINESS FILE #2013-BFN-1068877, DGP ELATI, 4125 N. ELATI STREET
BUSINESS FILE #2013-BFN-1068879, DGP ELATI, 4715 N. COLORADO BLVD.
BUSINESS FILE #2015-BFN-0007352, HERBAL WELLNESS, 1475 S. ACOMA STREET**

IT IS THEREFORE RECOMMENDED that all of the above-listed marijuana business licenses held by Respondents should be revoked.

DATED this 30th day of April, 2018.

/s/ Suzanne A. Fasing
Suzanne A. Fasing
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of the foregoing Recommended Decision was sent via email, on the date above, to the following:

Ashley Kilroy, Director
Ashley.Kilroy@denvergov.org

Drew Gottlieb
drewgottliebpc@gmail.com

Tom Downey, attorney for Respondents
TDowney@irelandstapleton.com

Kira Suyeishi, attorney for Respondents
KSuyeishi@irelandstapleton.com

John Jennings, attorney for Respondents
JJennings@irelandstapleton.com

Su Cho, Assistant City Attorney
Su.Cho@denvergov.org

Marley Bordovsky, Assistant City Attorney
Marley.Bordovsky@denvergov.org

Emela Jankovic, Assistant City Attorney
Emela.Jankovic@denvergov.org

EXLRecordsManagement@denvergov.org

CAOExciseandLicense@denvergov.org

/s/ Suzanne A. Fasing
Suzanne A. Fasing
Hearing Officer