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STATE OF ALASKA  
MARIJUANA CONTROL BOARD

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In the Matter of:  
  
AlaskaSense, LLC  
DBA AlaskaSense, LLC  
521 West Tudor Rd., Unit 202  
Anchorage, AK 99503  
  
Respondent

Accusation No. 2018-04

**ALASKASENSE LLC'S HEARING BRIEF**

**I. INTRODUCTION**

Commercial marijuana cultivation and retail sales in Alaska are in their earliest stages. Respondent AlaskaSense, LLC will be the first to admit that this new industry is challenging, complex and requires the earnest cooperation of all of its participants to succeed. By its first decisions, the Marijuana Control Board will shape the direction of this new economic sector. Unfortunately, these accusations paint an unfair and inaccurate portrait of AlaskaSense's business operations. Respectfully, AlaskaSense requests that the Board deny the director's request to revoke AlaskaSense's license.

**II. DISCUSSION**

**A. ALASKASENSE IS MAKING GOOD ON ITS TAX OBLIGATIONS AND NO FURTHER SANCTION IS NECESSARY (COUNTS 1 and 2)**

Count I

1  
2 AlaskaSense acknowledges has been delinquent in paying it state excise  
3 marijuana taxes and is making every effort to cure this matter. Prior to this  
4 Accusation being served upon AlaskaSense, Smadar Warden, the company's  
5 owner, took corrective action to address the unpaid tax balance and commenced  
6 communication with the Alaska Dept. of Revenue and started the process to  
7 engage in a payment plan with the Department. See, Exhibit 1 Partial Payment  
8 Plan dated April 19, 2018. Jana D. Weltzin later worked with the Department of  
9 Revenue to engage the parties in a full payment plan, and lumped the partial  
10 payment plan into one all encompassing plan for all outstanding tax, interest, and  
11 penalties due. Warden makes no excuses for being delinquent on her tax filings  
12 and obligations. She only asks for leniency and the opportunity to make it right.  
13 The AlaskaSense facility is located in the municipality of Anchorage. Warden has  
14 paid the Anchorage retail sales tax timely and in full every month, see Muni Sales  
15 Tax Records attached as Exhibit 2. The undersigned only points to compliance with  
16 the Municipality's tax obligations as an example that Warden does not make a  
17 habit of ignoring her governmental tax obligations.  
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20 Additionally, build-out of the facility was uniquely/incredibly expensive and  
21 was riddled with contractor mistakes and expensive plan review/change orders that  
22 tripled the originally estimated build out budget. The contractors did not properly  
23 calculate the load capacity of the first floor and installed a heavy concrete layer to  
24 the first floor. Thankfully, the municipality of Anchorage plan reviewers identified  
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1 the danger of the heavy load of the concrete and quickly worked with Warden to  
2 help her understand the costly truth that the newly installed concrete floor had to be  
3 completely ripped out as it was too heavy of a load for the first floor to bear. One  
4 can imagine how costly this was, and to a start up company, it nearly ended the  
5 venture before it got off the ground. Since that time, Warden had to hire many  
6 professionals to reverse engineer the mistake, and incurred massive debts to  
7 engineers, architects and general contractors. She made the choice to prioritize  
8 repayment to those private small businesses and paid those debts off first as the  
9 venture finally got off the ground. Warden did not realize that her obligation for  
10 State tax excise payments was a monthly obligation, and that deferring these  
11 payments to pay these small businesses, so they could pay their employees was  
12 alas the wrong choice – she should have paid the State first, as the State has the  
13 ability to revoke her ability to continue her business operations. Warden knows  
14 better know – and makes no excuses. Given the opportunity, she will display to this  
15 Board and the State of Alaska that she will timely comply with all of her obligations  
16 and make the State excise tax payments top priority.

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19 The Department has an option for a one-time payment plan that allows a tax  
20 payer to have the total amount assessed against the tax payer put into a 12 month  
21 payment plan – there are no discounts associated with this approach. The one-  
22 time payment plan is to create a schedule that allows for the tax payer to not have  
23 the license suspended pursuant to AS 43.10.045, as long as the tax payer strictly  
24 complies with the payment plan and pays 1/12 of the total amount due, plus  
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1 penalties and interest and plus any current amounts due for the present tax  
2 obligation for the preceding month. This plan ensures that the tax payer remains  
3 current for the present tax obligation and repays past due amounts within no longer  
4 then a 12 month period. If the tax payer doesn't remain current with the 12 month  
5 plan and the current obligation, the plan is breached and the entire amount is due  
6 and the license may be suspended.

