

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

3
4 STATE OF NEVADA, CANNABIS
COMPLIANCE BOARD,

Case No. 2020-05

5 Petitioner,

6 vs.

7 HERBAL CARE, LLC,

8 Respondent.
9

10
11 **COMPLAINT FOR DISCIPLINARY ACTION**

12 The Cannabis Compliance Board of the State of Nevada (the "CCB"), by and through
13 counsel, Aaron D. Ford, Attorney General of the State of Nevada, L. Kristopher Rath, Esq.,
14 Senior Deputy Attorney General, and Ashley A. Balducci, Esq., Senior Deputy Attorney
15 General, having a reasonable basis to believe that RESPONDENT HERBAL CARE, LLC
16 ("Herbal Care" or "Respondent") has violated provisions of Chapters 453A and 453D of the
17 Nevada Revised Statutes ("NRS") and Chapters 453A and 453D of the Nevada
18 Administrative Code ("NAC"), hereby issues its Complaint, stating the CCB's charges and
19 allegations as follows:

20 **JURISDICTION AND NOTICE**

21 1. During all relevant times mentioned in this complaint, Respondent Herbal
22 Care held, and currently holds, the following certificates and licenses:

23 ID	License/Certificate	Issued ¹	Address
24 C105	17834269360447362771 Medical Cultivation	07/1/18	1076 TELEGRAPH STREET, RENO, NV 89502
25 RC105	30040918290309210151 Recreational Cultivation	07/01/17	1076 TELEGRAPH STREET, RENO, NV 89502

26 and is, therefore, subject to the jurisdiction of the CCB and the provisions of NRS Chapters
27
28

¹ The Medical certificates were first issued by the Department of Taxation in 2017.

1 453A and 453D and NAC Chapters 453A and 453D.

2 2. During all relevant times mentioned in this complaint, Respondent Herbal
3 Care is registered as a limited-liability company in the State of Nevada. Keith R.E. Johnson
4 is the managing member of Herbal Care.

5 3. During all relevant times mentioned in this complaint, Keith R.E. Johnson
6 was the majority owner of the business, but delegated the management and operations for
7 Herbal Care to others, including Vince Austin and other Herbal Care employees.

8 4. Laws 2019, c. 595, § 240, eff. July 1, 2020, states, in pertinent part, as follows:

9 1. The administrative regulations adopted by the Department of Taxation
10 pursuant to chapters 453A and 453D of NRS governing the licensing and
11 regulation of marijuana establishments and medical marijuana
12 establishments remain in force and are hereby transferred to become the
13 administrative regulations of the Cannabis Compliance Board on July 1, 2020.
14 On and after July 1, 2020, these regulations must be interpreted in a manner
15 so that all references to the Department of Taxation and its constituent parts
16 are read and interpreted as being references to the Cannabis Compliance
17 Board and its constituent parts, regardless of whether those references have
18 been conformed pursuant to section 244 of this act at the time of
19 interpretation...

20 3. Any action taken by the Department of Taxation or its constituent parts
21 pursuant to chapter 453A and 453D of NRS governing the licensing and
22 regulation of marijuana establishments and medical marijuana
23 establishments before July 1, 2020, remains in effect as if taken by the
24 Cannabis Compliance Board or its constituent parts on and after July 1, 2020.

25 5. Effective July 1, 2020 and pursuant to NRS 678A.350, the CCB superseded
26 the Marijuana Enforcement Division of the Department of Taxation (the "Department") in
27 enforcing Nevada's laws and regulations for the cannabis industry.

28 6. This action was originally filed on May 13, 2020, as a complaint before the
Chief Administrative Law Judge, Department of Taxation, State of Nevada. That original
complaint was also served on Respondent and respondent's counsel on May 13, 2020. On
June 10, 2020, Respondent and the Department entered into a 60 day stay of the
administrative matter to pursue settlement negotiations. As set forth in Paragraphs 4 and
5, above, as of July 1, 2020, jurisdiction of this matter transferred from the Department to

1 CCB and this matter must therefore be adjudicated under CCB. Hence, this Complaint is
2 now filed under CCB². The factual allegations and charges remain the same as in the
3 original complaint. This CCB Complaint is filed to conform to the jurisdictional and other
4 requirements under Title 56 of NRS (NRS 678A through 678D).

