

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT

GB LL HOLDINGS MA LLC D/B/A GOPUFF
and GB LOGISTICS LLC,

Plaintiffs,

v.

ALCOHOLIC BEVERAGES CONTROL
COMMISSION and JEAN LORIZIO,
CRYSTAL MATTHEWS, and DEBORAH
BAGLIO, in their official capacities,

Defendants.

BUSINESS LITIGATION SESSION

CIVIL ACTION NO.

23-1193

VERIFIED COMPLAINT

Agencies act arbitrarily when they punish similarly-situated entities and circumstances in drastically different ways. On May 18, 2023, the Alcoholic Beverages Control Commission acted arbitrarily when it revoked outright both the Newton retail alcohol license and the statewide alcohol express transportation permit for the e-commerce platform Gopuff,¹ based only on a first offense for delivery of alcohol to minors.

For the past four years and through the height of the COVID-19 pandemic, tens of thousands of Massachusetts customers have come to rely on Gopuff's online e-commerce delivery platform to arrange on-demand deliveries of alcoholic beverages and other consumer products. Gopuff operated without incident under its ABCC license and permit until December

¹ As explained in further detail below, GB LL Holdings MA LLC ("GB Holdings") holds the Newton retail alcohol license, while GB Logistics LLC ("GB Logistics") holds the statewide express transportation permit. Except where specifically relevant, for ease of reference the verified complaint refers to them collectively as Gopuff.

2021, when the Commission issued notices of violations under G.L. c. 138, relating to individuals using fake IDs to purchase and obtain alcohol deliveries.

Dozens of recent ABCC decisions involving similarly situated licensees in comparable (and even more egregious) circumstances are clear and consistent: the sanction imposed for a first offense of sale of alcohol to minors — and frequently, for subsequent offenses as well — is a license suspension for a matter of *days*. To underscore the exceptionally rare nature of revocation, Gopuff is unaware of *any* instance in which the ABCC has *ever* outright revoked a retail license or a transportation permit on the basis of service to minors after a first offense.²

Throughout the ABCC’s investigation, Gopuff’s personnel and independent delivery partners cooperated with ABCC investigators and staff. Moreover, after receiving the notices of violation in December 2021, Gopuff immediately implemented numerous remedial actions to enhance its existing compliance program, communicated those efforts to the ABCC, and then testified in detail to those efforts at the March 7, 2022 ABCC hearing.

Indeed, during a successful license approval hearing for another GB Holdings retail license six months later, the ABCC chair affirmatively lauded Gopuff’s remedial efforts, stating on the record that “it seems to the Commission that as a result of [the investigators’] findings back at the end of last year [2021], this company has really taken it to heart and put a lot of work into taking steps to make sure that minors are not furnished alcohol in the future.”

Yet when the ABCC issued its decision nearly *fifteen months* later (having in the interim not only approved two new Gopuff retail package store licenses, but renewed both the Newton retail license and statewide express transportation permit), that Decision failed to even

² ABCC decisions are searchable through the Social Law Library, and Gopuff’s counsel has spent significant time searching these decisions. However, it remains possible that certain ABCC decisions have not been uploaded, and are not readily available to the public.

acknowledge — let alone consider — the extensive testimony submitted by Gopuff regarding its ongoing remedial measures.

For these and other reasons explained below, the Decision was arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. The Decision should be set aside and remanded to the Commission for further proceedings and enforcement proportionate to the scale and scope of the alleged violations.

THE PARTIES

1. Plaintiff GB LL Holdings MA is a Massachusetts limited liability corporation with its principal place of business in Philadelphia, Pennsylvania and a retail location in Newton, Massachusetts. GB LL Holdings MA holds a retail package store license issued pursuant to G.L. c. 138, § 15.
2. Plaintiff GB Logistics is a Delaware limited liability corporation with its principal place of business in Philadelphia, Pennsylvania. GB Logistics holds an express transportation permit issued pursuant to G.L. c. 138, § 22.
3. Defendant Alcoholic Beverages Control Commission (“ABCC”) is an agency of the Commonwealth. Its usual place of business is located in Chelsea, Massachusetts.
4. Defendant Jean Lorizio is a Massachusetts resident and member of the ABCC.
5. Defendant Crystal Matthews is a Massachusetts resident and member of the ABCC.
6. Defendant Deborah Baglio is a Massachusetts resident and member of the ABCC.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to G.L. c. 30A, § 14(1).
8. Venue is proper in this Court pursuant to G.L. c. 30A, § 14(1).

