

1 **BEFORE THE CANNABIS COMPLIANCE BOARD**
2 **STATE OF NEVADA**

3
4 STATE OF NEVADA, CANNABIS
 COMPLIANCE BOARD,

Case No. 2020-24

5 Petitioner,

6
7 vs.

8 WAVESEER OF LAS VEGAS, LLC,

9 Respondent.

10
11 **STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION**

12 The Cannabis Compliance Board (the “CCB”), by and through its counsel, Aaron D.
13 Ford, Attorney General for the State of Nevada, L. Kristopher Rath, Esq., Senior Deputy
14 Attorney General and Ashley A. Balducci, Esq., Senior Deputy Attorney General, hereby
15 enters into this Stipulation and Order for Settlement of Disciplinary Action (“Stipulation
16 and Order”) with Respondent Waveseer of Las Vegas, LLC (hereinafter “Waveseer LV”), by
17 and through its counsel of record, Alicia R. Ashcraft, Esq. of the law firm of Armstrong
18 Teasdale LLP. Pursuant to this Stipulation and Order, Waveseer LV and CCB (collectively,
19 the “Parties”) hereby stipulate and agree that CCB Case No. 2020-24 (the “Administrative
20 Action”) shall be fully and finally settled and resolved upon terms and conditions set out
21 herein.

22 **PERTINENT FACTS**

23 1. On November 17, 2020, CCB initiated this disciplinary action via the service
24 and filing of a Complaint for Disciplinary Action (the “Complaint”). The Complaint alleges
25 that, contrary to Nevada law, the Waveseer LV adult-use dispensary (RD132) sold cannabis
26 product that had not been approved for sale. Specifically, a directive had been issued via
27 Listserv in March 2020 requiring all cannabis dispensaries to check their inventories for
28

1 certain cannabis brands which had failed product testing¹ and to destroy or return these
2 failed products. The Complaint alleged that Respondent had sold one of these cannabis
3 brands in violation of the directive. Respondent Waveseer LV contended such sale was
4 inadvertent when the Department of Taxation, Marijuana Enforcement Division lifted the
5 METRC hold on the product. In response to the CCB notice dated July 28, 2020, Waveseer
6 provided a plan of correction to prevent such an occurrence in the future.

7 2. After service of the Complaint and prior to Respondent filing an answer,
8 counsel for CCB and counsel for Respondent engaged in good faith negotiations to reach an
9 agreement that is mutually acceptable to Respondent and counsel for the CCB for
10 resolution of this matter, with the understanding that this Stipulation and Order must be
11 approved by majority vote of the members of the CCB. Accordingly, the parties entered
12 into an agreement to stay the disciplinary process to allow the CCB to consider this
13 Stipulation and Order for approval.

14 ACKNOWLEDGEMENTS AND APPLICABLE LAW

15 This Stipulation and Order is made and based upon the following acknowledgements
16 by the Parties:

17 3. Waveseer LV has entered into this Stipulation and Order on its own behalf
18 and with full authority to resolve the claims against it and is aware of Waveseer LV's rights
19 to contest the violations pending against it. These rights include representation by an
20 attorney at Waveseer LV's own expense, the right to a hearing on any violations or
21 allegations formally filed, the right to confront and cross-examine witnesses called to testify
22 against Waveseer LV, the right to present evidence on Waveseer LV's own behalf, the right
23 to have witnesses testify on Waveseer LV's behalf, the right to obtain any other type of
24 formal judicial review of this matter, and any other rights which may be accorded to
25 Waveseer LV pursuant to provisions of NRS Chapters 678A through 678D, NRS Chapters
26 453A and 453D, NAC Chapters 453A and 453D, the Nevada Cannabis Compliance
27

28 ¹ A prior Public Health and Safety Advisory the Department promulgated in February 2020 notified licensees
and consumers that 20 brands of cannabis that had originally been listed as passing microbial testing by a
certain cannabis testing facility were determined to have actually failed such testing after later analysis.

1 Regulations (NCCR), and any other provisions of Nevada law. Waveseer LV is waiving all
2 these rights by entering into this Stipulation and Order. If the CCB rejects this Stipulation
3 and Order, or any portion thereof, Waveseer LV reserves the right to withdraw any or all
4 waivers.