5 7. As set forth below, the events at issue in this Complaint occurred prior to July
6 1, 2020, when Herbal Care was licensed pursuant to NRS Chapters 453A and 453D and
7 NAC Chapters 453A and 453D. Herbal Care is subject to the jurisdiction of the CCB and
8 subject to discipline pursuant to NRS 678A through 678D and the relevant provisions of
9 NRS Chapters 453A and 453D and NAC 453A and 453D. Violations are referenced herein
10 to the statutes and regulations in effect at the time each said violation occurred.

11 8. Pursuant to NRS 678A.500 and 678A.510(1), the CCB's Executive Director
12 has transmitted the details of the suspected violations of Herbal Care to the Attorney
13 General and the Attorney General has conducted an investigation of the suspected
14 violations to determine whether they warrant proceedings for disciplinary action. The
15 Attorney General has recommended to the Executive Director that further proceedings are
16 warranted, as set forth in this CCB Complaint. The Executive Director has transmitted
17 this recommendation and information to the CCB. Pursuant to NRS 678A.510(2)(b), the
18 CCB has voted to proceed with appropriate disciplinary action under NRS 678A.520
19 through 678A.600, and has authorized service of this CCB Complaint upon Respondent
20 pursuant to NRS 678A.510(1).

21 **FACTUAL ALLEGATIONS**

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

23 10. Beginning on February 12, 2018, the Department conducted a routine
24 inspection into the Herbal Care marijuana establishment (the "February 2018
25 investigation").

26 11. As part of the February 2018 investigation, the Department conducted visits
27 to the Herbal Care facilities located at 1076 Telegraph St., Reno, Nevada, on February 12
28

² This Complaint supersedes the Complaint filed under the Department of Taxation on May 13, 2020.

1 and February 15, 2018.

2 12. The February 2018 investigation revealed a number of violations of NRS
3 453A/453D and NAC 453A /453D.

4 13. These violations were chronicled in a March 22, 2018 Statement of
5 Deficiencies ("SOD") letter which required Herbal Care to submit a Plan of Correction
6 ("POC") within 10 business days.

7 14. On April 2, 2018, Herbal Care submitted a POC to the Department.

8 15. The Department accepted Herbal Care's POC on April 18, 2018.

9 16. In August 2018, the Department noticed an unusual pattern of entries made
10 by Herbal Care into the State's seed-to-sale tracking system, METRC. For example, Herbal
11 Care had logged 77 harvests in METRC, yet had not reported any sales in METRC. In
12 addition, Herbal Care had logged 204,000 grams of waste in METRC, yet had not reported
13 any destruction of product in METRC. Due to the large amount of product unaccounted for
14 in METRC, there was a concern for diversion of product. This prompted the Department
15 to conduct another investigation of the Herbal Care marijuana establishment (the
16 "September 2018 investigation"). The lead investigator for the Department was Damon
17 Hernandez.

18 17. As part of the September 2018 investigation, staff from the Department first
19 visited the Herbal Care facility at 1076 Telegraph St., Reno, Nevada, on September 5, 2018.
20 Upon arrival, only one employee of Herbal Care, Melissa Roberson, was present. She had
21 an expired agent card and stated she had not applied for renewal. Ms. Roberson initially
22 told Department staff that she did not have the keys or the codes to open the actual facility
23 and asked that Department return when the cultivation staff would be there. Department
24 staff advised it had the right to access the facility and requested Ms. Roberson contact the
25 managers and/or owners to allow Department access. While one Department staff member
26 worked with Ms. Roberson to contact someone who could open the facility, another
27 Department staff member tried the doors to the facility, which were all found to be locked.
28 However, checking the handles triggered an alarm. When the alarm was triggered, Ms.

1 Roberson immediately opened the doors and disarmed the alarm with the keys and codes
2 she told Department staff she did not have. Department staff was then able to access the
3 facility. Additionally, while speaking with Vince Austin (Herbal Care's consultant, who
4 managed the facility) over the phone, Department staff was told they could not access the
5 facility.

6 18. After accessing the facilities, Department staff found 81 containers of
7 marijuana that were not labeled with METRC tags nor any other tags to identify source,
8 quantity, lot, batch, and/or strain. The Herbal Care staff on site were unable to provide any
9 documentation from METRC for the untagged, unlabeled marijuana. Specifically, the
10 following containers were found without METRC tags (as noted below, some containers had
11 handwritten labels with the name of the strain):

