



1 Michael S. Fauver (SBN: 205829)
2 Marcus J. Kocmur (SBN: 208702)
3 Ian L.M. Durdle (SBN: 329187)
4 FAUVER, LARGE, ARCHBALD & SPRAY, LLP
5 820 State Street, 4th Floor
6 Santa Barbara, CA 93101
7 Tel: (805) 966-7000
8 Fax: (805) 966-7227
9 mfauver@flasllp.com
10 mkocmur@flasllp.com
11 idurdle@flasllp.com

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
5/5/2022 5:53 PM
By: Terri Chavez, Deputy

7 Lawrence J. Conlan (SBN: 221350)
8 David L. Cousineau (SBN: 298801)
9 Cappello & Noël LLP
10 831 State Street
11 Santa Barbara, CA 93101
12 Tel: (805) 564-2444
13 Fax: (805) 965-5950
14 lconlan@cappellonoel.com
15 dcousineau@cappellonoel.com

16 Attorneys For HERBL, INC.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SANTA BARBARA**
19 **ANACAPA DIVISION**

20 HERBL, INC., a California corporation,

Case No.: 22CV00077

21 Plaintiff,

SECOND AMENDED COMPLAINT

22 v.

23 CENTRAL COAST AGRICULTURE, INC.
24 dba Raw Garden; NABIONE, INC. dba
25 NABIS; DOES 1-25, inclusive,

26 Defendant(s).

- 27 **1. Intentional Misrepresentation;**
- 28 **2. Negligent Misrepresentation;**
- 3. Breach of Contract;**
- 4. Breach of Implied Covenant of Good Faith and Fair Dealing;**
- 5. Express Indemnity;**
- 6. Unfair Business Practices under Business and Professions Code §17200 et. seq. (Raw Garden)**
- 7. Intentional Interference with Contract;**
- 8. Intentional Interference with Prospective Economic Relations;**
- 9. Negligent Interference with Prospective Economic Relations;**
- 10. Civil Conspiracy to Commit Fraud;**
- 11. Aiding and Abetting Fraud;**
- 12. Unfair Business Practices under Business and Professions Code §17200 et. seq. (Nabis)**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CENTRAL COAST AGRICULTURE, INC.
dba Raw Garden,

Cross-Complainant.

v.

HERBL, INC; and ROES 1-20, inclusive,

Cross-Defendants.

Initial Complaint Filed: January 10, 2022
First Amended Complaint: January 28, 2022
Cross-Complaint: March 7, 2022

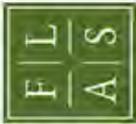
[Assigned for all Purposes to the Honorable
Donna D. Geck; Dept. 4]

Plaintiff HERBL, INC., a California corporation (“Plaintiff” or “HERBL”) brings action by and through their undersigned counsel against Defendants CENTRAL COAST AGRICULTURE, INC. dba Raw Garden (“Raw Garden”), NABIONE, INC. dba NABIS (“Nabis”), and DOES 1 through 25, inclusive (collectively “Defendants”) alleging as follows:

NATURE OF THE ACTION

1. HERBL brings this action to rectify and remedy the illegal and premeditated misconduct of Raw Garden and Nabis, including but not limited to breach of contract, tortious interference with contract, and unfair business practices. HERBL is the leading cannabis supply chain company in California. It maintained a contractual relationship with its supplier partner, Raw Garden, that included a multi-year contract term with limited early termination rights. Raw Garden breached its exclusive distribution agreement with HERBL by wrongfully terminating the parties’ agreement on January 7, 2022, without prior notice. In doing so, and in furtherance of a premeditated scheme designed to avoid its contractual obligation to use HERBL as the exclusive distributor of its products through the end of September 2023, Raw Garden misrepresented the terms of the parties’ agreement and established course of conduct. Almost immediately after breaching its contract with HERBL, Raw Garden made a public declaration and announcement that it had already entered a distribution relationship, and had been working “diligently behind the scenes” with Nabis. Nabis, in parallel, actively solicited Raw Garden to breach its contract with HERBL.