5 4. Should this Stipulation and Order be rejected by the CCB or not timely
6 performed by Waveseer LV, it is agreed that presentation to and consideration by the CCB
7 of such proposed stipulation or other documents or matters pertaining to the consideration
8 of this Stipulation and Order shall not unfairly or illegally prejudice the CCB or any of its
9 members and/or assigned hearing officers from further participation, consideration,
10 adjudication, and/or resolution of these proceedings and that no CCB member shall be
11 disqualified or challenged for bias.

12 5. Waveseer LV acknowledges that this Stipulation and Order shall only become
13 effective after the CCB has approved it.

14 6. Waveseer LV enters this Stipulation and Order after being fully advised of
15 Waveseer LV's rights and as to the consequences of this Stipulation and Order. This
16 Stipulation and Order embodies the entire agreement reached between the CCB and
17 Waveseer LV. It may not be altered, amended, or modified without the express written
18 consent of the Parties and all alterations, amendments and/or modifications must be in
19 writing.

20 7. In an effort to avoid the cost and uncertainty of a disciplinary hearing,
21 Waveseer LV has agreed to settle this matter. For purposes of settling this matter,
22 Waveseer LV acknowledges that the facts contained in the paragraphs in the above
23 "Pertinent Facts" portion of this Stipulation and Order are true and correct. Without
24 waiving any constitutional rights against self-incrimination, Waveseer LV further
25 acknowledges that certain facts contained in the CCB Complaint in Case No. 2020-24 could
26 be found to constitute violations of NRS Chapters 453A and 453D and NAC Chapters 453A
27 and 453D, with penalties up to and including suspension of license RD132, and a civil
28 penalty of up to \$10,000, if this matter went to an administrative hearing.

1 8. In settling this matter, the Executive Director for CCB and counsel for CCB
2 have considered the factors set forth in NCCR 4.030(2) and NAC 453D.905(2), including:
3 the gravity of the violations; the economic benefit or savings, if any, resulting from the
4 violations; the size of the business of the violator; the history of compliance with the Nevada
5 statutes and regulations governing marijuana/cannabis by the violator; actions taken to
6 remedy and/or correct the violations; and the effect of the penalty on the ability of the
7 violator to continue in business.

8 9. To resolve the Administrative Action, and only for those purposes and no
9 other, Waveseer LV specifically admits to the following violation with respect to the
10 Complaint in CCB Case No. 2020-24 for license RD132: One violation of NRS
11 453D.905(3)(d)(11) for selling an unauthorized cannabis product, which constitutes one
12 Category III violation.

13 10. As to the remaining allegations in the Complaint, Waveseer LV neither
14 admits nor denies those allegations and no civil penalties shall be assessed as to the
15 remaining violations.

16 11. With respect to RD132, Waveseer LV further agrees to pay a civil penalty in
17 the amount of \$7,500 in consideration for its admitted violation in Paragraph 10, above,
18 and in consideration of CCB's agreement to resolve the Administrative Action on the terms
19 set forth herein. Said sum must be paid within 30 days of CCB approval of this Stipulation
20 and Order.

21 12. If the CCB approves this Stipulation and Order, it shall be deemed and
22 considered disciplinary action by the CCB against Waveseer LV.

23 13. Both parties acknowledge that the CCB has jurisdiction to consider and order
24 this Stipulation and Order because Waveseer LV holds privileged licenses/certificates
25 regulated by the CCB as of July 1, 2020. Waveseer LV expressly, knowingly, and
26 intentionally waives the 21-day and/or 5 day notice requirements contained in the Nevada
27 Open Meeting Law and acknowledges that this Stipulation and Order may be presented to
28 the CCB for its consideration and potential ratification at the CCB's meeting on January

1 26, 2020.

2 **STIPULATED ADJUDICATION**

3 Based upon the above acknowledgments of the Parties and their mutual agreement,
4 the Parties stipulate and agree that the following terms of discipline shall be imposed by
5 the CCB in this matter:

6 14. Violations: As to license RD132, Waveseer LV is found to have one Category
7 III violation, as set forth in Paragraph 9, above.

8 15. Imposition and Payment of Civil Penalties. Waveseer LV shall pay a total
9 civil penalty in the amount of seven thousand, five hundred dollars (\$7,500) within 30 days
10 of the date the CCB approves this Stipulation and Order.