FACTUAL ALLEGATIONS

Gopuff

9. Gopuff, through various distinct legal entities, operates brick-and-mortar retail locations and an online e-commerce platform that sells and facilitates the delivery of a wide range of consumer products, including alcoholic beverages, to retail customers.
10. Founded in 2013, Gopuff offers over 4,000 products in categories ranging from snacks and drinks to home goods, pet supplies, and baby needs. The company operates in 37 states, the District of Columbia, and the United Kingdom, and holds more than 325 liquor licenses in 27 states across the country and the District of Columbia.
11. For Gopuff customers in the geographic vicinity of Newton, those products, including alcoholic beverages, are sold at a GB Holdings retail location at 82-84 Needham Street in Newton.
12. The ABCC first issued a retail alcohol license to GB Holdings for the Newton location on August 22, 2019, and subsequently renewed that permit annually in 2020, 2021, 2022, and 2023. This license was purchased by GB Holdings at a cost of \$225,000.
13. When a customer places an order through Gopuff's online e-commerce platform, that order is assembled at the retail location, and GB Logistics is informed that an order is available for delivery. GB Logistics operates a web platform that connects its independently contracted delivery partners with orders requiring delivery. A delivery partner who accepts an offer to deliver a given order collects the order from the retail location and delivers it to the customer.
14. In order to transport alcohol in Massachusetts for retail delivery purposes, a master express transportation permit is required under G.L. c. 138, § 22, issued by the ABCC.

GB Logistics currently holds statewide express transportation permits for 250 vehicles under § 22 to facilitate retail alcohol delivery statewide from any GB Holdings retail location, and, as such, the permits are not limited to use at a single retail location.

15. The ABCC first issued GB Logistics a statewide express transportation permit in 2019, and subsequently renewed that permit annually in 2020, 2021, 2022, and 2023.
16. Sequentially numbered copies of the master express transportation permit are issued by the ABCC, and are electronically allocated to delivery partners on the GB Logistics platform to ensure that the permit is on hand and available when a delivery partner is completing an alcohol delivery.
17. In November 2021, GB Logistics was issued 100 copies of its master express transportation permit. On March 19, 2022, GB Logistics sought and received ABCC approval to increase the number of copies by 50, and on January 31, 2022 sought and received ABCC approval to increase the number of copies by 150, for a total of 250. Each additional copy costs GB Logistics \$50, or \$12,500 annually in total for 250 authorizations.
18. During 2023 year-to-date, 25% of Gopuff's revenue for its three locations in Massachusetts that currently operate retail alcohol licenses was derived from orders that included alcohol.
19. Gopuff's delivery partners delivered 62,279 orders containing alcohol in Massachusetts over the past 12 months, earning themselves over \$575,000.
20. Nearly 99% of revenue from the sale of alcohol at the Newton location is derived from orders that customers have had delivered.
21. As of the filing of this Complaint, the value of the alcohol inventory at GB Holdings' Newton location is \$206,687.

ABCC Investigations

22. Since first being granted its retail license in Newton on August 22, 2019, Gopuff had operated at that location for over two years without any violation.
23. Since first being granted its statewide express transportation permit in 2019, GB Logistics had operated throughout the Commonwealth for over two years without any violation.
24. In November and December 2021, the Enforcement Division of the ABCC investigated complaints filed with the Commission alleging that Gopuff was selling and delivering alcoholic beverages from its Newton location to individuals under the age of 21.
25. On November 18, November 19, December 2, December 8, and December 9, 2021, ABCC investigators observed alcoholic beverages being placed into vehicles at GB Holdings' licensed location in Newton, and observed those vehicles make deliveries to customers who placed orders via Gopuff's online e-commerce platform.
26. In seventeen of the nineteen transactions the delivery partner scanned the customers' identification ("ID") to confirm they were over the minimum legal drinking age of 21.
27. Immediately after each transaction, the Decision asserted that the observing ABCC investigators intervened, asked for the customers' IDs, and determined that certain customers were under the age of 21 and had used fraudulent driver's licenses to purchase the alcohol.
28. In six of these transactions, the Decision asserted ABCC investigators also asked the delivery partner to produce a copy of GB Logistics' express transportation permit. Because this copy is stored electronically in the Gopuff app utilized by each delivery partner, in each instance the delivery partner had a valid copy available.