2. As described below, HERBL brings this action to recover the substantial damages it has and will continue to suffer as a result of the Defendants’ blatant disregard of Raw Garden’s



1 contractual commitments and obligations under the agreement between HERBL and Raw Garden.
2 Defendants have acted in bad faith, engaging in a course of conduct to fabricate an excuse to
3 prematurely terminate the distribution agreement, resulting in millions of dollars of lost revenue for
4 HERBL and other significant harm.

5 **PARTIES**

6 3. Plaintiff is and at all times mentioned in the Complaint was, a California corporation
7 organized under the laws of the State of California, with its principal place of business in Santa
8 Barbara County, California.

9 4. Plaintiff is informed and believes, and thereon alleges, that Raw Garden is, and at all
10 times mentioned in the Complaint was, a Delaware corporation, organized under the laws of the
11 State of Delaware, with its principal place of business in Santa Barbara County, California.

12 5. Plaintiff is informed and believes, and thereon alleges, that Nabis is, and at all times
13 mentioned in the Complaint was, a California corporation, organized under the laws of the State of
14 California, with its principal place of business in Alameda County, California.

15 6. Plaintiff is ignorant of the true names and capacities of the individuals, corporations
16 and entities sued herein as Does 1 through 25, inclusive, and therefore sues such Defendants by
17 fictitious names pursuant to *California Code of Civil Procedure*, section 474. When Plaintiff learns
18 the true names and capacities of these Defendants, Plaintiff will seek leave of court to amend its
19 Complaint accordingly. Plaintiff is informed and believes, and thereon alleges, that each of the
20 fictitiously named Defendants is responsible in some manner for the occurrences, obligations, harm
21 or defects alleged in this Complaint. Whenever there is a reference in the Complaint to any
22 Defendant, the reference shall be deemed to include Does 1 through 25.

23 **JURISDICTION AND VENUE**

24 7. Jurisdiction and venue are proper as the alleged acts, omissions, and course of
25 conduct giving rise to this Complaint occurred in the County of Santa Barbara, in the State of
26 California.

27 ///

28 ///

1 **MATERIAL FACTS COMMON TO ALL COUNTS**

2 **HERBL's Contract with Defendant Raw Garden**

3 8. HERBL operates a group of distribution centers that sell legal cannabis products
4 across the state and provides a full range of related services in category management, warehousing,
5 transportation, quality control, supply chain auditing and sales. It is the leading cannabis supply
6 chain company in California.

7 9. Raw Garden and its affiliates and wholly-owned subsidiaries are primarily engaged
8 in the cultivation, manufacturing and sale of cannabis products.

9 10. HERBL began providing distribution services to Raw Garden in late 2018. On or
10 about October 1, 2019, HERBL and Raw Garden entered into a written Supplier Agreement for
11 Distribution of Products (the "Agreement") providing that HERBL would be the exclusive
12 California distributor for Raw Garden products through at least the end of September 2023 (the
13 "Contract Term"). A copy of the Agreement is attached hereto as **Exhibit A** and its terms and
14 conditions are fully incorporated herein by reference.

15 11. Under the terms of the Agreement, HERBL, as the exclusive distributor of Raw
16 Garden products, purchases wholesale inventory from Raw Garden and then sells Raw Garden
17 products to licensed retail cannabis dispensaries throughout California. Raw Garden, upon the terms
18 set forth in the Agreement, is required to supply HERBL with sufficient inventory to maintain at
19 least a 21-day supply of Raw Garden products, based on the parties' coordinated sales forecasts, to
20 meet anticipated demand for orders from the market.

21 12. In reliance upon the exclusive 4-year Contract Term committed to by Raw Garden
22 under the Agreement, HERBL invested a substantial amount of money, time, and resources
23 dedicated to building out its infrastructure and staffing so that it could properly perform the required
24 services for the duration of the Agreement. As part of that effort and as provided under the
25 Agreement, HERBL hired and maintained no less than six sales representatives exclusively
26 dedicated to selling Raw Garden products.