- 12 a. 2 large bags of packaged marijuana flower were found in the facilities
13 office and 2 more found in the in the secure storage room without
14 METRC tags or product labels.
- 15 b. 16 rectangular open trays of Blue Dream strain trim.
- 16 c. 2 round open trays of SSK strain trim.
- 17 d. 3 open trays of BD strain trim.
- 18 e. 2 rectangular open trays of mixed trim.
- 19 f. 4 round open trays of Alien strain trim.
- 20 g. 4 round open trays of Blue Dream strain trim.
- 21 h. 1 round open tray of #9 strain trim.
- 22 i. 3 clear bins of SCH strain trim.
- 23 j. 9 big blue sealed canisters of unknown trim.
- 24 k. 2 white plastic bags of SSK strain trim.
- 25 l. 14 sealed glass jars of Pink Panties strain bud.
- 26 m. 3 vacuum sealed bags of unknown strain bud.
- 27 n. 2 orange burping buckets of Blue Dream strain bud.
- 28 o. 7 white burping buckets of Blue Dream strain bud.

- p. 1 white burping bucket of Darlins Net strain bud.
- q. 1 clear bag with individually packaged product of unknown strain bud.
- r. 1 green bag with individually packaged product of unknown strain bud.
- s. 2 individually packaged product in leaf bags of unknown strain bud.

With respect to the individually packaged products contained within the aforementioned containers, there were 304 separate, individual packages that did not have METRC tags.

19. Notably, Herbal Care had been told during the February 2018 investigation that trim could not be mixed, yet Herbal Care continued to have mixed trim in containers when the September 5, 2018, visit took place. Trim lots of different batches and different strains were combined together and improperly labeled as "mixed trim 4/19/2018 harvest."

20. During the September 2018 investigation, another Herbal Care employee, Marin Topic, aka "CW", arrived at the facility. Department staff asked Mr. Topic about the 77 harvests that had been logged in METRC and where they were located, as no sales had been reported in METRC from December 2017 up through the date of inspection. Mr. Topic was unable to provide an answer, as he relayed that he was only a grower and did not know what was done with the marijuana once it was harvested. Mr. Topic was not able to produce a destruction log or any other destruction documentation Department staff requested for the 204,000 grams of marijuana listed as waste on the METRC harvest reports for 12/1/17 through 9/5/18. All the unlabeled containers were quarantined in one room, so Department staff could return to weigh the contents of each.

21. The Department investigation team returned to the facility on September 7, 2018. Two investigators performed a count of the growing plants, finding a total of 3,282. They found 21 plants with no METRC tags. Other investigators began to weigh the unlabeled product, as set forth in Paragraph 13(a)-(s), above; however, the facility did not have scales appropriate for this task, so that product was quarantined again to be weighed at a later date.

22. Other Department staff members on September 7, 2018, worked to verify processes, procedures, and licenses at the facility, as well as an evaluation of the general

1 conditions at the facility. These Department staff members found the following conditions
2 and issues:

- 3 a. The floor of the facility had multiple holes throughout from previous
4 bolt patterns due to relocating shelving.
- 5 b. Missing or damaged base coving and inadequately sealed floor
6 junctures in multiple areas.
- 7 c. Boxes of protective outer garments found on a small shelf in the
8 chemical storage room not elevated to the required minimum of six
9 inches from the floor.
- 10 d. The exit door from the electrical room inadequately sealed on the sides.
- 11 e. Bathrooms discovered without paper towels or toilet paper.
- 12 f. Several plastic containers not food grade material for storage of
13 marijuana product.
- 14 g. Unavailable cleaning schedules for the grow rooms and the drying
15 room.
- 16 h. No Certified Pest Control Applicator on staff for the facility.
- 17 i. The presence of insects in the grow room.
- 18 j. The presence of mold on growing plants.
- 19 k. There was an open ventilation system found in unit 1 which created a
20 potential contaminant exposure risk.
- 21 l. Expired general business license from the City of Reno.

22 23. During the September 7, 2018, visit, one of the owners, Michael Mahoney was
23 also present. Mr. Mahoney was unable to answer any questions about METRC tagging or
24 plant inventory. Department staff also spoke again with Mr. Topic. Mr. Topic again stated
25 that he was responsible for the cultivation of plants and did what he was told as far as
26 when to harvest and what to sell. Mr. Topic stated he followed directions from Vince Austin,
27 who was in charge of operations for the facility.

28 24. Additional findings during the September 5 and 7, 2018, visits showed that

1 the majority of the plants in the grow rooms had METRC tags stuck in the grow media, not
2 zip tied to the plants themselves, as required. Department staff also found that bulk
3 product awaiting testing was stored without labels providing the name of the strain or
4 quantity of the product.