7  
8 Please refer to Exhibit 3, Full Payment Plan Agreement dated June 7, 2018,  
9 the payment plan agreement established between AlaskaSense and the Dept. of  
10 Revenue. The total balance due from AlaskaSense to the State of Alaska as of  
11 June 7<sup>th</sup>, 2018 is \$316,270.12. This amount breaks down as follows:

12 EXCISE Tax Balance: \$251,482.65

13 Penalties: \$ 59,780.85

14 Interest: \$ 5,006.62<sup>1</sup>

15  
16 In the payment plan letter from the Dept. of Revenue, the Dept. clearly indicates  
17 that it agrees not to suspend the license of AlaskaSense. The letter states:

18  
19 Payment of this installment must be received on or before  
20 June 15, 2018. Please send your payment with a copy of  
21 this letter or pay online by going to [online-tax.alaska.gov](http://online-tax.alaska.gov).  
22 **Please be advised that if timely payment is not  
23 received by the department, this agreement will  
24 terminate and collection proceedings as stated below  
25 will commence.**

24  
25 <sup>1</sup> 7.5% accrues quarterly on compound basis.

1 Failure to make payments per this agreement will result in  
2 the department taking enforcement actions such as filing  
3 of state tax liens, the levy of accounts and receivables, as  
4 well as the seizure of both real and personal property in  
5 the amount sufficient to satisfy your liabilities to the  
6 Department of Revenue. If you are authorized to conduct  
7 business under a license issued by the State of Alaska,  
8 that license will be suspended per AS.10.045 until the  
9 amount has been paid or other arrangements are agreed  
10 to by the state.

11 See, Exhibit 3(emphasis added). The last sentence of the first quoted paragraph  
12 above makes it clear that the *failure* to make payments per the payment plan  
13 agreement will result in enforcement actions, including, but not limited to  
14 suspending the AlaskaSense license. Warden has implemented a change in her  
15 approach to managing all administrative and governmental filings herself, as that  
16 approach clearly was not working for her – she was not able to keep up with all the  
17 online tax report filings (in addition to everything else she has on her plate to  
18 participate in this business) and has since hired one employee, with administrative  
19 and office management experience, to manage tax online filings (Warden gets  
20 drafts of the filings and approves them personally before those files are filed), and  
21 this employee handles other administrative requirements. The tax management  
22 and administrative requirement employee only handles these items, she is not in  
23 the facility working on anything else other than these two types of obligations. So  
24 far, this has greatly increased the company's management of these issues and  
25 appears to be an incredible benefit to the company and to Warden.

1 Therefore, if the licensee fails to comply with this plan, the Dept. of Revenue  
2 will take immediate action to suspend the license, until that time, the Marijuana  
3 Control Board should not overstep its authority into the realm of the Dept. of  
4 Revenue and suspend the license when a payment plan agreement has been  
5 reached with the harmed party (Dept. of Revenue) as it would be  
6 counterproductive, and it would essentially step on the toes of the Dept. of  
7 Revenue. As indicated by the email chain attached as Exhibit 4 in which the  
8 undersigned (Jana D. Weltzin, Esq.) and the Dept. of Revenue worked swiftly and  
9 closely to create a payment plan that would get this licensee back on track with her  
10 tax obligation in the most efficient manner and ensure that all tax obligations and  
11 associated penalties and interest would be assessed against AlaskaSense and  
12 timely paid in monthly lump sums over the course of the next 12 months. The  
13 licensee was eager to set up a payment plan and commence repayment. The  
14 licensee waived its rights to object to any and all assessments and waived its rights  
15 to challenge the amounts due and deferred to the Dept. of Revenue and its staff to  
16 calculate the amounts due. The Dept. of Revenue's staff, in return, were  
17 responsive, professional and incredibly helpful in getting this payment plan in  
18 place, please do not undercut their hard work and cut off the income source (the  
19 AlaskaSense cultivation license) to satisfy the amounts due to the State of Alaska  
20 by revoking the license, and therefore terminating any chance the State of Alaska  
21 has at collecting the amounts due.  
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1 The MCB has latitude in their disciplinary actions as defined in 3 AAC  
2 306.810(b). One way is to impose a fine on the licensee. AlaskaSense is actually  
3 being fined on a daily basis with rigorous penalties and interest from the  
4 Department of Revenue. AlaskaSense is working diligently to make right the taxes  
5 owed to the DOR, but to revoke their license and eliminate the sole source of  
6 income would only perpetuate the problem and not solve the issue for either party.