11 16. Plan of Correction. Respondent represents and warrants that it has put in
12 place a plan of correction to remedy and to prevent the recurrence of the violations set forth
13 in this Stipulation and Order. As to RD132, Respondent further represents and warrants
14 that, to the best of Respondent's knowledge, as of the date it has executed this Stipulation
15 and Order, it is operating in full compliance with NRS Title 56 and NCCR. In summary,
16 the plan of correction is as follows: Waveseer has implemented new written policies and
17 procedures detailing how cannabis packages on administrative hold in METRC will be
18 more accurately identified and handled, so that there will be no mistakes for any product
19 recalls. In addition, where consumers purchasing the recalled product could be identified,
20 they were contacted and notified of the issue.

21 17. Contingency if Approval Denied. If approval of this Stipulation and Order is
22 denied by CCB, Waveseer LV and counsel for the CCB agree to resume settlement
23 negotiations in good faith and attempt to reach an agreement to amend this Stipulation
24 and Order and resubmit an amended Stipulation and Order to the CCB to review for
25 approval at its next regularly scheduled meeting. If such an agreement cannot be reached,
26 the Parties agree to proceed with the Administrative Action, which shall include a
27 disciplinary hearing before the CCB or its assigned hearing officer. Waveseer LV shall file
28 its Answer to the Complaint no later than February 18, 2021. Should the Administrative

1 Action proceed for the reasons set forth in this Paragraph, CCB preserves all its claims and
2 arguments in the Administrative Action as set forth in its Complaint and Waveseer LV
3 preserves all its defenses and arguments set forth in its Answer. An unapproved
4 Stipulation and Order shall not be admissible as evidence or referenced in argument at any
5 disciplinary hearing in CCB Case No. 2020-24 or any other matter involving the CCB.

6 18. Contingency if Approval Conditioned. If the CCB approves this Stipulation
7 and Order, but said approval is contingent on certain conditions, the parties will undertake
8 further good faith negotiations to include said conditions in an amended stipulation and
9 order for execution by the CCB Chair. If Waveseer LV does not agree to the certain
10 conditions imposed by the CCB, the parties will undertake additional negotiations and
11 attempt to reach an agreement to amend this Stipulation and Order and resubmit an
12 amended Stipulation and Order to the CCB to review for approval at its next regularly
13 scheduled meeting. If such an agreement cannot be reached, the Parties agree to proceed
14 with the Administrative Action, which shall include a disciplinary hearing before the CCB
15 or its assigned hearing officer. Waveseer LV shall file its answer to the Complaint no later
16 than February 18, 2021. Should the Administrative Action proceed for the reasons set forth
17 in this Paragraph, CCB preserves all its claims and arguments in the Administrative
18 Action as set forth in its Complaint and Waveseer LV preserves all its defenses and
19 arguments asserted in its Answer and withdraws all waivers set forth herein.. An unapproved
20 Stipulation and Order shall not be admissible as evidence or referenced in argument at any
21 disciplinary hearing in CCB Case No. 2020-24 or any other matter.

22 19. Closure of Disciplinary Action. Once this Stipulation and Order is fully
23 performed by Waveseer LV, the Administrative Action will be closed.

24 20. Communications with CCB Members. Waveseer LV understands that this
25 Stipulation and Order will be presented to the CCB in open session at a duly noticed and
26 scheduled CCB meeting. Waveseer LV understands that the CCB has the right to decide
27 in its own discretion whether or not to approve this Stipulation and Order. The CCB's
28 counsel, which is the Nevada Attorney General and its staff attorneys, will recommend

1 approval of this Stipulation and Order. In the course of seeking CCB acceptance of this
2 Stipulation and Order, counsel for CCB may communicate directly with individual CCB
3 members. Waveseer LV acknowledges that such communications may be made or
4 conducted *ex parte*, without notice or opportunity for Waveseer LV to be heard on its part
5 until the public CCB meeting where this Stipulation and Order is discussed, and that such
6 contacts and communications may include, but may not be limited to, matters concerning
7 this Stipulation and Order, the Administrative Action and any and all information of every
8 nature whatsoever related to these matters. Waveseer LV agrees that it has no objections
9 to such *ex parte* communications. CCB agrees that Waveseer LV and/or its counsel may
10 appear at the CCB meeting where this Stipulation and Order is discussed and, if requested,
11 respond to any questions that may be addressed to Waveseer LV and/or the Attorney
12 General's staff attorneys. Waveseer LV agrees that, should the CCB decline to approve this
13 Stipulation and Order, Waveseer LV will not contest or otherwise object to any CCB
14 member, and/or CCB appointed hearing officer, hearing and adjudicating the
15 Administrative Action based on the aforementioned *ex parte* communications with anyone
16 from the Nevada Attorney General's Office.