5 25. As a result of these inspections and other aspects of the September 2018
6 investigation, the Department issued a Notice of Summary Suspension against Herbal
7 Care on September 7, 2018.

8 26. Within the Notice of Summary Suspension, the Department provided Herbal
9 Care with notice of a hearing date of September 25, 2018, before an administrative law
10 judge, to provide Herbal Care with an opportunity to be heard and challenge the
11 Department's findings.

12 27. As part of the Department's continued investigation, Department staff
13 returned to the Herbal Care facility on September 11, 2018, to witness the harvesting of
14 two trays of flowering plants.

15 28. As part of the Department's continued investigation, Herbal Care
16 representatives voluntarily met with the Department on September 13, 2018, to discuss
17 the operations of Herbal Care and the facts and circumstances surrounding the September
18 2018 investigation and the summary suspension. Herbal Care was represented by counsel
19 at the meeting. During that meeting, Herbal Care's lead consultant, Vince Austin, stated
20 that Herbal Care's owner, Keith Johnson, had hired Mr. Austin in 2015 to assist with the
21 design and build out of the cultivation facility, without a consulting agreement or contract
22 in place between Mr. Austin and Herbal Care. Mr. Austin stated the initial planting took
23 place in June 2017. Mr. Austin acknowledged that the initial planting started with seeds
24 from his own "personal collection." Mr. Austin admitted he did not have a medical
25 marijuana patient card in Nevada. Mr. Austin did not receive remuneration from Herbal
26 Care for the seeds; he simply planted them and then started to hire and train new staff.
27 Mr. Austin acknowledged that he and the facility staff did not take the Department
28 required METRC training and the facility had staffing issues, including staff smoking

1 marijuana on the premises. During this meeting, Mr. Johnson, acknowledged he had hired
2 Mr. Austin in 2014 or 2015 as a consultant to help him with the build out and design of the
3 cultivation facility in Reno. Mr. Austin could not explain the numerous discrepancies
4 between the facility's manual records and the data they recorded in METRC. Mr. Austin
5 possessed a Nevada agent card for the Herbal Care facility, but it was only valid from
6 October 11, 2017 to August 1, 2019. As such Mr. Austin had worked and/or volunteered at
7 Herbal care without the proper agent card prior to October 11, 2017.

8 29. At the end of the September 13, 2018 meeting, after being advised of the right
9 to a hearing and that the Department bore the burden of proof, Herbal Care waived its
10 right to a hearing regarding the Notice of Summary Suspension and agreed to an indefinite
11 suspension while the Department concluded its investigation.

12 30. Herbal Care waived its right to a hearing regarding the indefinite inspection
13 and agreed to an indefinite suspension in writing on September 17, 2018.

14 31. The Department continued with its investigation after the September 13,
15 2018 meeting.

16 32. On September 14, 2018, Department staff returned to the Herbal Care facility.
17 Plants were counted to verify the accuracy of inventory. Department staff found that plants
18 were crowded into trays. Trays in some cases had standing water at the bottom and winged
19 insects and spider mites. Plants had been previously listed in the facility in METRC at
20 certain locations (there were 4 units/buildings within the Herbal Care facility). However,
21 Department staff found that 380 plants had been moved without entering the changes in
22 METRC. Also, after counting the plants Department staff determined that 63 plants that
23 METRC showed growing in the facility could not be found in the facility. Also, ten harvests
24 from METRC data were selected for review with Herbal Care staff member Kendra
25 Osbourne. Four of the harvests did not show any packaging generated for them and Ms.
26 Osbourne did not know where that product or the information on that product could be
27 located.

28 33. On September 14, 2018, Department staff weighed all of the marijuana found

1 in containers without METRC tags (see Paragraph 13(a)-(s)) at the facility. The total weight
2 was 92.012 kilograms (202.85 pounds).

3 34. Herbal Care made the decision to destroy its remaining inventory of
4 marijuana. On September 20, 2018, Department staff witnessed the destruction of all
5 marijuana inventory on site.

6 35. On September 28, 2018, Department staff returned to Herbal Care to retrieve
7 video footage from surveillance cameras. The parties made arrangements for copies and
8 the Department later obtained and reviewed the footage. The footage was analyzed, in
9 conjunction with the security plan Herbal Care had previously submitted to the
10 Department. Department staff found that Respondent had failed to maintain security
11 cameras which maintain surveillance of necessary areas 24 hours a day /seven days a week,
12 as required. A room showing packaging of marijuana skipped several hours of packaging.
13 An exterior camera only provided stills during nighttime hours.

