BEFORE THE CANNABIS COMPLIANCE BOARD
STATE OF NEVADA

STATE OF NEVADA, CANNABIS COMPLIANCE BOARD, Petitioner, vs. NV CANN LABS, LLC Respondent.	Case No. 2023-02

COMPLAINT FOR DISCIPLINARY ACTION

The Cannabis Compliance Board of the State of Nevada (the "CCB"), by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, L. Kristopher Rath, Esq., Senior Deputy Attorney General, and Allison L. Herr, Esq., Senior Deputy Attorney General, having a reasonable basis to believe that Respondent NV Cann Labs, LLC ("NCL", or "Respondent") has violated provisions of Chapters 678A through 678D of the Nevada Revised Statutes ("NRS"), and the Nevada Cannabis Compliance Regulations ("NCCR"), hereby issues its Complaint, stating the CCB's charges and allegations as follows:

JURISDICTION

1. During all relevant times mentioned in this Complaint, NCL held, and currently holds, the following certificates and licenses:

ID	License/Certificate	Last Issued / Renewed	Address
L001	Medical cannabis independent testing laboratory 53359095815516640847	7/1/2022	[redacted]
RL001	Adult-use cannabis independent testing laboratory 99935327095322531205	7/1/2022	[redacted]

2. During all relevant times mentioned in this Complaint, NCL was registered as a domestic limited liability company in the State of Nevada. The Nevada Secretary of State lists the manager of NCL as JANA, LLC. Nichole Barber is listed as the point of contact with the CCB.

3. As NCL holds its licenses with the CCB, it is subject to NRS Title 56 and the NCCR for the violations asserted herein. Therefore, NCL is subject to the jurisdiction of the CCB and subject to discipline pursuant to NRS 678A through 678D and the relevant provisions of the NCCR.

4. Pursuant to NRS 678A.500 and 678A.510(1), the CCB's Executive Director has transmitted the details of the suspected violations of NCL to the Attorney General and the Attorney General has conducted an investigation of the suspected violations to determine whether they warrant proceedings for disciplinary action. The Attorney General has recommended to the Executive Director that further proceedings are warranted, as set forth in this CCB complaint. The Executive Director has transmitted this recommendation and information to the CCB. Pursuant to NRS 678A.510(2)(b), the CCB has voted to proceed with appropriate disciplinary action under NRS 678A.520 through 678A.600. Pursuant to NRS 678A.520(1), the CCB's Executive Director has authorized service of this Complaint upon Respondent.

FACTUAL ALLEGATIONS

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

6. Beginning on or about November 17, 2021, the CCB conducted a routine inspection and investigation (the "2021 Investigation") of NCL's medical and adult-use cannabis independent testing laboratory facility at [redacted]. The Board Agents for this investigation were Kimberly Wayman ("Wayman"), Elizabeth Perez ("Perez"), Carrie Poniewaz ("Poniewaz") and Lynette Kogler ("Kogler") (collectively referred to as the "CCB Agents").

7. On November 17, 2021, the CCB Agents arrived at the NCL facility. As part of the usual laboratory inspection process, the CCB Agents conducted a walkthrough of the

facility, and then each CCB agent focused on specific aspects of the laboratory's operations.

8. During the initial walkthrough, the CCB Agents found that significant structural changes had been made to the facility since the previous inspection in December 2019 (the "December 2019 Investigation"). An area previously designated as warehouse space was converted to new office space and a gas storage room. Additionally, a space which previously served as the gas room and warehouse space was converted to a new laboratory/instrumentation room. There was no CCB record of the laboratory requesting approval for these changes. Laboratory Manager Parker Hein ("Hein") confirmed to Poniewaz that the laboratory did not request or receive the required CCB approval and inspection prior to commencing the new build out or use of the modifications, which included wall demolition and removal, new wall construction, change of room use and purpose, addition of cameras and the movement of testing operations and instrumentation.