29. In two of these instances, the Decision concedes that the delivery partner produced a valid transportation permit. In the four instances where the delivery partner did not produce the authorization, it was not because the authorization was unavailable, but because the delivery partner failed to recall that the authorization was stored electronically on the app.
30. In certain other instances, the ABCC investigators observed a delivery partner interact with individuals deemed by the ABCC investigators to be “youthful appearing individuals,” and the delivery partner then departed *without* delivering alcoholic beverages.

ABCC Enforcement Action

31. Following some of the investigated transactions described above, ABCC investigators spoke to the GB Holdings shift manager of the Newton retail location to inform him of the alleged violations, and indicated he would receive notices of violation in the mail.
32. During each such visit to the location, GB Holdings staff was cooperative and provided the information requested by investigators.
33. Although the GB Holdings shift manager at the Newton retail location informed the ABCC investigators on the evening of November 18, 2021 and repeatedly thereafter that the Newton retail location did not control the operations of the delivery partners because the delivery partners were contractors contracted to another company (GB Logistics), the ABCC investigators never contacted GB Logistics regarding alleged violations prior to issuing the formal notices of violation.

34. Notwithstanding the oral statements of its investigators, the ABCC did not mail or issue any formal notice of violation until December 17, 2021, when it noticed Gopuff via email for a total of 23 hearings.
35. Every ABCC retail license and express transportation permit lists a contact of record and, for a retail license, a Manager of Record. At no time prior to noticing the formal notice of violation did ABCC ever contact the contact of record listed or Manager of Record on the GB Holdings license, or the contact of record on the GB Logistics permit, to inform those individuals of the alleged violations.
36. The first time Gopuff was made aware of the specific factual details of how each of the noticed deliveries was when the investigative reports were mailed to Gopuff in hard copy. The Commission did not attach those reports to its December 17, 2021 email to Gopuff.
37. Counsel for Gopuff requested electronic versions of the investigative reports from the ABCC on or about December 28, 2021.
38. When those electronic versions were received by Gopuff counsel, the metadata of each of the reports for the November 18, 2021 incidents indicated that they had been “last modified” on December 1, 2021 at 2:02PM, demonstrating that the ABCC had those completed reports in its possession a *week before* commencing its third round of investigations on December 8 and 9, 2021, and *two weeks before* issuing its notices of violation to Gopuff.
39. These alleged violations were the first offenses noticed by the ABCC to either GB Holdings or GB Logistics, each of which had operated under their ABCC approvals without incident since April 19, 2019 and December 13, 2019, respectively.

40. Following its receipt of the notices, GB Holdings and GB Logistics moved to consolidate the hearings into a single hearing to address all 23 investigative reports.
41. The ABCC granted the motion to consolidate and scheduled the consolidated hearing for March 7, 2022.
42. For purposes of the hearing and the ABCC's subsequent Decision, GB Holdings and GB Logistics stipulated to the facts contained in the Commission's investigative reports detailing the circumstances of each respective alleged violation.

Remedial Measures

43. During the pendency of the ABCC proceedings, Gopuff undertook significant remedial actions in response to specific issues identified in the incident reports, in an effort to improve its existing compliance program consistent with its legal obligation to prevent the delivery of alcohol to minors.
44. Gopuff enhanced its existing educational curriculum for its delivery partners and store personnel, to increase awareness of how to handle circumstances involving alcohol orders placed by minors. Notwithstanding the challenges presented by social distancing requirements, delivery partners and store personnel received *in-person* TIPS training, as well as Massachusetts-specific online responsible delivery training, and Gopuff established a policy under which only delivery partners who complete the in-person TIPS program are authorized to make alcohol deliveries. The implementation of this curriculum cost approximately \$25,000.
45. Gopuff updated its Responsible Delivery Policy in light of the facts and circumstances set forth in the investigative reports, including an establishing an express prohibition on delivering alcohol to a customer on a sidewalk or waiting at an intersection, and

affirmatively requiring delivery partners to deliver alcohol only to the doorway or entrance of a building or a residence.