14 36. Also, during the course of the investigation, Department staff examined
15 Herbal Care's Wholesale Marijuana Tax Return ("WMTR") for the month ending August
16 31, 2018. In Herbal Care's August WMTR, Herbal Care reported no product sold. However,
17 documents Department staff obtained from Herbal Care's facility reveal an invoice and
18 Transportation Manifest for a sale on August 30, 2018, in the amount of \$5,735.04 to
19 Greenleaf Wellness, Inc., that Herbal Care did not report in its August 2018 WMTR.

20 37. During the course of the indefinite suspension, to which Respondent Herbal
21 Care agreed, settlement negotiations took place in an attempt to reach a mutually
22 agreeable resolution to no avail. On February 21, 2020, Respondent filed a Petition for
23 Writ of Mandamus in the Second Judicial District Court in and for Washoe County, Case
24 No. CV20-00343 ("the Petition"), alleging, inter alia, that Herbal Care's agreement to the
25 indefinite suspension was improper and indicating a desire to move forward with the
26 administrative process. On April 20, 2020, Herbal Care filed an Amended Petition for Writ
27 of Mandamus and Complaint³. Accordingly, the Department proceeded with a complaint

28 ³ The Department generally denied the allegations in the Petition and the Amended Petition and Complaint and responded to it via a motion to dismiss on May 13, 2020.

1 and notice of hearing, as settlement negotiations had broken down. As set forth above,
2 CCB now continues with this proceeding via this Complaint.

3 VIOLATIONS OF LAW

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

5 39. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17A,
6 Sec. 120(3)(a)(3) (NAC 453D.905(3)(a)(3)) by providing false information to the
7 Department. Specifically, Herbal Care employee Melissa Roberson intentionally provided
8 the Department staff with false information, stating that she did not have the keys or
9 access codes to the facility, when she, in fact, did. This is a Category I violation, which
10 carries a \$35,000 penalty, and a suspension up to 30 days or license revocation.

11 40. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17A,
12 Sec. 120(3)(b)(2) and (5) (NAC 453D.905(3)(b)(2) and (5)) and R092-17, Sec. 91(3)(g) (NAC
13 453D.312(3)(g)) by denying Department staff access to the Herbal Care facility, failing to
14 promptly admit Department staff to the facility, and failing to cooperate fully with an
15 investigation. Specifically, Herbal Care employee Melissa Roberson denied access to the
16 Herbal Care facility to Department. In addition, Herbal Care's consultant/manager told
17 Department that they could not access the facility. These two occurrences are each
18 Category II violations, which delayed access to the facility. The first violation carries a fine
19 of \$10,000 and a license suspension up to 20 days. The second violation carries a fine of
20 \$20,000 and a license suspension up to 30 days. In addition, Ms. Roberson's and Mr.
21 Austin's failure to cooperate fully with Department's investigation is grounds for the
22 suspension or revocation of Herbal Care's licenses, pursuant to R092-17, Sec. 91(3)(g) (NAC
23 453D.312(3)(g)).

24 41. As to licenses C105 and RC105, Respondent Herbal Care violated NRS
25 453A.340(2), R092-17, Sec. 120(3)(a) ((NAC 453D.905(3)(a)), and R092-17, Sec.
26 120(3)(b)(10) (NAC 453D.905(3)(b)(10)) by acquiring usable marijuana (seeds) from an
27 unapproved source. Specifically, Vince Austin, an Herbal Care representative/consultant,
28 admitted that he did not have a medical marijuana patient card in Nevada and he

1 personally brought in marijuana seeds from an unapproved source into the State of Nevada
2 and used those seeds in creating the strains grown by Herbal Care. Herbal Care listed 41
3 strains on the METRC system. As to Herbal Care's license RC105, this is a Category II
4 violation, which is a third Category II violation, requiring revocation of license RC105. As
5 to Herbal Care's C105 license, this is a Category I violation because NRS 453A.340(2) is
6 grounds for immediate revocation. This second Category I violation requires revocation of
7 license C105. Also, pursuant to NRS 453A.340(2) by itself, this offense is grounds for
8 immediate revocation of Respondent Herbal Care's license C105.

9 42. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
10 Sec. 107(2) (NAC 453D.438(2)) and R092-17, Sec. 120(3)(d)(8) (NAC 453D.905(3)(d)(8)) by
11 allowing Vince Austin, a person without a valid marijuana agent registration card, to be
12 employed and/or volunteer, and/or provide labor at Respondent Herbal Care's facility prior
13 to October 11, 2017. Additionally, Department staff observed employee Melissa Robertson
14 working with an agent card expired as of July 31, 2018. There are two such violations.
15 These are Category III violations. The first violation carries a \$2,500 fine and the second
16 violation carries a \$5,000 fine or a license suspension of not more than 10 days.