7  
8 Count II

9 On May 1, 2018, Enforcement agents showed up at the AlaskaSense  
10 Facility and requested business records. AMCO Enforcement Agents did not give  
11 any heads up or notice as to their arrival or any notice of what documents they  
12 were looking for prior to their arrival at the facility. AlaskaSense admits the  
13 document production requested by the MCB was incomplete, but not intentionally.  
14 As noted above, Enforcement agents showed up to the facility, during business  
15 hours, unannounced and without any written or oral previous indication that the  
16 Agents were coming to the facility to obtain documents. Therefore, Warden and  
17 her staff were not prepared for the visit – if a heads-up notification was given,  
18 Warden could have arranged for all the documents to be ready for pick up upon  
19 arrival. But due to the spontaneous nature of the Enforcement Agent's arrival,  
20 Warden could not plan for the request – in fact, Warden was not even present  
21 when the Enforcement agents arrived at the facility requesting sensitive tax  
22 documents and reports. Warden was having a dental surgery on or about May 1,  
23 and when she was notified that Enforcement was at the facility requesting  
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1 documents, she was recovering from the surgery and was on medication and not  
2 fully functional. See attached correspondence from Warden's medical professional  
3 Exhibit 5. Warden had undergone complex dental surgery and was prescribed  
4 very strong pain medication, which made it impossible for her to leave her home for  
5 several days.

6 Warden did her best, although under the influence of medications to direct  
7 her most trusted employee Lorenzo Gonzalez to located the sensitive documents.  
8 Lets be clear here – Enforcement was requesting financially sensitive documents  
9 and the owner of the business had just come out of a complex dental surgery and  
10 was under pain medication. It is unreasonable to require an employer to educate  
11 her employees on the whereabouts and allow access by employees to sensitive  
12 financial information and tax documents. Normal business owners do not allow  
13 access by employees to financial information and tax documents for obvious  
14 reasons. There is no reason why this count should be included in this accusation  
15 – Warden would have gladly prepared the documents for Enforcement prior to her  
16 surgery or obtained them and delivered them to Enforcement once she was able to  
17 do so after the surgery and pain medications subsided.

18 The accusation at paragraph number ten states that the failure of an  
19 employee to obtain tax and financial documents immediately upon request,  
20 consists of a violation for failing to provide and maintain business records normally  
21 retained for tax purposes. As a business owner, is it normal for employees to have  
22 access to the company's QuickBooks? No. Is it normal for employees to have  
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1 access to the company's tax returns, tax notices, and tax filings? Absolutely not.  
2 What is being asked of AlaskaSense is for it to be put in a precarious situation and  
3 either allow its employees to have unfettered access to all its sensitive financial  
4 records and tax documentation, or risk "discipline" by this Board. This Board has a  
5 question to ask itself – if you owned a business, would you allow your employees  
6 access to your financial documents? To your tax records? Would that be a good  
7 business practice? This Board needs to decide what is reasonable – is it  
8 reasonable that when the boss is home recovering from a mouth surgery and in a  
9 medicated state, should the boss ensure that her employees can access all the  
10 most sensitive and most personal financial affairs of the company? It is our position  
11 that the answer is a resounding no – its not reasonable, its invasive and its an  
12 impractical, overbearing demand on these small to midsize businesses.  
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15 In order to provide the requested documentation to the Board, she relied  
16 upon her most trusted employee at the facility to undertake the responsibility  
17 (admittedly, Warden was a bit hard to understand due to the mouth surgery when  
18 she directed Lorenzo as to where the documentation was at, he likely couldn't  
19 understand all that she said and/or Warden likely couldn't communicate all the  
20 documentation he needed to provide to Enforcement to satisfy its request). The  
21 employee thought he had compiled everything required unfortunately, the  
22 production was incomplete, but not intentionally.  
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1 ALASKASENSE LLC DID NOT VIOLATE REGULATIONS IN ITS WASTE  
2 DISPOSAL PRACTICES (COUNTS 3, 4, and 5)

3  
4 Count III

5 AlaskaSense LLC's operating manual and 3 AAC 306.740 require that all  
6 marijuana waste be rendered unusable and mixed with other waste before leaving  
7 an establishment. The regulation does not define "unusable" and there is no  
8 known guidance from the Board or other authorities as to how "unusable" is  
9 defined. Despite the allegations in Counts 3, 4 and 5, AlaskaSense has actually  
10 continually improved its waste disposal process – above and beyond the original  
11 requirements – in response to unique and unanticipated challenges.