9. Wayman reviewed the agent card status for the owners and staff of NCL, and discovered that Joe Orlich, who was listed in CCB records as a 25% owner, did not have a valid agent card. Mr. Orlich's Agent card, number [redacted], expired on September 2, 2020. Agent card application [redacted], was created in the CCB's Accela platform ("Accela") on January 19, 2021: over four months after Mr. Orlich's card expired. On January 20, 2021, an email was sent to Mr. Orlich via Accela, notifying him that his fingerprint submission form must be uploaded to further process his application. Subsequent emails were sent via Accela on March 22, 2021, April 14, 2021, and June 10, 2021, reminding Mr. Orlich that his application was still pending his fingerprint submission form. The email from June 10, 2021, also specified that Mr. Orlich was to provide the MME number and establishment name to the CCB Licensing email. The fingerprint form was eventually submitted by the laboratory on November 17, 2021 (the day of the inspection, when Wayman discovered the issue and 441 days after the last valid agent card had expired). The temporary agent card letter was issued on January 26, 2022, and the final agent card was printed January 26, 2022.

10. Inspection of the laboratory's security procedures revealed multiple areas of

noncompliance. All cannabis establishments are required to maintain an electronic monitoring system with specific requirements for video cameras and video storage. They must also maintain a notification system that provides an audible and visual notification of any failure in their electronic monitoring system. Wayman's discussion with NCL's designated security manager James Whitney ("Whitney") revealed that NCL did not have the required failure notification system in place. Additionally, cannabis establishments are required to perform a semiannual security audit to ensure compliance with state security procedures and to identify potential security issues. Whitney stated that he did occasionally check to make sure the lab was compliant with security requirements, but could not tell Wayman what he looked for or the last time he performed such a check. Whitney confirmed to Wayman that the required security audits were not being documented.

11. Perez inspected the NCL's cannabinoid testing data, procedures, and practices. Part of this inspection process included direct observation of analytical staff as they performed cannabinoids testing. While observing the staff, Perez would ask them questions as they performed the testing. During these conversations, potency analyst Christine Deduyo ("Deduyo") informed Perez that in practice, if there were five or more individual concentrate samples from the same producer with the same strain name, the laboratory would calculate the average THC potency and then compare each individual result to the average. They would then use this information to decide whether to reanalyze a concentrate sample and any individual outlier would be retested. Deduyo stated that this practice was created jointly by herself and Hein, who also confirmed this practice to Perez. NCL performed this retesting without reporting the original test results to the CCB prior to retesting, as required under NCCR 11.070(9). Retesting samples based on strain trending is a repeat violation from the December 2019 investigation.

12. Perez inspected the sample receiving and homogenization process and requested video camera footage from the sample intake room for November 1, 2021, and November 2, 2021, as part of this review. During her review of the video footage, she observed the sample receiving technicians handle the cannabis samples directly with

gloved hands, then handle multiple subsequent samples without changing gloves or using sanitary tools, allowing the potential for cross-contamination of samples. She also observed the technicians donning new gloves over used gloves without washing their hands, in violation of NCCR 6.090(1) and 6.092. These actions were a repeat violation from the December 2019 investigation and contradicted the plan of correction ("POC") that was accepted by the CCB for that investigation. The POC that was approved for the December 2019 investigation included standard operating procedure ("SOP") *SOP-019-10 Intake and Processing*, which stated in section 9.1.2 that "Sample Receiving Technicians must wear all personal protective equipment during homogenization and shall replace gloves in between each sample. The Sample Receiving Technician will wash their hands prior to putting on gloves and will then take care not to touch anything in between glove changes. If the technician does touch something, they should wash their hands before putting on the next set of gloves." Although this was the verbiage required for CCB-approval of the laboratory's POC for the December 2019 investigation, the most recent version of the SOP, *SOP-019-15 Intake and Processing*, showed that portions of this verbiage had been subsequently removed. Section 9.1.2 now stated "Sample Receiving Technicians must wear all personal protective equipment during homogenization of samples. The Sample Receiving Technician will wash their hands prior to putting on gloves."

13. During an onsite follow-up visit on December 2, 2021, Perez directly observed the sample receiving technicians during the sample intake process. While under direct observation, laboratory employees Whitney, Brian Kollenbroich ("Kollenbroich"), and Tatiana Weiford ("Weiford") used sample handling tools to handle flower samples, contrary to the video footage from November 1, 2021, and November 2, 2021. When Perez asked whether they always used these tools to handle samples, they stated to Perez that they did. The following day, Perez requested video of the sample intake room for December 2, 2021, which was provided on an external drive by Whitney. Perez reviewed the video footage from before, during, and after her visit, and observed the sample intake staff using the tools when under her direct observation. She also observed that after she left the area, the staff

discontinued the use of the sample handling tools and commenced handling multiple consecutive samples directly with gloved hands without washing hands and changing gloves in between. This is a repeat violation from the December 2019 investigation, as well as an intentional misrepresentation to CCB Agents regarding the actual sample handling practices.