46. Gopuff implemented enhanced ID scanning technology (the Intellicheck system, also utilized by the Boston Police Department), to increase its ability to identify and reject fraudulent IDs. Gopuff informed the ABCC at the March 7, 2022 hearing that it was in the process of upgrading its ID scanning technology to Intellicheck. Gopuff had fully adopted and integrated Intellicheck into its Massachusetts protocols by September 2022.
47. In January 2022, weeks before the March 7, 2022 ABCC hearing, Gopuff expanded the existing geographic delivery exclusion zone around the Boston College campus, which prevents alcohol from being delivered to addresses on or near campus.
48. Gopuff ensured that delivery partners were aware that they would still receive their fees even if they need to cancel an order at the point of delivery because a customer is found to be under 21 years old.
49. Gopuff instituted a “secret shopper” compliance check program to conduct self-assessments of compliance with its Responsible Delivery Policy by its delivery partners.
50. Gopuff launched a weekly reminder notification to delivery partners via the Gopuff app to provide continual reminders of the requirements and best practices relating to the delivery of alcohol.
51. At the March 7, 2022 hearing, Gopuff testified before the ABCC on these and other remedial measures that Gopuff had already begun implementing by the time of the hearing.

52. Gopuff also emphasized at the hearing that it takes the responsible delivery and sale of alcohol seriously, and remains committed to continual improvement of its compliance program.

The Intervening Fifteen Months Between the Hearing and the Decision

53. Following the March 7, 2022 hearing, in the intervening months before the ABCC issued a decision, Gopuff continued to implement remedial measures to improve its compliance with G.L. c. 138, § 34, as it testified during the hearing that it would. Gopuff also continued to communicate its progress to the ABCC following the hearing.

54. During this period, the Commission, being fully aware of the events and information presented at the March 7, 2022 hearing, approved two new retail licenses for GB Holdings on September 19, 2022, over six months after the hearing.

55. During that September 19, 2022 hearing, the ABCC chair affirmatively lauded Gopuff's remedial efforts, stating on the record that "it seems to the Commission that as a result of [the investigators'] findings back at the end of last year [2021], this company has really taken it to heart and put a lot of work into taking steps to make sure that minors are not furnished alcohol in the future."

56. In or about November 2022, eight months *after* the hearing — and again, being fully aware of the details of the March 7, 2022 hearing — the ABCC approved GB Holdings' request to renew the same Newton retail license and GB Logistics request to renew the same statewide express transportation permit at issue in this appeal.

57. GB Logistics also applied for and received 150 additional copies of its express transportation permit from the ABCC in the period between the March 7, 2022 hearing and the time the ABCC issued its Decision. These copies must be carried by the delivery

partners when delivering alcohol, pursuant to GB Logistics' master express transportation permit.

The Decision

58. On May 18, 2023, the ABCC issued its Decision, concluding that Gopuff violated G.L. c. 138, § 34 (19 counts against each of GB Holdings and GB Logistics) and G.L. c. 138, § 22 (6 counts against GB Logistics). *See Exhibit A.*
59. G.L. c. 138, § 34, in relevant part, prohibits “a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age”
60. G.L. c. 138, § 22, provides, in relevant part, that “[e]very person operating a vehicle when engaged in [the transportation and delivery of alcoholic beverages and alcohol] shall carry the vehicle permit [issued by the Commission] or a certified copy thereof . . . and shall, upon demand of any constable, policeman, member of the state police or any investigator of the commission produce such permit or copy for inspection; and failure to produce such permit or copy shall be prima facie evidence of unlawful transportation.”
61. In its Decision, the ABCC, listed the documents in evidence and noted the existence of an audio recording of the March 7, 2022 hearing.
62. Nowhere in the Decision did the ABCC acknowledge or consider the numerous remedial measures described to the Commission by Gopuff during the hearing.
63. Quoting *Arthurs v. Bd. of Registration in Medicine*, 383 Mass. 299, 317 (1981), the ABCC stated that “the purpose of discipline is not retribution, but the protection of the public” (alteration omitted).
64. The Decision issued approximately fifteen months after the hearing, and eighteen months after the first alleged violation, during which time the ABCC allowed GB Holdings to

continue selling alcohol from the Newton location and allowed GB Logistics to continue arranging for delivery of alcohol to members of the public, and placed no limitations on either activity.

65. On the basis of its finding of violations, the ABCC revoked both GB Holdings' Newton retail package store license and GB Logistics' statewide express transportation permit.