12 At its first regulatory inspection, AlaskaSense's disposal equipment was  
13 surveyed and improved. This included a Yard Force 13 12-in Electric Leaf Mulcher.  
14 (Exhibit 6). Unfortunately, this mulcher was completely insufficient. By the time of  
15 the February 2018, inspection, AlaskaSense had upgraded its mulching system  
16 (above and beyond the original, approved machinery) to a Sun Joe 14 amp electric  
17 wood chipper. (Exhibit 6). Since, the February inspection, AlaskaSense has  
18 upgraded a third time, to a gas-powered wood chipper that must be used out-of-  
19 doors. This system has passed recent inspections, and AlaskaSense continues to  
20 seek ways to improve its particularization of waste.  
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23 A major, unanticipated issue has been the frequent theft and attempted theft  
24 of waste from its dumpsters – even though the waste is unusable, AlaskaSense  
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1 had to continually upgrade its dumpsters. The security on the dumpsters in  
2 February 2018 was compelled by the constant criminal activity around the  
3 dumpsters and was the result of cooperation between AlaskaSense and Northern  
4 Waste to develop a bear-proof dumpster.

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6 The thieves would leave waste outside the dumpsters on the ground.  
7 During the winter this waste would be intermittently covered and uncovered by  
8 snow and ice – a complete clean-up was simply not possible. On February 16,  
9 2018, during the site inspection, the “usable” waste that is the subject of Count 3  
10 were fragments of marijuana, scattered on the ground by thieves. Even the  
11 fragments photographed are contaminated with dirt. Because of the difficulty with  
12 finding a sufficient mulcher, small fragments of marijuana were not ground to  
13 powder. Nonetheless there was substantial compliance with the requirement that  
14 all marijuana waste be rendered unusable.  
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#### 16 Count IV

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18 There was no refusal of an inspection, what occurred on February 16, 2018,  
19 was the result of miscommunications and misunderstandings. AlaskaSense  
20 appreciates the inspectors’ frustration, but the lock on the dumpster was simply  
21 frozen. When inspectors left the facility, AlaskaSense ordered its employees to get  
22 the lock open by any means necessary. Ironically, a few more minutes of heating  
23 the lock (a process begun by Inv. Fern) enabled the key to turn. AlaskaSense  
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1 immediately informed the investigators that the lock was open – a mere 14 minutes  
2 after their departure. At the same time, expecting an immediate return by  
3 investigators who had just left, AlaskaSense ordered a trash pick up on an urgent  
4 basis. As often occurs, the dumpsters were full and it was better to remove the  
5 waste as soon as possible. It was simply bad luck, that the dumpsters were  
6 emptied before the inspectors returned (and even without the knowledge of the  
7 employees working directly with the inspectors).  
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9           Moreover, the dumpsters are not part of the licensed premises – 3AAC  
10 306.740 clearly indicates that once marijuana plant waste is made unusable by  
11 grinding the marijuana with equal amounts of compostable and non-compostable  
12 materials, the marijuana is not considered marijuana anymore – it is rendered  
13 unusable and may be disposed of in a dumpster that is locked or unlocked – as the  
14 marijuana that has been destroyed is no longer usable. Moreover, 3 AAC 306.430,  
15 Restricted Access Area, provides that a cultivation facility shall include as  
16 restricted access area, and maintain video surveillance of the licensed premises  
17 any area where marijuana is grown, processed, packaged or stored, or where  
18 marijuana waste is destroyed. This provision says nothing about an area where  
19 marijuana waste once rendered unusable is kept or located and nothing about any  
20 authority of an Enforcement agent to request access to the marijuana waste after  
21 its been rendered unusable. The regulations at 3AAC 306.705 defines what is the  
22 licensed premises, and the area (in this case the dumpster) where waste that has  
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1 been rendered unusable is stored is not included in the definition of licensed  
2 premises. 3AAC 306.725, Inspection of Licensed Premises, provides for the  
3 authority of Enforcement Agents to inspect the licensed premises, and provides  
4 authority to inspect the premise, records, qualifications of personnel, methods of  
5 operation, marijuana inventory tracking system, policies, and purposes of any  
6 marijuana establishment and of any application for a marijuana establishment  
7 license. Notably, the authority for Enforcement agents to inspect an area where  
8 marijuana waste rendered unusable is stored is not included and therefore does  
9 not exist in the regulations. The Accusation cites 3 AAC 306.800 as a basis for  
10 punishment for failing to provide access to the dumpster of the facility – however,  
11 this citation is incorrect, 3 AAC 306.800 does not provide for inspection of  
12 marijuana waste rendered unusable and stored in a dumpster, off of the licensed  
13 premises. In fact, marijuana waste is not even mentioned in 3AAC 306.800, nor is  
14 there any insinuated or inferred authorization codified in this section for any  
15 inspection of any physical premises except for the line drawing submitted to the  
16 Control Board and identified as the licensed premises. The authority to inspect is  
17 limited to the licensed premises.  
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21 Count V