27 13. The Agreement specifies annual sales and distribution goals for 2019 and 2020. The
28 Agreement further provides that sales and distribution goals for 2021 and beyond are to be



1 determined using the process outlined in Section 10 of the Agreement, that HERBL and Raw Garden
2 “shall mutually agree upon certain targets and objectives regarding the Sales & Distribution of the
3 [Raw Garden] Products.”

4 14. In recognition of HERBL’s significant capital investment and commitment to
5 building the Raw Garden brand as well as the grant of valuable HERBL stock warrants to Raw
6 Garden as part of the Agreement, there are only a few limited, specific circumstances in which Raw
7 Garden may terminate the Agreement prior to the end of the Contract Term, and only after
8 complying with the requirements set forth within Section 11 of the Agreement. In particular, Section
9 11 provides, in relevant part, that Raw Garden may only terminate the Agreement if:

- 10 a. HERBL failed to timely remit payment of an invoice due Raw Garden in accordance with
11 their agreed-upon credit terms and subsequently failed to remedy the default within thirty
12 (30) days of receiving written notice from Raw Garden of the alleged default;
- 13 b. HERBL failed to fulfill any of the material terms and conditions of the Agreement and
14 then failed to either (i) remedy such failures within thirty (30) days of receiving written
15 notice of default from Raw Garden, or (ii) in the event such default could not reasonably
16 be cured within thirty (30) days, if HERBL has not diligently implemented a corrective
17 plan within thirty (30) days of receipt of Raw Garden’s written notice of default to cure
18 such default within ninety (90) days; or
- 19 c. In the event HERBL (i) failed to achieve at least 85% of the mutually agreed upon annual
20 sales goals during any calendar year **and** (ii) then also failed to achieve 85% of the
21 mutually agreed upon sales goals for the following quarter, six months and year.

22 **Raw Garden Induced HERBL to Modify Performance**

23 15. Over the course of 2019 and 2020, HERBL worked diligently to perform its
24 obligations under the Agreement. HERBL maintained seven sales employees dedicated to Raw
25 Garden, one more than the six employees that were required by the Agreement during that time. In
26 addition, HERBL achieved its sales and distribution goals for both 2019 and 2020. HERBL grew the
27 sales of Raw Garden products by substantial multiples over what they were prior to the parties
28

1 entering into the Agreement. Moreover, HERBL vastly expanded Raw Garden's sales and
2 distribution by over 600 retail dispensaries across the entire State of California.

3 16. The Agreement did not specify sales and distribution goals for 2021 or thereafter,
4 contemplating instead the parties would discuss and mutually agree upon those goals annually. Since
5 the inception of the Agreement, HERBL and Raw Garden have engaged in frequent communications
6 and conducted regular sales and operational meetings.

7 17. Beginning in early 2021, Raw Garden and HERBL discussed potential sales and
8 distribution goals for 2021. On April 6, 2021, HERBL's Chief Executive Officer, Mike Beaudry,
9 emailed Raw Garden's Chief Operating Officer at the time, Darren Clark, to say that HERBL would
10 agree to a stretch sales goal of \$170 MM provided that failure to achieve the stretch goal could not
11 be considered a breach by HERBL upon which Raw Garden could terminate the Agreement. Clark
12 agreed to these terms on behalf of Raw Garden in his response to Beaudry's email the following day.

13 18. The sales goal was rendered moot less than two weeks later, however, when Raw
14 Garden gave notice of its desire to restructure the Agreement and take all sales functions in-house. In
15 the discussions that followed in late April of 2021, Clark, on behalf of Raw Garden, advised HERBL
16 he wanted to transition HERBL's dedicated sales team to an in-house role at Raw Garden,
17 whereupon Raw Garden would assume all responsibility for sales.

18 19. Raw Garden's in-house counsel, Matthew Allen, circulated a proposed amendment to
19 the Agreement via email on May 3, 2021. The proposed amendment would modify the terms of the
20 Agreement to reflect the assumption of all sales activities by Raw Garden. On May 17, 2021, Clark
21 assured Beaudry that HERBL and Raw Garden were close to coming to terms related to Raw Garden
22 insourcing all sales by July 1.

