

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

3 STATE OF NEVADA, CANNABIS
4 COMPLIANCE BOARD,

5 Petitioner,

Case No. 2022-60

6 vs.

7 DAMIEN JAMAL NESS.

8 Respondent.

9 **COMPLAINT FOR DISCIPLINARY ACTION**

10 The Cannabis Compliance Board of the State of Nevada (the “CCB”), by and through
11 counsel, Aaron D. Ford, Attorney General of the State of Nevada Emily N. Bordelove, Esq.,
12 Senior Deputy Attorney General and Ashley A. Balducci, Esq., Senior Deputy Attorney
13 General, having a reasonable basis to believe that DAMIEN JAMAL NESS (“NESS” or
14 “Respondent”) has violated provisions of Chapters, 678A through 678D of the Nevada
15 Revised Statutes (“NRS”), and the Nevada Cannabis Compliance Regulations (“NCCR”),
16 hereby issues its Complaint, stating the CCB’s charges and allegations as follows:

17 **JURISDICTION**

18 1. NESS currently holds the following cannabis establishment agent registration
19 cards:

20 ID No.	Cannabis Establishment	Application Date	Expiration Date
21 [REDACTED]	Dispensary	December 4, 2020	December 15, 2022

22
23 2. In NESS’s application for Agent Card [REDACTED], NESS executed an “Applicant
24 Dispense/Divert Pledge” Form pledging not to “**dispense** or divert marijuana or marijuana
25 products to **unauthorized persons.**” (emphasis added).

26 3. As set forth below, the events at issue in this CCB Complaint occurred after July
27 1, 2020. NESS applied for his [REDACTED] Agent Card on December 4, 2020, and the CCB
28 issued the agent card to NESS. Therefore, NESS is subject to the jurisdiction of the CCB

1 and subject to discipline pursuant to NRS 678A through 678D and the relevant provisions
2 of the NCCR.

3 4. Pursuant to NRS 678A.500 and 678A.510(1), the CCB's Executive Director has
4 transmitted the details of the suspected violations of NESS to the Attorney General, and
5 the Attorney General conducted an investigation of the suspected violations to determine
6 whether they warrant proceedings for disciplinary action. The Attorney General has
7 recommended to the Executive Director that further proceedings are warranted, as set
8 forth in this CCB Complaint. The CCB has authorized proceeding with disciplinary action
9 against NESS, pursuant to NRS 678A.510(2)(b). Pursuant to NRS 678A.520(1), the CCB's
10 Executive Director has authorized service of this Complaint upon NESS.

11 **FACTUAL ALLEGATIONS**

12 5. The CCB incorporates all prior Paragraphs as though fully set forth herein.

13 6. On or about April 28, 2021, Essence Tropicana, LLC ("ETL") dispensary
14 transmitted a Cannabis Establishment ("CE") Incident Report to the CCB, identifying
15 incidents of an underage individual purchasing and attempting to purchase cannabis at its
16 dispensary located on 7260 South Rainbow Blvd., Las Vegas, Nevada 89118.

17 7. According to the CE Incident Report, on or about April 15, 2021, an underage
18 individual attempted to make a purchase at its dispensary, and her identification card did
19 not successfully scan. At that time, ETL discovered that the individual was under 21 years
20 of age¹, and ETL escorted her from its premises. ETL initiated an investigation and found
21 that this same underage individual completed prior purchases at its adult-use dispensary.
22 ETL reported that it had terminated the ETL employees who allowed these sales.

23 8. On or about April 29, 2021, the CCB's Chief of Audits and Inspections, Karalin
24 Cronkhite ("Chief Cronkhite"), investigated the CE Incident Report. During Chief
25 Cronkhite's investigation, she discovered that ETL hired NESS to work as Guest
26 Consultant in its drive-through. According to ETL, NESS's specific role was to (1) verify

27 _____
28 ¹ Specifically, the individual was twenty (20) years, ten (10) months, and fourteen (14) days old.

1 the guest's identification card by utilizing the VeriScan scanning device, (2) verify the
2 products in the bag requested, and (3) charge the guest for the transaction. ETL reported
3 that, on or about April 9, 2021, video surveillance footage showed NESS visually examining
4 the identification card, scanning the underage individual's identification card in VeriScan,
5 and, upon information and belief, that NESS ignored the VeriScan notification that the
6 individual was underage. NESS proceeded to allow the underage individual to purchase
7 cannabis through the drive-through.

8 9. ETL subsequently settled with the CCB regarding its role in these sales and
9 attempted sale, as reflected in the settlement agreement filed in Case No. 2021-50.

10 VIOLATIONS OF LAW

11 10. The CCB incorporates all prior Paragraphs as though fully set forth herein.