22 The Accusation bases this Count on the fact that AlaskaSense did not “notice”  
23 the Control Board of its marijuana waste. This is an example of AMCO assuming  
24 that every licensee and its employees listen to the guidance from the Control Board  
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1 during their quarterly meetings (which is nearly impossible unless one attends in  
2 person do to the phone call quality) and fails to recognize that if AMCO staff or the  
3 Control Board wants changes in the regulations it needs to amend the regulations  
4 written words. AlaskaSense complied with the regulation's written words – as noted  
5 in the Accusation, between the cultivation's active and operating date, August 8,  
6 2017, and the date of March 19, 2018, AlaskaSense did give noticed of their total  
7 amount of waste generated. Each harvest batch in metrc had a total amount  
8 of waste entered per harvest batch by AlaskaSense. AlaskaSense did report its  
9 waste and AlaskaSense did wait three days after entering the waste in Metrc before  
10 it rendered it unusable. AlaskaSense did this because based on the regulations  
11 posted on the AMCO website (the version available to the public via  
12 [https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/](https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/MarijuanaRegulations.pdf)  
13 [MarijuanaRegulations.pdf](https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/MarijuanaRegulations.pdf), dated March 7, 2018). The regulations provided to the  
14 public do not require an electronic mail be sent to enforcement or the board  
15 three days prior to rendering the marijuana waste unusable. The regulations at  
16 3AAC 306.740, Waste Disposal, plainly states:

17 (c) A marijuana establishment shall

18 (1) in the marijuana inventory tracking system required  
19 under 3 AAC 306.730, give the board notice not later than  
20 three days before making the waste unusable and  
21 disposing of it; however, the director may authorize  
22 immediate disposal on an emergency basis..  
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1 Emphasis added. Please note that the regulations say notice must be given in the  
2 marijuana inventory tracking system - that system is better known as Metrc (see  
3 3AAC 306.730 for description of inventory tracking system). Metrc, as the Control  
4 Board later discovered, doesn't have a function to communicate this notice to the  
5 Control Board, an Enforcement agent would have to log into the system and view  
6 the waste log (which it could and in fact did in this case) to receive notice that an  
7 amount of waste had been identified as waste by a licensee.

8  
9 The AlaskaSense facility had its initial inspection conducted on August 11,  
10 2017. See Exhibit 7. At paragraph six you will see "Waste Disposal" – this  
11 paragraph is read by the licensee and initialed by the licensee to ensure that  
12 licensee has read and understands what is expected from them as a licensee and  
13 marijuana establishment operator (citing below in relevant part):

14  
15 6. Waste Disposal.... Marijuana waste includes:  
16 marijuana plant waste, including roots, stalks, leaves, and  
17 stems that have not been processed with solvent; solid  
18 marijuana sample plant waste in possession of a  
19 marijuana testing facility; and other waste as determined  
20 by the board. – **You must give the board at least 3 days**  
21 **notice in the marijuana inventory tracking system**  
22 required under 3AAC 306.760 before making the waste  
23 unusable and disposing of it.


24 Emphasis added. Enforcement's own inspection form and acknowledgement of  
25 regulation provisions does not state "you must email enforcement your waste you  
26 intend to destroy three days in advance." It states you must enter the waste you  
intend to destroy in the marijuana inventory tracking system three days before

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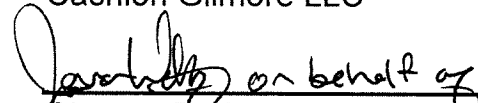
1 rendering marijuana unusable – this is a huge difference. It's not reasonable to  
2 threaten sanctions or revocation of a license due to a marijuana establishment not  
3 following some unwritten rule or unpublished guidance.

4 The Control Board needs to amend the rules/regulations properly to ensure  
5 compliance with how it wishes licensees to operate – if the written word of the  
6 regulations does not reflect what the Control Board wants, then the Control Board  
7 needs to amend the regulations.  
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10 JDW, LLC

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12 \_\_\_\_\_  
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14 ABA 151116

15 Cashion Gilmore LLC

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