23 20. While not obligated to do so, HERBL participated in these amendment discussions
24 fully and in good faith in an effort to accommodate Raw Garden's intentions. HERBL's in-house
25 counsel, Bradley Peacock, prepared and circulated a revised version of the proposed amendment via
26 email on June 13, 2022, addressing multiple points of discussion. This revised amendment included
27 language acknowledging Raw Garden's desire to take over sole responsibility for sales under the
28 Agreement by including language stating: "CCA shall be responsible for its own sales and sales-



1 related activity under this Agreement, including the employment of any full-time dedicated sales and
2 management personnel, calling on Customer accounts, and entering Product orders into HERBL's
3 order management system."

4 21. In a letter sent to HERBL's management on June 24, 2021, Clark represented that
5 Raw Garden needed additional time to address other non-sales related items in the draft amendment
6 and that Raw Garden was "pausing" the amendment discussions temporarily but would resume
7 discussions "in the near future."

8 22. At no point during any of these discussions regarding performance under the contract,
9 or at any time prior to such discussions, did Raw Garden give any notice of any alleged default
10 under the Agreement. On the contrary, Clark's June 24 letter stated that Raw Garden had no issues
11 with HERBL's performance "on the delivery side" of the business relationship.

12 23. Raw Garden "paused" finalizing the draft amendment to the Agreement only after it
13 had urged HERBL to move aggressively to effectuate the transition of the sales team and
14 responsibility for sales from HERBL to Raw Garden. In fact, by the time Raw Garden "paused" the
15 amendment negotiation process on June 24, 2022, the transition of the sales team from HERBL to
16 Raw Garden was already being carried out. During the transition process, in reliance on Raw
17 Garden's many statements and conduct indicating that it was assuming control and responsibility for
18 sales, including but not limited to Clark's multiple representations that Raw Garden would relieve
19 HERBL of its responsibilities under the Agreement for sales of Raw Garden products, HERBL went
20 out of its way to facilitate the transition of the sales team for the benefit of its relationship with Raw
21 Garden, even making special accommodations for its transferring employees with respect to stock
22 options to help convince the employees to accept the change in employer.

23 24. Since the transition, and at Raw Garden's request, HERBL maintained a dedicated
24 Raw Garden brand manager who acted as a liaison for all things Raw Garden-related, while Raw
25 Garden provided its own sales function.

26 25. From July 2021 forward, it was Raw Garden and HERBL's mutual understanding and
27 agreement, as expressed in multiple emails, draft amendments to the Agreement, and other writings
28 exchanged, inter alia, between Beaudry, Peacock, Clark, and Allen from mid-April 2021 through late



1 June 2021, as well as through each party’s conduct, that HERBL was no longer responsible for sales
2 under the Agreement. As late as December 15, 2021, Raw Garden, through its Chief Operating
3 Officer, Thomas Martin, wrote that he had been insisting “since our initial discussions beginning
4 several months ago” that HERBL should “cease and desist on all sales activities,” when retailers
5 attempted to place orders through HERBL because Raw Garden had become solely responsible for
6 all sales of Raw Garden products under the Agreement.

7 26. Raw Garden never resumed discussions about amending the Agreement. Based on
8 information and belief, Raw Garden’s true intention in pushing aggressively to take over sales
9 responsibilities under the Agreement was to create a pretext for bringing HERBL’s employees in-
10 house to Raw Garden and obtaining HERBL’s confidential trade secret information and retail
11 contacts so that it could more easily terminate the Agreement prior to the end of the Contract Term
12 without experiencing any drop off in sales or business disruption.

13 **Raw Garden and Nabis Conspired to Break HERBL’s Contract**

14 27. On information and belief, beginning in early 2021, Nabis and Raw Garden began
15 working together to arrange for Raw Garden to prematurely terminate the Agreement and enter into
16 a written contract for Nabis to handle distribution of Raw Garden’s products going forward.

