

BEFORE THE EXECUTIVE DIRECTOR, DEPARTMENT OF REVENUE

STATE OF COLORADO

STIPULATION, AGREEMENT, AND ORDER
SA 21-LKWD-57

IN THE MATTER OF:

MDS ENTERPRISES, INC. & 7-ELEVEN, INC.
D/B/A 7-ELEVEN STORE 34238A
50 TELEP AVENUE
JOHNSTOWN, COLORADO 80534

Fermented Malt Beverage Beer Off Premises License No. 04-00265

The State of Colorado, Liquor Enforcement Division ("Division") and MDS Enterprises, Inc. & 7-Eleven, Inc., d/b/a 7-Eleven Store 34238A, 50 Telep Avenue, Johnstown, Colorado 80534 ("Licensee") hereby stipulate and agree as follows:

- I. Licensee has been the subject of an investigation conducted by the Division. Agents of the Division allege violations of the Colorado Liquor Code, Sections 44-3-901(1)(b)(I), and 44-3-901(11), C.R.S.

IT IS ALLEGED THAT:

- A. On July 2, 2021 the Licensee, by and through its employee/agent [REDACTED] permitted the selling, serving, giving, or procuring of an alcohol beverage (a can of Vizzy Hard Seltzer, Blueberry Pomegranate, fermented malt beverage) to 21WF17722, an eighteen-year-old Liquor Enforcement Division underage purchaser.
 - B. [REDACTED] failed to verify that the consumer was at least twenty-one years of age by requiring the consumer to present a valid identification and who appeared to be under the age of fifty (50).
2. Licensee acknowledges receipt of sufficient notice, advisement of rights, and process of the proceedings and wishes to resolve all issues which were the subject of the investigation, by entering into this Stipulation, Agreement, and Order ("Order").
 3. The Division and Licensee have discussed the merits of the investigation and allegations, and they have come to a mutual agreement and understanding to jointly propose to the State Licensing Authority a resolution of the allegations in lieu of proceeding to the issuance by the State Licensing Authority of an Order to Show Cause and conducting a

hearing to determine the merits of such allegations. The terms and conditions of this Order are subject to approval by the State Licensing Authority.

4. Licensee admits the violations as alleged above in paragraph 1.
5. Licensee agrees, in lieu of the issuance of an Order to Show Cause, and subsequent proceedings, to submit to the following sanctions:
 - A. A **seven (7) day** suspension of Licensee's **fermented malt beverage beer off premises license** to take place as follows:
 - i. License to be actively suspended for **three (3) days** from 12:01 a.m. on **September 17, 2021** until 11:59 p.m. on **September 19, 2021**.
 - ii. During any period of active license suspension, Licensee shall post signs on its premises in compliance with Regulation 47-600(F), 1 C.C.R. 203-2.
 - iii. **Four (4) days** of the suspension to be held in abeyance for a period of one (1) year, from the date of approval of this agreement by the state licensing authority, pending no further violations of the Colorado Liquor Code, Section 44-3-901(1)(b)(I), C.R.S., during this period.
6. The Licensee has filed a written petition to the Division in accordance with 44-3-601(3), C.R.S. requesting that the Licensee be allowed to pay a fine in lieu of active suspension in paragraph 5(A)(i). The Division finds that the petition supports the following:
 - A. That the public welfare and morals would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes; and
 - B. That the books and records of the Licensee are kept in such a manner that loss of sales of alcohol beverages which the Licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy.
7. The parties agree that the fine shall be the equivalent of twenty percent (20%) of the Licensee's estimated gross revenues from the sales of alcohol beverages during a period of three (3), except that the fine shall not be less than five hundred dollars (\$500.00) nor more than one-hundred thousand dollars (\$100,000.00). The parties agree that the average days' sales for the month of **June 2021** shall be the appropriate measure of said estimated gross revenues. Based upon these records, the amount of the fine has been determined to be **\$500.00**.