17 43. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
18 Sec. 120(3)(d)(4) (NAC 453D.905(3)(d)(4)) by failing to keep any required records, including
19 seed-to-sale tracking requirements. Specifically, Respondent failed to use proper METRC
20 tags on 81 containers of marijuana, as set forth in Paragraph 13. Each container holding
21 marijuana which did not have a METRC tag affixed constitutes at least one violation. There
22 are 81 such violations. Each violation is a Category III violation. The first violation is the
23 third Category III violation and carries a \$10,000 fine. The second violation is the fourth
24 Category III violation and license suspension up to 30 days. The remaining 79 violations
25 constitute the fifth and subsequent violations, which require revocation of Herbal Care's
26 licenses.

27 44. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
28 Sec. 120(3)(d)(5) (NAC 453D.905(3)(d)(5)) by failing to properly package and label

1 marijuana. Specifically, individually packaged marijuana product were stored in black
2 trash bags which did not bear METRC tags and could not be traced in METRC to a harvest
3 or a batch which was properly tested. Other packages did not contain the correct testing
4 information making it impossible for a consumer to track the testing results of the
5 marijuana. There are 304 such violations. Each violation is a Category III violation. As
6 there are more than 5 Category III violations pursuant to the above Paragraphs, the
7 additional 304 violations set forth in this Paragraph require license revocation.

8 45. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
9 Sec. 120(3)(d)(5) (NAC 453D.905(3)(d)(5)) by failing to tag all plants as required.
10 Specifically, marijuana plants did not have a visible METRC tags or the METRC tags were
11 not properly attached to the individual plants. This is a Category III violation. Given that
12 there are over 5 Category III violations, the violations in this Paragraph require license
13 revocation.

14 46. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
15 Sec. 120(3)(d)(15) (NAC 453D.905(3)(d)(15)) by failing to meet requirements for the disposal
16 of marijuana waste. Specifically, Respondent failed to adequately document proof of the
17 destruction and proper disposal of marijuana and marijuana products. This is a Category
18 III violation. Given that there are over 5 Category III violations, the violation in this
19 Paragraph requires license revocation.

20 47. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
21 Sec. 120(3)(b)(14) and Sec. 111(1)(a)(3) (NAC 453D.905(3)(b)(14), NAC 453.434(1)(a)(3)) by
22 failing to maintain required surveillance systems. Specifically, Respondent failed to
23 maintain security cameras which maintain surveillance of necessary areas 24 hours a
24 day/seven days a week. A room showing packaging of marijuana skipped several hours of
25 packaging. An exterior camera only provided stills during nighttime hours. Either situation
26 could result in diversion and violated the security plan Herbal Care submitted to the
27 Department when it applied for its License/Certificate. This is a Category II violation. As
28 there are over 2 Category II violations, the violation in this Paragraph requires license

1 revocation.

2 48. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
3 Sec. 120(3)(d)(3) (NAC 453D.905(3)(d)(3)) by allowing consumption by any person of
4 marijuana on the premises of the marijuana establishment. Specifically, during the
5 September 13, 2018 meeting Herbal Care representatives admitted employees consumed
6 marijuana on the premises as an explanation for certain procedures not being followed by
7 Herbal Care employees. There are two violations. Each violation is a Category III violation.
8 Given that there are over 5 Category III violations, the violations in this Paragraph require
9 license revocation.

10 49. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17
11 Sec. 120(3)(e)(12) (NAC 453D.905(3)(e)(12)) by allowing infestation by pests that are not
12 multigenerational or on contact surfaces, specifically, spider mites, winged insects, and
13 mold as shown in several photographs. There is one violation, which is a Category IV
14 violation, carrying a \$1,250 fine.

15 50. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
16 Sec.120(3)(a)(3) (NAC 453D.905(3)(a)(3)) and/or R092-17, Sec.120(3)(b)(1) (NAC
17 453D.905(3)(b)(1)) by entering false information in METRC. Specifically, Herbal Care's
18 METRC entries showing the weight of plants harvested were inconsistent with internal
19 Herbal Care records. The person responsible for inventory control at the facility could not
20 identify the current status or location of the marijuana from four of the ten harvests
21 documented in METRC selected for review. There are 507 such violations. For intentionally
22 entering false information, this is a Category I violation, requiring revocation of licenses.
23 For unintentionally entering false information, this is a Category II violation, also
24 requiring revocation of licenses.