17 21. Release. In execution of this agreement, Respondent agrees that the State of
18 Nevada, the CCB, the Office of the Attorney General, and each of their members, staff,
19 attorneys, investigators, experts, hearing officers, consultants and agents are immune from
20 any liability for any decision or action taken in good faith in response to information and
21 data acquired by the CCB. Respondent agrees to release the State of Nevada, the CCB, the
22 Office of the Attorney General, and each of their members, staff, attorneys, investigators,
23 experts, hearing officers, consultants and agents from any and all manner of actions, causes
24 of action, suits, debts, judgments, executions, claims and demands whatsoever, known or
25 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have
26 against any and/or all of the persons, government agencies or entities named in this
27 Paragraph, arising out of, or by reason of, CCB's investigation of the matters set forth in
28 its Complaint, the matters set forth in this Stipulation and Order, or the administration of

1 CCB Case No. 2020-24.

2 22. No Precedence. The Parties agree that this Stipulation and Order shall not
3 constitute a precedent for any other issues or proceedings before the CCB and/or in any
4 other forum, other than those set forth in this Stipulation and Order. Furthermore, this
5 Stipulation and Order shall not be admissible in any other proceeding or action with respect
6 to proof of fact or any other matter and/or any other licensee and/or cannabis establishment
7 registered agent, except proceedings brought to enforce this Stipulation and Order under
8 its terms and/or for the CCB's consideration of future disciplinary action against this
9 Respondent.

10 The CCB may consider the discipline imposed herein in any future disciplinary
11 action against Respondent, as required under NCCR 4.030(2), along with the other factors
12 set forth in NCCR 4.030(2), and possible progressive discipline pursuant to NCCR 4.035
13 through 4.060.² As every case concerns different facts and details, this Stipulation does not
14 act as precedence to bind CCB to impose any particular penalty, to charge or allege any
15 particular violation, and/or to impose any particular disciplinary action in the future for
16 this Respondent, or any other respondent, for violations of the same statutes and/or
17 regulations addressed in this Stipulation and Order. Likewise, CCB is not bound by any
18 previous settlement agreements it has approved in entering into this Stipulation and
19 Order.

20 23. Attorneys' Fees and Costs. The Parties each agree to bear their own attorneys'
21 fees and costs.

22 24. Further Assurances. The Parties shall cooperate in executing such additional
23 documents and performing such further acts as may be reasonably necessary to give effect
24 to the purposes and provisions of this Stipulation and Order.

25 25. Voluntary and Informed Agreement. The Respondent represents that its
26 owners, officers, and/or its directors, who are responsible for and able to legally bind

27 _____
28 ² The Parties acknowledge and agree that the specific facts and circumstances of this Administrative Action as
alleged in the Complaint occurred prior to the effective date of the NCCR, and accordingly the progressive
disciplinary provisions of NAC 453D.905(4)(d) of two years shall apply.

1 Waveseer LV have read completely and understand fully the terms of this Stipulation and
2 Order, that such terms are fully understood and voluntarily accepted by Respondent in
3 advance of and as memorialized by the signing of this Stipulation and Order, and that the
4 Respondent's signature to this Stipulation and Order indicates same. Respondent further
5 represents that it has voluntarily entered into this Stipulation and Order to make a full,
6 final, and complete compromise upon the terms and conditions set forth herein.
7 Respondent further represents that any releases, waivers, discharges, covenants, and
8 agreements provided for in this Stipulation and Order have been knowingly and voluntarily
9 granted and without any duress or undue influence of any nature from any person or entity.
10 The Parties, and each of them, hereby expressly acknowledge that they are each
11 represented by counsel of their own choice in this matter and have been advised by counsel
12 accordingly.

13 26. Warranties of Authority. The Parties to this Stipulation and Order, and each
14 of them, expressly warrant and represent to all other Parties that each has the full right,
15 title, and authority to enter into and to carry out its obligations hereunder, with the sole
16 exception of the required approval of this Stipulation and Order by the CCB. The Parties
17 also expressly acknowledge the foregoing authority.