14. Kogler requested and obtained residual solvents test records and instrument generated data for October and November 2021. Kogler's analysis of the instrument data revealed a pattern of retesting those samples which tested positive for residual solvents, even when passing quality control ("QC") checks assured valid test results. Samples which were retested were resampled and tested twice more, either on the next day or the same day (sometimes the only samples in the second run of the day were the additional retests.) Conversely, samples which tested negative for residual solvents were never retested, even when failing QC checks rendered those results invalid. NCL did not report all test results, once again, as required under NCCR 11.070(9).

15. Kogler's inspection of residual solvents testing included comparison of the results from the instrument data with those reported on the Certificates of Analysis ("COAs"). She observed instances where the initial failing results were ignored and the passing retest results were reported on the CoA, even though the initial failing results were valid and there was no scientific reason for retesting and reporting the passing values. This is exemplified by the following samples which initially failed for Butane, but were reported as passing:

	Butane Result 1		Butane Result 2		Butane Result 3		Butane Result- CoA	
Sample	Test Date	Value (ppm)	Test Date	Value (ppm)	Test Date	Value (ppm)	Issue Date	Value (ppm)
2021NVC2511-17893	10/13/2021	1056.257	10/13/2021	498.442	10/14/2021	269.276	10/14/2021	498.444
2021NVC2743-19353	11/10/2021	631.487	11/10/2021	267.796	11/10/2021	127.54	11/10/2021	267.793

During an onsite follow-up visit on December 21, 2021, Kogler asked Hein and residual solvents analyst Andrew Miller ("Miller") the reason for the practice of selective retesting of residual solvents samples. Kogler was informed that the retesting was not performed for

scientific reasons, but to confirm the presence of residual solvents because the lab receives "angry phone calls" from clients when their products test positive for residual solvents.

16. QC checks are required within analytical runs to ensure the validity of the results produced by the measurement system. When QC results fail to fall within the tolerances prescribed in the laboratory's SOPs, the laboratory must refrain from reporting results from that run and investigate the issue. Review of the laboratory's corrective action documents, instrument data and instrument maintenance logs showed no indication of corrective action in response to the systemic QC failures across multiple areas of testing. This lack of regard for failing QC resulted in sample results being reported when QC failed for multiple analytes for multiple methods, including pesticides, mycotoxins, residual solvents, and terpenes testing. Although test method SOPs specified that samples from runs with failing QC must not be reported and must be reanalyzed, the laboratory failed to adhere to these requirements, instead reporting sample results with invalid QC data. Review of the laboratory's QC trend logs for 2021 and January and February of 2022 revealed that the laboratory was aware of the QC failures, and yet failed to investigate these failures and perform appropriate corrective action. Analyst Timothy Bouta ("Bouta") stated that for pesticides and mycotoxins analysis, only one QC was analyzed at the beginning of each analytical run, and if the QC failed to meet tolerance the run would be stopped and the QC reanalyzed. Although there were systemic QC failures throughout the data reviewed, there was no evidence that the laboratory was reanalyzing QC as stated by Bouta. There were no other QC checks within pesticides analytical runs aside from the initial QC check, precluding the ability to determine whether the instrument remained in control through completion of the analytical run. Additionally, a secondary check standard of a different manufacturer or lot number from the primary standard must be included in the analyses per SOP-026-012 *Analysis of Pesticides by GC-MS*, yet the laboratory was not running this required check. Hein acknowledged this shortage of QC in pesticide analytical runs, and further stated that this practice began during the "previous administration" when the laboratory "could not pass" this QC. This indicates that the laboratory knew that

these instruments were not producing reliable data yet continued reporting the data anyway. This practice of reporting results from analytical runs with invalid QC provides the potential for endangering consumers, especially as it pertains to product safety tests such as pesticides and mycotoxins.