25 51. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
26 Sec. 183(1)(c), (2)(c), (2)(d), and (e)(10) (NAC 453D.732(1)(c), (2)(c), (2)(d), and (e)(10)), and
27 Sec. 188 (NAC 453D.734) by failing to properly maintain a building used for marijuana
28 manufacture, processing, and/or holding. Specifically, the September 2018 investigation

1 found floors with multiple holes throughout the facility, base coving missing or damaged,
2 inadequately sealed floor junctures in multiple areas, boxes of protective outer garments
3 found on a small shelf in the chemical storage room not elevated to the required minimum
4 of six inches from the floor, and an inadequately sealed exit door from the electrical room.
5 There are 8 such violations, which are Category V violations. The first violation does not
6 carry a fine. The second violation carries a \$750 fine. The third violation carries a \$1,250
7 fine or up to a 3 day license suspension. The fourth violation carries a \$2,500 fine or up to
8 a 7 day license suspension. The fifth violation carries a \$5,000 fine or license suspension
9 up to 10 days. The sixth and subsequent violations each carry \$10,000 fines or up to 20
10 days of license suspension.

11 52. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
12 Sec. 113(1)(a)(2) and (5) (NAC 453D.446(1)(a)(2) and (5)) by failing to maintain the facility
13 restroom. Specifically, inspection found that the bathrooms were not supplied with paper
14 towels or toilet paper. There are 2 Category V violations, each carrying a \$10,000 fine or a
15 license suspension up to 20 days.

16 53. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
17 Sec. 219(5) (NAC 453.805(5), NAC 453D.905(3)(e)(9)) by using several plastic containers
18 for storage of marijuana product that not food grade materials, as observed during the
19 September 7, 2018 inspection. This is a Category IV violation, carrying a \$2,500 fine or
20 suspension up to 7 days (second Category IV violation).

21 54. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
22 Sec. 187(1)(a) (NAC 453D.720(2)(c)(2), NAC 453D.740(1)(a), and NAC 453D.905(3)(e)(10))
23 by failing to have on hand cleaning schedules for the grow rooms and drying room, as
24 observed during the September 7, 2018 inspection. This is a Category IV violation, carrying
25 a \$5,000 fine or license suspension of up to 10 days (third Category IV violation).

26 55. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
27 Sec. 187(4) (NAC 453D.740(4)) by failing to have an employee who is a certified pest control
28 applicator on staff. This is a Category V violation, carrying a \$10,000 fine.

1 56. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
2 Sec. 185 (NAC 453D.708(1)(a)) by utilizing an open ventilation system creating a potential
3 contaminant risk, as observed during the September 7, 2018 inspection. This is a Category
4 V violation, carrying a \$10,000 fine.

5 57. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
6 Sec. 103 (NAC 453D.400) and R092-17, Sec. 120(3)(a)(2) (NAC 453D.905(3)(a)(2)) by failing
7 to maintain a valid City of Reno business license. Specifically, inspection on September 7,
8 2018 revealed Respondent's City of Reno business license had expired on July 30, 2018,
9 therefore Herbal Care was operating without all its required licenses. This is a Category I
10 violation, requiring revocation of Herbal Care's licenses.

11 58. As to licenses C105 and RC105, Respondent Herbal Care violated R092-17,
12 Sec. 120(3)(a)(3) and 120(3)(a)(5) (NAC 453D.905(3)(a)(3) and 453D.905(3)(a)(5)) or R092-
13 17, Sec. 120(3)(b)(1) and 120(3)(d)(10) (NAC 453D.905(3)(b)(1) and 453D.905(3)(d)(10)) by
14 failing to report and pay taxes on a sale. Specifically, Herbal Care did not report on its
15 August 2018 WMTR a sale to Greenleaf Wellness, Inc., of \$5,735.04 in August 2018, and
16 failed to pay taxes on said sale. These violations are either Category I or Category III.
17 Given the number of Category I and Category III violations, these violations require
18 revocation.

19 **DISCIPLINE AUTHORIZED**

20 Pursuant to the provisions of NRS 678A.600, NAC 453A.332 (R092-17, Sec. 91(1)),
21 NAC 453D.405 (R092-17, Sec. 246), NAC 453D.900 (R092-17, Sec. 119(1)), and NAC
22 453D.905 (R092-17, Sec. 120), the CCB has the discretion to impose the following
23 disciplinary actions:

- 24 1. Revoke the licenses and certificates;
25 2. Suspend the licenses and certificates;
26 3. Impose a civil penalty of not more than \$35,000 for each separate violation of
27 Chapter 453D on the licenses and certificates; and
28 4. Take such other disciplinary action as the CCB deems appropriate.