12 11. As to NESS's [REDACTED] Agent Card, NESS's actions, as described in Paragraph
13 8, violated NRS 678B.385(2), NCCR 7.020, & 4.040(1)(a)(3). Specifically, on or about April
14 9, 2021, NESS visually examined an underage individual's identification card scanned an
15 underage individual's identification card in VeriScan, and upon information and belief,
16 NESS ignored the VeriScan notification that the individual was underage. Thereby NESS
17 failed to verify the age of a person less than 21 years of age using the VeriScan system or
18 independent from the VeriScan system and/or sold and/ or otherwise provided cannabis or
19 cannabis paraphernalia to a person who is less than 21 years of age. NESS's actions, as
20 described in Paragraph 8 and this Paragraph, constitute grounds for immediate revocation
21 of NESS's [REDACTED] Agent Card under NRS 678B.385(2) and/or one (1) Category II
22 violation under NCCR 4.040 (2)(a)(2), carrying a civil penalty of not more than \$25,000,
23 with a suspension of NESS's [REDACTED] Agent Card for not more than twenty (20) days.

24 12. In the alternative, NESS's actions, as described in Paragraphs 8 & 11, violated
25 NCCR 4.040(1)(a)(4). Specifically, NESS allowed a person who is less than 21 years of age
26 to enter or remain in a cannabis establishment when he allowed a person who is less than
27 21 years of age through ETL's drive-through. Under CCB guidance, the CCB treats
28 curbside pick-up and drive-through transactions as if the transaction occurred in the

1 cannabis establishment's premises; thus, a person who is less than 21 years of age is not
2 allowed in a vehicle during curbside pick-up and drive-through transactions. Such a
3 violation constitutes one (1) Category II violation under NCCR 4.040(2)(a)(2), carrying a
4 civil penalty of not more than \$25,000 and a suspension of NESS's [REDACTED] Agent Card
5 for not more than twenty (20) days. In an additional alternative, NESS's actions, as
6 described in Paragraphs 8 & 11, violated NCCR 4.050(1)(a)(7), by allowing activity which
7 violates the laws of this State. Specifically, NESS allowed an underaged individual to
8 purchase cannabis or cannabis paraphernalia. Such violation constitutes one (1) Category
9 III violation under NCCR 4.050(2)(a)(1) and carries a civil penalty of not more than
10 \$10,000.

11 DISCIPLINE AUTHORIZED

12 Pursuant to the provisions of NRS 678A.600, NCCR 4.020, 4.030, 4.035 through
13 4.060, and 5.100, the CCB has the discretion to impose the following disciplinary actions:

- 14 1. Revoke NESS's [REDACTED] Agent Card;
- 15 2. Suspend NESS's [REDACTED] Agent Card;
- 16 3. Impose a civil penalty of not more than \$25,000 for each separate violation of NRS
17 Title 56 and the NCCR on NESS's [REDACTED] Agent Card; and
- 18 4. Take such other disciplinary action as the CCB deems appropriate.

19 The CCB may order one or any combination of the discipline described above.

20 RELIEF REQUESTED

21 Based on the foregoing, counsel for the CCB respectfully requests the CCB revoke
22 NESS's [REDACTED] Agent Card and impose civil penalties against NESS in the amount of
23 \$25,000.

24 NOTICE TO RESPONDENT

25 PLEASE TAKE NOTICE, that Respondent has a right to request a hearing on the
26 charges set forth herein, pursuant to NRS 678A.510 through 678A.590. Failure to
27 demand a hearing constitutes a waiver of the right to a hearing and to judicial
28 review of any decision or order of the Board, but the Board may order a hearing,

1 even if the Respondent so waives its right. NRS 678A.520(2)(e).

2 **PLEASE TAKE NOTICE**, you, as the Respondent, **must Answer this Complaint**
3 **within twenty (20) days after service of this Complaint, unless granted an**
4 **extension.** Pursuant to NRS 678A.520(2), in the Answer Respondent:

5 (a) Must state in short and plain terms the defenses to each claim asserted.

6 (b) Must admit or deny the facts alleged in the Complaint.

7 (c) Must state which allegations the Respondent is without knowledge or
8 information to form a belief as to their truth. Such allegations shall be deemed denied.

9 (d) Must affirmatively set forth any matter which constitutes an avoidance or
10 affirmative defense.

11 (e) May demand a hearing. Failure to demand a hearing constitutes a waiver of the
12 right to a hearing and to judicial review of any decision or order of the Board, but the Board
13 may order a hearing even if the Respondent so waives its right.