17. There was also a lack of instrument maintenance documented, which was especially concerning in the context of continually failing QC. During an onsite follow-up visit on December 20, 2021, Perez and Kogler discovered that neither in-house nor third-party preventative maintenance was being performed regularly for multiple instruments, even though Scientific Director Hui Wang ("Director Wang") stated that third-party preventative maintenance visits had been occurring annually. For example, GC-MS-1, an instrument used for testing the pesticide Pentachloronitrobenzene ("PCNB'), had not had preventative maintenance service in over a year and had not been calibrated since that service. Regarding the instrument's calibration, Hein stated that he would know when it was time to recalibrate GC-MS-1 when the QC check was "out of whack." Hein stated that, generally, the GC-MS-1 instrument received a column change every six months. However, he could not recall the last time the column was changed, nor could he provide documentation that this was even occurring. Hein stated that the column cleaning and baking steps were not being performed at the end of each run as required per NCL's own SOP-026-012, *Analysis of Pesticides by GC-MS*. In fact, the most recent documentation of a column cleaning and baking step was in October of 2020. Review of instrument data by Perez and Kogler revealed that the chromatography from this instrument was extremely poor, and the instrument blanks repeatedly failed, indicative of instrument carryover and/or a dirty column. Even though analytical runs contained routinely failing QC checks, which demonstrated that the instrument was not producing reliable results, the laboratory continually reported data from GC-MS-1.

18. On February 18, 2022, the CCB issued a "Cease and Desist" letter in response to the laboratory's deficient QC practices. The laboratory responded to the letter via email on March 14, 2022, providing a list of corrections which the CCB agents deemed acceptable.

19. Wayman inspected the laboratory's microbiology section and discovered multiple compliance issues. Although the instructions for use ("IFU") for the 3M Petrifilm Total Aerobic Count and Total Yeast and Mold assays specify to estimate plate counts by averaging the number of colonies in 2 or more representative squares and multiplying by 30, the laboratory was only multiplying by 20. This practice was not only incorrect, but it also allowed for the potential of passing samples which should have failed testing by virtue of underreporting the results. Fortunately, a retrospective review from the previous 30 days did not reveal any samples which were inappropriately reported as passing due to this issue. The laboratory was storing the unopened boxes of the 3M Petrifilms at room temperature (20-25°C), even though the manufacturer's IFUs specify they are to be stored at or below 8°C, and only brought to 20°C - 25°C immediately before use. Additionally, the boxes of 3M plates were being stored directly on the floor under the microbiology bench when there is a requirement to store all items six inches or more from the floor. NCCR 10.055(2)(c). The microbiology staff informed Wayman that, when performing plating assays, the routine practice was to allow the sample dilution tubes to settle for 15 minutes prior to inoculating the media. This practice not only conflicted with NCL's own SOPs, but it also allowed for the potential of artificially lowered microbial counts due to the settling of microbes which may be adhered to particulate matter. Wayman also found several issues which reflected inadequate staff training. Direct observation of microbiology staff revealed they were performing dilutions and plate inoculations in a manner that conflicted with NCL's own SOPs and provided the potential of artificially lowered microbial counts. The analyst was not ensuring adequate mixing of microbial dilutions prior to creating serial dilution tubes or prior to plate inoculation. Proper pipetting technique was not being followed: the analyst was observed incompletely filling the pipette tip as well as allowing for multiple air bubbles, thereby decreasing the amount of sample used for testing. Additionally, review of the "Microbial Results" forms showed that results were not being recorded in the forms consistently or appropriately. There were multiple runs where the dates of plate reading were not being recorded in the fields designated for this purpose,

which precludes the ability to confirm adequate incubation time of microbial plates. Corrections were being made to the results in a manner that obscured the original entry in the form, and there were multiple runs where the incorrect sample dilution factors were indicated.

20. Poniewaz inspected the laboratory's Quality Assurance and Quality Control (QA/QC) program and related processes. She determined the overall QA/QC program to be noncompliant, with insufficient oversight provided by the laboratory's technical manager at the time, Derrick Palma ("Palma"). Review of the laboratory's then current SOPs revealed systemic issues with lab practices that did not match NCL's own SOPs. *SOP PRO-009 Internal and External Audits and Assessments* specifies that SOPs are to be audited at least once per calendar year; however, these inspections had not been performed as specified in the SOP, and a random selection of ten of the laboratory's SOPs showed they were all past due for annual review. *SOP-017-005 Micropipette Use and Maintenance* specifies that pipettes will be checked internally once per month to ensure accuracy, and the monthly checks are logged in the "Autopipette Monthly Check Logbook"; however, this was not being performed for any of the working pipettes, and no such logbook was available upon request. *SOP-039-004 Detection of pH for Edible and Liquid Marijuana Products* specified that each day of testing must contain one duplicate sample and the RPD should be less than 30%; however, there was no documentation that the RPD was being calculated and evaluated. Quality control practices did not match the SOPs for pesticides, mycotoxins, residual solvents, or terpenes. For example, the true values and acceptance ranges specified for continuing calibration verification ("CCV") QC samples did not match what was being observed in practice. Additionally, the pesticides, mycotoxins, residual solvents, and terpenes SOPs specify to reanalyze potentially affected samples when QC fails, but this was not being done. These are just a few examples of the multiple instances of procedure not matching practice.