Recent ABCC Decisions Involving Minors

66. The ABCC has issued numerous recent decisions following alleged violations of G.L. c. 138, § 34 or § 34C in which similarly situated licensees have been subjected to significantly less severe sanctions — temporary suspensions or fines — than those imposed on Gopuff.
67. In a February 2022 decision, the ABCC found that a package store licensee (d/b/a Big Bob's Wine & Spirits in Worcester) had engaged in ten counts of sales to minors in September 2021, each of whom either used fraudulent licenses or were never asked by the licensee for ID. Addendum ("Add.") at 32. At the hearing, the licensee — who, like Gopuff had held a license since 2019 — informed the ABCC of its "efforts to prevent future violations," including "re-certifying employees' TIPS training and ensuring all new employees are TIPS certified, installing a new scanner, scanning all out of state identifications and ensuring identifications presented match with the individuals seeking to purchase alcoholic beverages." Add. 37. Yet instead of revoking the license, the Commission ordered a 15-day suspension of which only 7 days were to be served and 8 days held in abeyance for 2 years provided no further violations of Chapter 138. Add. 37.

68. In a February 2023 decision, the ABCC found that a licensee (d/b/a Applebee's Neighborhood Grill & Bar in Walpole), which had one previous violation, had served seven minors during a single inspection, many of whom had not been asked for ID by the licensee. Add. 53. Yet the ABCC did not revoke the licensee's license but, rather, considered the testimony of the licensee about the training required of its servers (completing an annual certification of its "serving alcoholic beverages responsibly" program, and upgrades to the licensee's point-of-sale system that prompts for ID checks). Add. 57. The ABCC ordered an 8-day suspension. Add. 57.
69. In a January 2022 decision, the ABCC found that a licensee (d/b/a Union Street in Newton) had 16 minors in possession of alcohol during a single inspection, all 16 of whom admitted to utilizing fraudulent IDs to gain access to the premises. Add. 23. The ABCC did not revoke the licensee's license but, rather, considered the remedial measures the licensee agreed to make. Add. 25. The ABCC ordered a 20-day suspension of which 16 days were deemed served and 4 days held in abeyance for 2 years provided no further violations of Chapter 138. Add. 25.
70. In a February 2023 decision, the ABCC found that a licensee (d/b/a Husky's Pub in Worcester) had "numerous youthful appearing individuals, standing in plain view of bartenders and other employees, in possession of what appeared to be alcoholic beverages." Add. 62. Based upon the ABCC investigators' interviews with just "some" of these patrons, the ABCC found the licensee had 19 minors in possession of alcoholic beverages *during a single inspection* — the same number of minors that purchased from GoPuff over five separate dates over three weeks in 2021. Add. 62–64. Yet the ABCC did not revoke the licensee's license. Instead, the ABCC considered the licensee's

implementation of the same types of remedial measures that GoPuff outlined at its hearing — additional training, new ID technology, and improved operational compliance measures — and ordered a 25-day suspension of which only 15 days were to be served and 10 days held in abeyance for 2 years provided no further violations of Chapter 138. Add. 64.

71. In a November 2022 decision, the ABCC found that a licensee (d/b/a The Lansdowne Pub, adjacent to Fenway Park) had *16 minors in possession of alcohol at one time*, six of whom were only 18 years old. Add. 49–50. Many of the minors had arrived from another establishment wherein ABCC investigators testified they saw “hundreds of seemingly underage individuals” who dispersed when the presence of ABCC investigators became known. Add. 49–50. Yet the ABCC did not revoke the licensee’s license but, rather, considered the licensee’s testimony in mitigation, and ordered a 16-day suspension, of which only 8 days were to be served and 8 days held in abeyance for 2 years provided no further violations of Chapter 138. Add. 51.
72. In an August 2022 decision, the ABCC found that a licensee (Café Neo Inc. in Worcester) had *15 minors in possession of alcohol during a single inspection*, several of whom were not asked for identification either when entering the premises or ordering their drinks. Add. 41–43. Yet the ABCC did not revoke the licensee’s license but, rather, ordered a 20-day suspension of which 10 days were to be served and 10 days held in abeyance for 2 years provided no further violations of Chapter 138. Add. 43.
73. In a February 2022 decision, the ABCC found that a licensee (d/b/a Sunset Cantina in Brookline) had *13 minors in possession of alcohol upon a single inspection*. Add. 27–29. The ABCC did not revoke the licensee’s license but, rather, considered the fact that the

licensee — like GoPuff — had no prior violations and had pledged to take remedial measures. Add. 29–30. The ABCC instead ordered an 18-day suspension, of which 13 days were deemed served and 5 days held in abeyance for 2 years provided no further violations of Chapter 138. Add. 30.