18 27. Binding Effect. This Stipulation and Order shall be binding upon and inure
19 to the benefit of the Parties hereto and the Parties' respective successors, predecessors,
20 parents, affiliates, shareholders, employees, heirs, executors, assigns, and administrators.

21 28. Construction. The headings of all Sections and Paragraphs of this Stipulation
22 and Order are inserted solely for the convenience of reference and are not a part of the
23 Stipulation and Order and are not intended to govern, limit, or aid in the construction or
24 interpretation of any term or provision of this Stipulation and Order. In the event of a
25 conflict between such caption and the paragraph at the head of which it appears, the
26 paragraph and not such caption shall govern in the construction of this Stipulation and
27 Order.

28 29. Governing Law. This Stipulation and Order shall be governed by and

1 construed in accordance with the laws of the State of Nevada, without reference to conflict
2 of law principles.

3 30. Jurisdiction and Forum Selection. The Parties consent to the jurisdiction of
4 the Eighth Judicial District Court of the State of Nevada, in and for Clark County, to
5 resolve any disputes related to the terms or enforcement of this Stipulation and Order. The
6 successful or prevailing Party or Parties in such action shall be entitled to recover
7 reasonable attorney fees, costs, and expenses actually incurred in initiating or responding
8 to such proceeding, in addition to any other relief to which it may be entitled.

9 31. Interpretation. This Stipulation and Order is the result of negotiations among
10 the Parties who have each negotiated and reviewed its terms. In the event a Court ever
11 construes this Agreement, the Parties expressly agree, consent, and assent that such Court
12 shall not construe this Agreement or any provision hereof against any Party as its drafter
13 for purposes of interpreting any ambiguity or uncertainty in this Stipulation and Order.

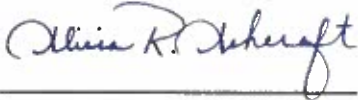
14 32. Time is of the Essence. Time is of the essence in the performance of all terms
15 of this Stipulation and Order.

16 33. Severability. If any portion of this Stipulation and Order, or its application
17 thereof to any person or circumstance, shall be deemed to any extent to be invalid, illegal,
18 or unenforceable as a matter of law, all remaining clauses of this Stipulation and Order
19 and its application thereof shall be not affected and shall remain enforceable to the fullest
20 extent permitted by law.

21 34. Counterparts and Copies. This Stipulation and Order may be executed in
22 counterparts, each of which when so executed and upon delivery to counsel of record for the
23 Parties shall be deemed an original ("Counterparts"). This Stipulation and Order shall be
24 deemed executed when Counterparts of this Stipulation and Order have been executed by
25 all the Parties and/or their counsel; such Counterparts taken together shall be deemed to
26 be the Agreement. This Stipulation and Order may be executed by signatures provided by
27 electronic facsimile or email, which signatures shall be binding and effective as original
28 wet ink signatures hereupon. All fully executed copies of this Stipulation and Order are

1 duplicate originals, equally admissible in evidence.

2 IN WITNESS WHEREOF, this Stipulation and Order has been executed by the
3 Parties and attested by their duly authorized representatives as of the date(s) so indicated.
4 The Effective Date of this Stipulation and Order shall be the date it is ordered by the CCB.

5 

6 Date: January 7, 2021

7 Alicia R. Ashcraft (Nev. Bar No. 6890)
8 Counsel for Respondent Waveseer LV

9 

10 Date: 1/7/2021

11 David Rosen, Manager
12 On behalf of Respondent Waveseer LV

13 

14 Date: 1/7/2021

15 L. Kristopher Rath (Nev. Bar No. 5749)
16 Ashley Balducci (Nev. Bar No. 12687)
17 Senior Deputy Attorney General
18 Counsel for Cannabis Compliance Board

19 

20 Date: 1/15/2021

21 Tyler Klimas, Executive Director for the
22 Cannabis Compliance Board

23 **ORDER**

24 WHEREAS, on 26th day of January, 2021, the Nevada Cannabis Compliance Board
25 approved and adopted all the terms and conditions set forth in the Stipulation and Order
26 for Settlement of Disciplinary Action with Waveseer LV.

27 IT IS SO ORDERED.

28 SIGNED AND EFFECTIVE this 26th day of Jan, 2021.

STATE OF NEVADA,
CANNABIS COMPLIANCE BOARD

By: 
HON. MICHAEL L. DOUGLAS, CHAIR