21. Poniewaz's review of the proficiency testing ("PT") program revealed the program to be deficient. As part of quality control and quality assurance, all cannabis

independent testing facilities must successfully participate in approved PT programs that cover all required analytes a minimum of every 12 months to maintain continued licensure. NCCR 11.040. A review of NCL's PT reports from 2020 and 2021 revealed that NCL had failed to perform PT for all required analytes at least once every 12 months as required; they failed to perform PT for delta-8 THC in 2020 and for pH in 2021. NCCR 11.040 and the laboratory's policy *PRO-12-005 Proficiency Testing* both require PT samples to be analyzed using the same procedures with the same number of replicate analyses as routine samples, yet the laboratory was analyzing only the PT samples with additional replicates. For instance, review of data for pH testing revealed that on 5/12/2020, PT sample 929-3138 was run four times, when routine samples were run once each. Review of data for water activity testing on 6/17/2021 revealed that PT sample R30787-05 was run in triplicate, when routine client samples were run once each.

22. During an unrelated investigation of the production facility Las Vegas Wellness and Compassion (P045), adult-use license number 63918266150160688897, it was discovered that the production facility had implemented an unapproved THC potency target of 105 mg THC per bottle, which was higher than the approved homogeneity target of 99.97 mg THC per bottle (13 servings at 7.69 mg THC per serving), and higher than the regulatory limit of 100 mg THC for a single edible product. On December 3, 2021, Inspectors Perez, Kogler, and Wayman, interviewed Sips employees Bryan Viellion ("Viellion") and Sean Tomaro ("Tomaro") at the production facility. Viellion stated that they implemented a higher target value of 105 mg THC for the Sips beverages as a "benefit to their customers". Viellion stated that NCL would sample the Sips beverage from the batch production tank, analyze the sample, and then provide the preliminary THC potency results back to him verbally so he could adjust the fill weight of the bottles to achieve their desired target of 105 mg THC per bottle. He stated that he would speak to "Amanda" at NCL prior to the COA being issued and would provide her the fill weight used to obtain the unapproved target of 105mg THC per Sips bottle, so they could include that fill weight on the CoA. The laboratory would then publish the CoA to include the fill weight which was

verbally provided by the Sips' staff. Follow up interviews with NCL staff Deduyo and Project Manager Amanda Kraft ("Kraft") on December 6, 2021, confirmed that the laboratory was indeed sharing preliminary THC potency results for the Sips beverages with Las Vegas Wellness and Compassion, prior to issuing the CoA to the CCB. Deduyo stated that it was the customary practice to test the Sips sample to obtain an initial potency value, and then provide this result to Kraft, who would subsequently convey the preliminary results to Viellion and/or Tomaro with Sips. Kraft further confirmed that Viellion would then use this preliminary information to calculate the fill weight necessary to achieve 105mg of THC per Sips bottle. Viellion would then communicate this fill weight to Kraft, who in turn communicated this fill weight to potency analyst Deduyo. Deduyo would then use this fill weight to report the mg of THC per unit and unit weight on the CoA. Laboratory Manager Hein would conduct a final data review and publish the CoA. Laboratories are required to obtain the approved homogeneity target on file for an edible item so they can determine whether the target potency passes routine homogeneity assessment. The laboratory is required to assess whether the potency of each edible product is within 15% of the THC potency target on file with the CCB for the item. Rather than testing against the approved target, NCL worked with Las Vegas Wellness and Compassion to enable them to use a noncompliant and unapproved target of 105 mg of THC per Sips bottle. Although there is a requirement to provide the CCB with results at the same time they are provided to a facility, these activities all occurred before the CoA was published. During the visit on December 20, 2021, Perez informed Scientific Director Hui Wang ("Director Wang") that CCB Agents had discovered this noncompliant practice for the Sips products. Director Wang acknowledged the practice and stated that the laboratory "doesn't do that anymore". It is noted that providing preliminary potency results to a client without prior to issuance of the CoA is a repeat violation from the December 2019 inspection.