ABCC Decisions Involving Transportation Permits

74. Other ABCC decisions involving express transportation permits similarly impose sanctions far short of outright revocation.
75. For instance, in December 2004, Federal Express was found to have violated its express transportation permit by delivering wine to a minor, for which the Commission ordered a three-day suspension of its permit. Add. 09–11.
76. In August 1997, the ABCC found that licensee d/b/a New Bayview Liquors delivered alcohol on fifteen to twenty trips on the single night of the investigation, and admitted it did not even *possess* a transportation permit. Add. 07. The ABCC suspended the license “for a period of one (1) day.” Add. 07–08.
77. In January 1992, licensee Theresa MacDonald agreed to resolve multiple violations of her wholesale and package store licenses, by, among other things obtaining requisite transportation permits that (unlike Gopuff) she had never acquired. Add. 04–06. In that matter, which also involved unauthorized wine tastings, unauthorized mail delivery, and potentially disqualified individuals participating in the business, the sanction that ABCC had imposed was indefinite suspension, not revocation. Add. 04–06.
78. In October 1990, the ABCC found that licensee McGonagle & Sons, Inc. had transported alcohol without a transportation permit between two retail locations, and “suspend[ed] the license for two days on that count.” Add. 02–03.

Harms to Gopuff Following the Decision

79. In light of the Decision, the GB Holdings Newton location ceased its sale of alcoholic beverages and GB Logistics ceased coordinating alcoholic beverage deliveries from retail locations across the Commonwealth.
80. The same day the Decision issued (Thursday, May 18, 2023), Gopuff filed a motion with the Commission for a stay of the Decision pending this appeal.
81. On the afternoon of Monday, May 22, 2023, the Commission denied the motion for a stay.
82. There is a statutory quota limiting the number of “all alcohol” off-premise retail licenses in the City of Newton to eighteen, one of which is the GB Holdings license.
83. Once the ABCC revoked the GB Holdings license, it became immediately available for any other party to request through application. No other all-alcohol off-premise retail licenses are available under the City of Newton quota.
84. There is a significant and competitive interest in the limited number of quota licenses allocated to the City of Newton.
85. There is a significant risk that the City of Newton will award the GB Holdings license to another licensee during the pendency of this appeal, which will prevent GB Holdings from regaining its license even if the ABCC’s revocation is found to be unlawful.
86. Gopuff’s absence from the Massachusetts alcohol market is and will continue to result in a loss of market share to competitor alcohol retailers who can provide delivery of their products to customers.

87. Gopuff's absence from the market is and will continue to result in a loss of customers, customer goodwill, and damage to Gopuff's reputation for dependability, speed, and reliability in its ability to provide delivery of alcohol to customers.
88. More specifically, since 2019, Gopuff customers have relied on having a full assortment of products, including alcohol and non-alcoholic items (such as grocery and household products) delivered to their homes in minutes. Currently, over 25% of Gopuff product revenue generated by its three locations in Massachusetts that currently operate retail alcohol licenses comes from orders containing at least one alcoholic beverage item. The loss of the ability to deliver alcohol will irreparably damage Gopuff's ability to service a significant portion of its customer base and those customers will likely look elsewhere to meet their everyday needs.
89. Gopuff is and will continue to be unable to recoup any lost revenue as a result of the ABCC's Decision to revoke its Newton retail license and statewide express transportation permit, as monetary damages are unavailable against the Commonwealth or its agencies.
90. The revocation of a license can have adverse implications on the ability of the licensee to obtain a new license in either Massachusetts or in other states. The ABCC retail application (and those in many other states) require applicants to list any violations that resulted in suspension, revocation, or cancellation of a license. The ABCC and its counterparts in other states can and do analyze that information to evaluate the character and fitness of an applicant to hold a license.
91. If Gopuff is unable to promptly resume alcohol delivery services, it risks being forced to cease operations through all of its Massachusetts retail locations due to insufficient sales,

leading to loss of income for numerous Massachusetts residents who are either employees of Gopuff or independent contracted delivery partners of GB Logistics.