- A. Payment of the fine pursuant to the provisions of this agreement shall either be made online at <https://secure.colorado.gov/payment/liquor>, select Administrative Action Fee or Fine and include the amount listed above or shall be in the form of a **certified check or a cashier's check** made payable to the Colorado Department of Revenue. Said fine shall be paid and mailed to the Department of Revenue, Attn: Liquor Enforcement Division, P.O. Box 17087, Denver, Colorado 80217-0087, on or before **September 3, 2021**.
 - B. Upon the timely payment of the fine agreed upon in this paragraph, Licensee's three (3) day suspension as set forth in paragraph 5(A)(i) of this stipulation and agreement shall be deemed automatically permanently stayed.
 - C. If the Licensee fails to make payment in a timely manner as detailed in this paragraph, the full three (3) day suspension shall be served as detailed in paragraph 5.
8. This Order shall be admissible as evidence in future proceedings concerning any alleged violation of this Order. The matters at issue in said future proceeding shall be limited to the question of whether or not Licensee has failed to comply with the terms of this Order. Any issues relating to the underlying complaint or investigation that formed the basis for action against Licensee (and any defenses that Licensee may have to such complaint and investigation) shall specifically not be at issue in the proceeding against Licensee for failing to comply with the terms of this Order. In the event an alleged violation of this Order is taken to hearing and the State Licensing Authority determines that the allegations are proven, or Licensee enters into a stipulation in lieu of hearing in which it admits such allegations, the State Licensing Authority shall, in addition to any other penalty imposed, order Licensee to serve all or any days of suspension presently held in abeyance pursuant to this agreement. In the event an alleged violation of this Order is taken to hearing and the State Licensing Authority determines that the allegations are unproven, then the Division shall take no further action and this Order shall remain operative and in full force and effect.
 9. Upon execution by all parties, this Order and all its terms shall have the same force and effect as an order entered after a formal hearing pursuant to § 44-3-601, C.R.S., except that it may not be appealed. Failure to comply with the terms of this Order may be sanctioned by the State Licensing Authority as set forth in §§44-3-103(19)(b) and 44-3-601, C.R.S.
 10. Licensee expressly agrees and acknowledges that Licensee has entered into this Order knowingly and voluntarily. Licensee acknowledges that the terms of this Order were mutually negotiated and agreed upon. After the opportunity to consult with legal counsel, Licensee affirms that Licensee has read this Order and fully understands its nature,

meaning and content. Licensee agrees that upon execution of this Order, no subsequent action or assertion shall be maintained or pursued by Licensee asserting the invalidity in any manner of this Order.

11. Upon execution by all parties, this Order shall represent the entire and final agreement of the parties. In the event that any provision of this Order is deemed unenforceable by a court of competent jurisdiction, such provision shall be severed, and the remainder of this Order shall be given full force and effect.
12. Licensee understands and knowingly and voluntarily enters into this Order. Licensee further understands and knowingly and voluntarily waives the following rights:
 - A. The right to a formal disciplinary hearing on the merits of the matters forming the basis of this Order and the right to require the State Licensing Authority to meet its burden of proof in a formal hearing;
 - B. The right to cross-examine all witnesses against Licensee at a formal hearing;
 - C. The right to subpoena witnesses, present evidence and to testify on Licensee's own behalf at a formal hearing;
 - D. The right to be represented by counsel of Licensee's own choosing and at Licensee's expense at any stage of this proceeding;
 - E. The right to engage in pre-hearing discovery of the State Licensing Authority's evidence; and
 - F. The right to appeal this Order.
13. All the costs and expenses incurred by Licensee to comply with this Order shall be the sole responsibility of the Licensee, and shall not in any way be the obligation of the Division.
14. This Order shall be effective on the date approved and ordered by the Executive Director of the Department of Revenue, as the State Licensing Authority. Should the State Licensing Authority reject the terms hereof, Respondent's admissions herein shall be withdrawn, and the matter scheduled for a hearing after issuance of an Order to Show Cause.
15. Upon approval and order of the State Licensing Authority, this Order shall become a permanent part of the record, and shall be open to public inspection and published pursuant to the Division's standard policies and procedures or applicable law.

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Michelle Stone-
Principato

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Stone-Principato
Date: 2021.08.11 13:18:34 -06'00'

Michelle Stone-Principato
Division Director
Liquor Enforcement Division



Monte Strotheide
MDS Enterprises, INC. & 7-Eleven, Inc.

Date

8/4/21

Date

APPROVED and ORDERED this _____ day of _____ 2021.

Mark
Ferrandino

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Ferrandino
Date: 2021.09.16 08:59:54
-06'00'

Mark Ferrandino
Executive Director/CEO
Department of Revenue
State Licensing Authority

Telecopy or electronic versions of this stipulation which contain telecopy facsimiles of signatures shall be deemed duplicate executed originals of this stipulation. This stipulation may be executed in counterparts and delivered by facsimile, U.S. Mail (or private carrier), or .pdf transmission.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **STIPULATION, AGREEMENT, AND ORDER** was placed in the United States Mail on _____, 2021, addressed as follows:

MDS Enterprises, Inc. & 7-Eleven, INC. D/B/A 7-Eleven Store 34238A P.O. Box 219088 Dallas, TX 75221 mdstrotheide@gmail.com	Liquor Enforcement Division P.O. Box 17087 Denver, CO 80217-0087 dor_led_legal@state.co.us
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By: **Alexandra Prichard**
Allie Prichard

Digitally signed by
Alexandra Prichard
Date: 2021.09.27 15:28:33
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