VIOLATIONS OF LAW

23. CCB incorporates all prior Paragraphs as though fully set forth herein.

24. As to licenses L001 & RL001, NCL violated NCCR 4.035(1)(a)(3) by making an

intentionally false statement to Board Agents. Specifically, as set forth in Paragraph 13, above, NCL staff told Perez that they always used sanitary handling techniques for laboratory samples of cannabis, including the use of sample handling tools. However, video surveillance footage from both before and after Perez's aforementioned verbal communications with NCL staff showed that NCL staff failed to use sanitary handling techniques for laboratory samples of cannabis when no CCB Agent was observing them. These illegal acts constitute a Category I violation, which carries a civil penalty of not more than $90,000 and a suspension of not more than 30 days, or revocation, of licenses L001 & RL001. NCCR 4.035(2)(a)(1).

25. As to licenses L001 & RL001, NCL violated NCCR 4.040(1)(a)(15) & (19), NCCR 11.025(4)(a), (c), (d), & (8)(a-d) and NCCR 11.070(9) by intentionally failing to comply with approved procedures in its laboratory and violating NCCR 11.070 by failing to report all test results to the CCB. Specifically, as set forth in paragraph 11, NCL was retesting concentrate samples which did not match the average result calculated from 5 or more concentrates of the same strain, even when passing QC showed the initial results to be valid. Further, this practice violated NCL own procedure which indicated cannabinoid results from analytical runs with passing QC are to be reported. This also violated NCCR 11.070(9) because all original and some retesting results were not reported to the CCB. These acts and omissions constitute a Category II violation, which carries a civil penalty of not more than $25,000 and a suspension for not more than 20 additional days of NCL licenses L001 and RL001. NCCR 4.040(2)(a)(1).

26. As to licenses L001 and RL001, NCL violated NCCR 4.040(1)(a)(15) and NCCR 11.025 (4)(a), (c), (d), & (8)(a-d) by intentionally failing to follow its own, CCB-approved, standard operating procedures ("SOPs"). Specifically, as set forth in paragraphs 12 and 13, laboratory staff was handling test samples in an unsanitary manner which conflicted with the approved plan of correction for the December 2019 investigation, as well as the laboratory's own, approved, SOPs. These acts and omissions constitute a second Category II violation, which carries a civil penalty of not more than $75,000 and a suspension of not

more than an additional 30 days of NCL licenses L001 and RL001. NCCR 4.040(2)(a)(2).

27. As to licenses L001 and RL001, NCL violated NCCR 4.040(1)(a)(19), NCCR 11.075(2), (3), (5), & (6), and NCCR 11.070(9) by failing to comply with NCCR 11.070 through conducting unauthorized re-testing of cannabis samples and failing to report all test results to the CCB. Specifically, as set forth in paragraphs 14 and 15, NCL was performing unapproved retesting of residual solvents samples that initially failed testing, and only reporting the passing results to the CCB. This unauthorized testing resulted in false reporting of samples as passing for residual solvents, when they, in fact, should have been reported as failed. These acts and omissions constitute a third Category II violation, which requires revocation of NCL licenses L001 and RL001. NCCR 4.040(1)(a)(3).

28. As to licenses L001 and RL001, NCL violated NCCR 4.040(1)(a)(15), 4.040(1)(a)(19), NCCR 11.025(4)(a), (c), (d), & (8)(a-d), NCCR 11.060(1), (2), & (3)(a), and NCCR 11.070(9) by intentionally varying from approved laboratory procedures and failing to transmit the results of all testing to the Board via a certificate of analysis at the same time said results are reported to the requesting facility who provided the cannabis sample. Specifically, as set forth in paragraph 22, NCL colluded with the production facility Las Vegas Wellness and Compassion to report homogeneity verification results for "Sips" infused drinks based on an unapproved homogeneity target of 105mg THC. This was not the approved target on file with the CCB for this menu item and exceeded the allowable THC target for an adult-use product. In doing so, NCL reported test results to Las Vegas Wellness and Compassion before reporting them to the Board via certificates of analysis. These acts and omissions constitute a fourth Category II violation, which requires revocation of NCL licenses L001 and RL001. NCCR 4.040(1)(a)(3).