COUNT I

G.L. c. 30A, § 14(7)

92. Gopuff incorporates the allegations contained in the above paragraphs as though fully set forth herein.
93. The ABCC's Decision violates G.L. c. 30A, § 14(7) as it is, among other things, in violation of constitutional provisions, made upon unlawful procedure, based upon an error of law, unsupported by substantial evidence, unwarranted by the facts presented in the record, arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.
94. The Decision was arbitrary and capricious because it is significantly and objectively more punitive as to Gopuff than other recent decisions involving comparable (and even more egregious) circumstances. "[A]n agency action is arbitrary when the agency offered insufficient reasons for treating similar situations differently." *Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996).
95. The Decision was arbitrary and capricious because it is significantly and objectively more punitive as to Gopuff than other recent decisions involving first offenses by licensees.
96. The Decision was arbitrary and capricious because it failed to acknowledge the significant remedial measures described by Gopuff at the March 7, 2022 hearing, which were in fact implemented in the fifteen intervening months prior to the issuance of the Decision on May 18, 2023. *Doe v. SORB*, 456 Mass. 612, 622-23 (2010) (holding that an

agency's failure to consider "substantial evidence presented at the hearing" by a petitioner was arbitrary and capricious under G.L. c. 30A, § 14(7)).

97. The ABCC routinely acknowledges in its decisions remedial measures taken by licensees, and routinely mitigates the severity of the penalty imposed as a result thereof.

98. Licensees are entitled to "fundamental fairness" from their regulating agency in proceedings involving their licenses. *Roslindale Motor Sales, Inc. v. Police Comm'r of Boston*, 405 Mass. 79, 83 (1989). *See also Commonwealth v. Ly*, 450 Mass. 16, 22 (2007) (holding that the "Fourteenth Amendment . . . requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice") (internal citations omitted).

99. Quoting *Arthurs v. Bd. of Registration in Medicine*, 383 Mass. 299, 317 (1981), the Decision stated that "the purpose of discipline is not retribution, but the protection of the public" (alteration omitted).

100. The ABCC abrogated principles of fundamental fairness when it treated Gopuff differently from other licensees, by intentionally amassing alleged violations from multiple dates over the course of nearly a full month and then noticing all the alleged violations simultaneously, rather than following its standard practice of issuing notices of alleged violations to licensees reasonably contemporaneously with the occurrence of the violations.

101. In so doing, the ABCC deprived Gopuff of the opportunity to timely remediate the issues identified. Such action is contrary to the principle that the purpose of discipline is protection of the public, not retribution, and is not in accordance with law.

102. The Decision was arbitrary and capricious because in the fifteen intervening months between the hearing and the Decision, the ABCC approved two new retail licenses for GB Holdings and 150 copies of GB Logistics' master express transportation permit, renewed both the GB Holdings license and the GB Logistics permit at issue in this case, yet subsequently concluded that Gopuff's conduct in November and December 2021 was sufficiently egregious to warrant complete and immediate revocation of the Newton retail license and the statewide express transportation permit.

103. Gopuff is aggrieved by the ABCC's Decision revoking GB Holdings' Newton retail license and GB Logistics' statewide express transportation permit, and will suffer irreparable and permanent injury if the Decision is allowed to stand.

PRAYER FOR RELIEF

WHEREFORE, Gopuff respectfully prays that this Court:

- a. Enter judgment in favor of Gopuff and against ABCC on Count I of this Complaint;
- b. Issue an order declaring that the Decision is arbitrary, capricious, and unlawful;
- c. Preliminarily and permanently enjoin and set aside the Decision under G.L. c. 30A, § 14(7);
- d. Remand the matter for further proceedings before the ABCC;
- e. Award costs and reasonable attorneys' fees; and
- f. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

GB LL HOLDINGS MA LLC D/B/A
GOPUFF and GB LOGISTICS LLC,

By their attorneys,

A handwritten signature in black ink, appearing to read 'Thaddeus A. Heuer', written over a horizontal line.


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Date: May 23, 2023

VERIFICATION

I, Kristen Adamowski, am the Senior Director of GoBrands, Inc. I have reviewed the allegations in this Verified Complaint, have personal knowledge of the facts stated above, and hereby swear that those facts are true and accurate.

Signed under the penalties of perjury this 23rd day of May, 2023,



Kristen Adamowski