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

2 **RELIEF REQUESTED**

3 Based on the foregoing, counsel for the CCB respectfully requests the CCB impose
4 the penalty of revocation against Herbal Care's licenses, C105 and RC 105. In addition
5 counsel for the CCB respectfully requests the CCB impose penalties against Herbal Care
6 in the amount of \$160,750. Counsel for the CCB further requests the amount expended for
7 its time and effort, pursuant to R092, Sec. 102(3) (NAC 453A.352(4) and 453.200(3)), in the
8 amount of \$45,163.16. In sum, counsel for the CCB respectfully requests the CCB order
9 revocation of Herbal Care's licenses and fines, penalties and costs in the total amount of
10 \$205,913.16. The CCB reserves its right to seek additional amounts for time and effort as
11 its work on this matter continues through hearing and rehearing, if applicable.

12 **NOTICE TO RESPONDENT**

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

18 **PLEASE TAKE NOTICE**, that Respondent must answer this Complaint
19 **within 20 days after service of this Complaint**, unless granted an extension. Pursuant
20 to NRS 678A.520(2), in the answer Respondent:

- 21 (a) Must state in short and plain terms the defenses to each claim asserted.
22 (b) Must admit or deny the facts alleged in the complaint.
23 (c) Must state which allegations the respondent is without knowledge or information
24 form a belief as to their truth. Such allegations shall be deemed denied.
25 (d) Must affirmatively set forth any matter which constitutes an avoidance or
26 affirmative defense.
27 (e) May demand a hearing.
28

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

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

8 The Board shall determine the time and place of the hearing as soon as is reasonably
9 practical after receiving the respondent's answer. The Board shall deliver or send by
10 registered or certified mail a notice of hearing to all parties at least 10 days before the
11 hearing. The hearing must be held within 45 days after receiving the respondent's answer
12 unless an expedited hearing is determined to be appropriate by the Board, in which event
13 the hearing must be held as soon as practicable. NRS 678A.520(4).

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

16 Tyler Klimas, Executive Director
17 Cannabis Compliance Board
18 555 E. Washington Avenue, Suite 4100
19 Las Vegas, Nevada 89101
20 tklimas@ccb.nv.gov

21 If served by email, Respondent must ensure that it receives an acknowledgement of receipt
22 email from CCB as proof of service.

23 As RESPONDENT, you are specifically informed that you have the right to appear
24 and be heard in your defense, either personally or through your counsel of choice at your
25 own expense. At the hearing, the CCB has the burden of proving the allegations in the
26 Complaint, although any failure on your part to maintain any documents, records,
27 surveillance video, and/or any other items required pursuant to the relevant statutes and
28 regulations shall create a rebuttal presumption that such items would be harmful to your
case. 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

1 the right to call and examine witnesses, introduce exhibits, and cross-examine opposing
2 witnesses on any matter relevant to the issues involved.

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

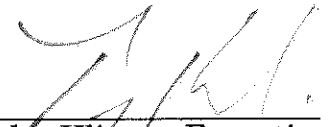
6 If Respondent does not wish to dispute the charges and allegations set forth herein,
7 within 30 days of the service of this Complaint, Respondent may pay the civil penalties and
8 costs set forth above in the total amount of \$64,186.50 and surrender licenses RC132 and
9 C132 to:

10 Tyler Klimas, Executive Director
11 Cannabis Compliance Board
12 555 E. Washington Avenue, Suite 4100
13 Las Vegas, Nevada 89101

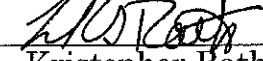
14 YOU ARE HEREBY ORDERED to immediately cease the activity described above
15 which is a violation of Nevada law.

16 DATED: July 21, 2020.

17 STATE OF NEVADA,

18 By: 
19 Tyler Klimas, Executive Director
20 555 E. Washington Avenue, Suite 4100
21 Las Vegas, Nevada 89101
22 (702) 486-2300

23 AARON D. FORD
24 Attorney General

25 By: 
26 L. Kristopher Rath (Bar No. 5749)
27 Senior Deputy Attorney General
28 Ashley A. Balducci, (Bar No. 12687)
Senior Deputy Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, Nevada 89101
(702) 486-9287
Attorneys for the Department