29. As to licenses L001 & RL001, Respondent NCL violated NCCR 4.050(1)(a)(11) and NCCR 6.060, by failing to notify the Board or its agents of modifications or expansions of NCL's facility. Specifically, as set forth in Paragraph 8 above, NCL commenced with material changes to the facility without Board inspection and approval. NCCR 6.060 requires each cannabis establishment to notify the Board in writing of any material

changes that are being made to the facility. It further prohibits commencing the operation with the changes until Board Agents either complete an inspection of the change or notify the cannabis establishment that an inspection is not necessary. These acts and omissions constitute a Category III violation, which carries a civil penalty of not more than $10,000. NCCR 4.050(2)(a)(1).

30. As to licenses L001 and RL001, Respondent NCL violated NCCR 4.050(1)(a)(5), NCCR 6.085(1)(c)(3)(VII), and 6.085(6)(a) by failing follow an approved security plan. Specifically, as set forth in Paragraph 10, above, NCCR 6.085(1)(c)(3)(VII) requires a security system to detect unauthorized entrance into the facility. The security system must include an electronic monitoring system as well as a system that provides an audible and visual notification of any failure in the electronic monitoring system. As set forth in paragraph 10, above, NCL did not have the required audible and visual failure notification system and CCB never approved a security plan with that omission. Additionally, as also set forth in Paragraph 10, above, NCL failed to conduct the required semiannual audit of security measures, as required under NCCR 6.085(6)(a). These omissions constitute a second Category III violation, which carries a civil penalty of not more than $30,000 and/or a suspension of licenses L001 and RL001 of not more than 10 days. NCCR 4.050(2)(a)(2).

31. As to licenses L001 and RL001, NCL violated NCCR 4.050(1)(a)(26) and NCCR 11.010(1)(a), and 11.025(4)(a), (c), (d), & (8)(a-d) by failing to maintain quality control and quality assurance programs for its facility. Specifically, as set forth in Paragraphs 16 through 18, above, there were multiple quality control failures. NCL performed testing in a manner that precluded accuracy and provided the potential for endangering consumers. Specifically, NCL reported results for samples when QC results exceed the tolerance limits defined in their procedures. These acts and omissions constitute a third Category III violation, which carries a civil penalty of not more than $90,000 and/or a suspension of licenses L001 and RL001 of not more than an additional 20 days. NCCR 4.050(2)(a)(3).

32. As to licenses L001 and RL001, NCL violated NCCR 4.040(1)(a)(15), 4.050(1)(a)(26), and NCCR 11.010(1)(a) and 11.025(4)(a), (c), (d), & (8)(a-d) by intentionally

varying from its approved SOPs, failing to maintain a quality assurance program, and failing to adhere to general laboratory standards. Specifically, as set forth in Paragraph 19, above, NCL was performing microbiological testing in a manner which deviated from the manufacturer's instructions for use, deviated from its own SOPs, and storing 3M Petrifilms directly on the floor at incorrect storage temperatures. These acts and omissions constitute at least a Category III violation, which is NCL's fourth Category III and carries a civil penalty of not more than $90,000 and a suspension of licenses L001 and RL001 of not more than an additional 60 days. NCCR 4.050(2)(a)(4). In the alternative, these acts and omissions constitute NCL's fifth Category II violation, which requires revocation of licenses L001 and RL001. NCCR 4.040(2)(a)(3).

33. As to licenses L001 and RL001, NCL violated NCCR 4.050(1)(a)(26) and NCCR 11.010(1)(a) and 11.025(4)(a), (c), (d), & (8)(a-d) for failure to maintain quality assurance and quality control programs at its facility. Specifically, as set forth in Paragraph 20, above, there were multiple, systemic issues with practices that failed to match procedures, intentional disregard of QC practices, and a failure to perform QA inspections as required. These acts and omissions constitute a fifth Category III violation, requiring revocation of licenses L001 and RL001. NCCR 4.050(2)(a)(5).

34. As to licenses L001 and RL001, NCL violated NCCR 4.050(1)(a)(26) and NCCR 11.040(3) & (5) by failing to maintain quality control and quality assurance programs, and failure to adhere to proficiency testing requirements. Specifically, as set forth in Paragraph 21, above, NCL failed to perform proficiency testing (PT) that covers all required analytes a minimum of every 12 months, and failed to perform proficiency testing using the same procedures used for testing cannabis products. As set forth in paragraph 21 above, NCL did not perform PT for Delta 8 THC in 2020 and did not perform PT for pH in 2021. Additionally, testing data showed that NCL performed testing on PT samples in replicate when routine samples were tested only once. This is the sixth Category III violation, which requires revocation of licenses L001 and RL001. NCCR 4.050(2)(a)(5).