14 **Failure to Answer or to appear at the hearing constitutes an admission by the**
15 **Respondent of all facts alleged in the Complaint. The Board may take action**
16 **based on such an admission and on other evidence without further notice to the**
17 **Respondent.** NRS 678A.520(3).

18 The Board shall determine the time and place of the hearing as soon as is reasonably
19 practical after receiving the Respondent's Answer. The Board may assign a hearing officer
20 to conduct the hearing under NCCR 2.070, 4.095, and 4.110. The Board or its assigned
21 hearing officer shall deliver or send by registered or certified mail a notice of hearing to all
22 parties at least ten (10) days before the hearing. The hearing must be held within forty-five
23 (45) days after receiving Respondent's Answer unless an expedited hearing is determined
24 to be appropriate by the Board, in which event the hearing must be held as soon as
25 practicable. NRS 678A.520(4). The Chair of the Board or the assigned hearing officer may
26 grant one or more extensions to the forty-five (45) day requirement pursuant to the request
27 of a party or an agreement by both parties.

28 Respondent's Answer and Request for Hearing must be either: mailed via registered

1 mail, return receipt; or emailed to:

2 Tyler Klimas, Executive Director
3 Cannabis Compliance Board
4 700 E. Warm Springs Rd, Suite 100
5 Las Vegas, NV 89119
6 tklimas@ccb.nv.gov

7 If serving its Answer and Request for Hearing via email, Respondent must ensure
8 that it receives an acknowledgement of receipt email from the CCB as proof of service.
9 Respondent is also requested to email a copy of its Answer and Request for Hearing to the
10 Senior Deputy Attorneys General listed below at abalducci@ag.nv.gov and
11 eborde love@ag.nv.gov.

12 As the Respondent, you are specifically informed that you have the right to appear
13 and be heard in your defense, either personally or through your counsel of choice at your
14 own expense. At the hearing, the CCB has the burden of proving the allegations in the
15 Complaint. The CCB will call witnesses and present evidence against you. You have the
16 right to respond and to present relevant evidence and argument on all issues involved. You
17 have the right to call and examine witnesses, introduce exhibits, and cross-examine
18 opposing witnesses on any matter relevant to the issues involved.

19 You have the right to request that the CCB issue subpoenas to compel witnesses to
20 testify and/or evidence to be offered on your behalf. In making this request, you may be
21 required to demonstrate the relevance of the witness's testimony and/or evidence.

22 If the Respondent does not wish to dispute the charges and allegations set forth
23 herein, within thirty (30) days of the service of this Complaint, Respondent may pay the
24 civil penalties set forth above in the total amount of \$ 25,000 and surrender Agent Card

25  on notice to:

26 Tyler Klimas, Executive Director
27 Cannabis Compliance Board
28 700 E. Warm Springs Rd, Suite 100
Las Vegas, NV 89119

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1 YOU ARE HEREBY ORDERED to immediately cease the activity described above
2 which is a violation of Nevada law.

3 DATED: February 25, 2022.

4 STATE OF NEVADA, CANNABIS COMPLIANCE BOARD

5 By: 

6 Tyler Klimas, Executive Director
7 Nevada Cannabis Compliance Board
8 700 E. Warm Springs Rd, Suite 100
9 Las Vegas, NV 89119
10 (775) 687-6299

11 AARON D. FORD
12 Attorney General

13 By: 

14 Emily N. Bordelove (Bar No. 13202)
15 Senior Deputy Attorney General
16 Ashley A. Balducci (Bar No. 12687)
17 Senior Deputy Attorney General
18 Attorneys for the Cannabis Compliance Board
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1 **DECLARATION AND CERTIFICATE OF SERVICE OF**
2 **COMPLAINT FOR DISCIPLINARY ACTION**
3 **(Service via Mail)**

4 I, Amber Virkler, hereby certify and affirm that:

- 5 1. I am over the age of 18 years old.
- 6 2. I am a Board Agent of the Cannabis Compliance Board (“CCB”), as defined in NCR
- 7 1.068.
- 8 3. Pursuant to NRS 678A.520 and NCCR 4.075, I have served the Respondent herein with
- 9 the Complaint for Disciplinary Action (“Complaint”) in the above captioned matter as
- 10 follows:

11 By placing a true and correct copy of the Complaint to be deposited for mailing in
12 the United States Mail in a sealed envelope via registered or certified mail, prepaid
13 in Las Vegas, Nevada, to Respondent’s point of contact with the CCB under NCCR
14 2.050 at Respondent’s address on file with the Board as follow:

15 Name of point of contact served: Damien Jamal Ness

16 Address on file with CCB: [REDACTED]

17 Date of Service: March 7, 2022

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on March 7, 2022
20 (date)

21 
22 (signature)