35. As to licenses L001 & RL001, Respondent NCL violated NRS 678B.350 and

NCCR 4.055(1)(a)(1) by failing to have an owner in possession of a valid cannabis establishment agent card. Specifically, as set forth in Paragraph 9, above, NRS 678B.350(1) requires any person with an ownership interest in a cannabis establishment of 5 percent or more to maintain a cannabis establishment agent registration card. Contrary to this requirement, Joe Orlich, a 25% owner of NCL, did not have a valid cannabis establishment agent card for over a year. This omission constitutes one Category IV violation, which carries a civil penalty of not more than $5,000. NCCR 4.055(2)(a)(1).

DISCIPLINE AUTHORIZED

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

1. Revoke NCL's licenses L001 and RL001;
2. Suspend NCL's licenses L001 and RL001 for up to 170 days;
3. Impose a civil penalty of not more than $90,000 for each separate violation of NRS Title 56 and the NCCR on the licenses of NCL; and/or
4. Take such other disciplinary action as the CCB deems appropriate.

The CCB may order one or any combination of the disciplinary actions described above.

RELIEF REQUESTED

Based on the foregoing, counsel for the CCB respectfully requests the CCB impose the penalty of revocation and civil penalties against NCL in the amount of $415,000, for L001 and RL001.

NOTICE TO RESPONDENT

PLEASE TAKE NOTICE, that Respondent has a right to request a hearing on the charges set forth herein, pursuant to NRS 678A.510 through 678A.590. **Failure to demand a hearing constitutes a waiver of the right to a hearing and to judicial review of any decision or order of the Board, but the Board may order a hearing even if the respondent so waives his or her right.** NRS 678A.520(2)(e).

PLEASE TAKE NOTICE, you, as the Respondent, **must answer this Complaint**

within 20 days after service of this Complaint, unless granted an extension. Pursuant to NRS 678A.520(2), in the answer Respondent:

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

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

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

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

(e) May demand a hearing. **Failure to demand a hearing constitutes a waiver of the right to a hearing and to judicial review of any decision or order of the Board**, but the Board may order a hearing even if the respondent so waives his or her right.

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

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

///

///

Respondent's Answer and Request for Hearing must be either: mailed via registered mail, return receipt; or emailed to:

Tyler Klimas, Executive Director
Cannabis Compliance Board
700 East Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119
tklimas@ccb.nv.gov

If served by email, Respondent must ensure that it receives an acknowledgement of receipt email from CCB as proof of service. Respondent shall also email a copy of its Answer and Request for Hearing to the Senior Deputy Attorneys General listed below at lrath@ag.nv.gov and aherr@ag.nv.gov .

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

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

If the Respondent does not wish to dispute the charges and allegations set forth herein, within 30 days of the service of this Complaint, Respondent may pay the civil penalties set forth above in the total amount of $415,000, discontinue its operations and surrender licenses L001 and RL001 to:

Tyler Klimas, Executive Director
Cannabis Compliance Board
700 East Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119

///

///

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

DATED: April 24th, 2023.

STATE OF NEVADA, CANNABIS COMPLIANCE BOARD

By: _____
Tyler Klimas, Executive Director
Cannabis Compliance Board
700 East Warm Springs Road, Ste. 100
Las Vegas, Nevada 89119

AARON D. FORD
Attorney General

By: _____
L. Kristopher Rath (Bar No. 5749)
Senior Deputy Attorney General
Allison L. Herr (Bar No. 5383)
Senior Deputy Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, Nevada 89101
(702) 486-9287

Attorneys for the Cannabis Compliance Board

Certified Mail: 7019 2280 0002 0378 6676

DECLARATION AND CERTIFICATE OF SERVICE OF COMPLAINT FOR DISCIPLINARY ACTION
(Service via Mail)

I, Amber Virkler, hereby certify and affirm that:

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

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

   Name of point of contact served: Nichole Barber

   Address on file with CCB: [redacted]

   Date of Service: April 24, 2023

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

Executed on April 24, 2023 [signature]
(date) (signature)

cc: Nichole Barber, [redacted]
via First Class Mail