17 28. On information and belief, on or before April 21, 2021, representatives of Nabis
18 spoke with officers at Raw Garden and encouraged Raw Garden’s management to breach the
19 Agreement.

20 29. On information and belief, on or about August 19, 2021, Martin texted Beaudry
21 confirming that he was at Nabis’s facilities, sending a picture of the main entrance and stating that he
22 was scoping out HERBL’s competition. On information and belief, Martin did so to mislead HERBL
23 about its intention to breach the Agreement and provide cover for its meetings with Nabis.

24 30. Between approximately November 15, 2022, and December 23, 2022, Beaudry had
25 multiple conversations, both in-person and over the phone, with Martin about the business
26 relationship between HERBL and Raw Garden. During this period, HERBL began to hear rumors
27 from other people within the cannabis industry that Raw Garden was looking to break its
28 commitment to HERBL. Beaudry asked Thomas multiple times if these rumors were true, including

1 but not limited to during a meeting on December 15, 2021. Each time he was questioned by
2 Beaudry, Martin repeatedly and vehemently denied the rumors and insisted that Raw Garden
3 remained committed to the Agreement and its relationship with HERBL, including potentially
4 extending the term of the Agreement.

5 31. On December 16, 2021, Beaudry emailed Martin stating that he was discounting the
6 rumors about Raw Garden leaving HERBL based on the many representations Martin had made to
7 him that Raw Garden desired to continue to do business with HERBL over the long term and to
8 extend the Agreement.

9 32. At the same time Martin was providing these assurances, however, Raw Garden
10 began drawing down the amount of Raw Garden products normally provided to HERBL to fulfill
11 orders. Upon information and believe, even while Martin was providing assurances to Beaudry, Raw
12 Garden was diverting, or preparing to divert, product shipments to Nabis that normally would have
13 gone to HERBL for distribution.

14 33. In early December 2021, based on information and belief, HERBL became aware that
15 Nabis was interfering with its exclusive rights by engaging Raw Garden in contract negotiations to
16 handle the distribution of Raw Garden's products and actively encouraging Raw Garden to breach its
17 contract with HERBL.

18 34. Nabis had previously induced another HERBL supplier to breach its distribution
19 contract with HERBL and, based on information and belief, used this experience to persuade Raw
20 Garden it could breach the Agreement without any repercussions or action by HERBL.

21 35. On December 15, 2021, HERBL sent Nabis a cease and desist notice wherein
22 HERBL expressly made Nabis aware of (i) the existence of the Agreement; (ii) that the Agreement
23 contained an exclusivity provision for the distribution of Raw Garden's products for the duration of
24 the Contract Term; (iii) Raw Garden's premature termination of the Agreement would result in
25 substantial damages; and (iv) Nabis' actions constituted intentional interference with contractual
26 relations and unfair competition in violation of *California Business and Professions Code*, section
27 17200.

28 ///

1 36. Nabis acknowledged receipt of this correspondence and in response, on December 29,
2 2021, requested additional information, including a copy of HERBL’s exclusive distribution
3 agreement with Raw Garden. Notably, Nabis did not deny the allegations in HERBL’s cease and
4 desist notice.

5 37. On January 3, 2022, Raw Garden sent HERBL written correspondence through which
6 it purported to provide notice of breach and termination of the Agreement (the “Breach Notice”),
7 falsely asserting that HERBL had failed to cure prior defaults including, inter alia, purported failures
8 to provide at least six salespersons and meet 2021 sales goals. At no time prior to delivery of the
9 Breach Notice did Raw Garden ever provide HERBL with notice of a default or breach by HERBL
10 of the Agreement, as would be required under the terms of the Agreement in order to create a
11 performance-based termination right prior to the end of the Contract Term.

12 38. At close of business on January 4, 2022, Raw Garden sent HERBL an email asserting
13 that HERBL had engaged in a “supplemental default” by failing to timely pay an invoice purportedly
14 due that day.

15 39. Section 11(a)(ii) of the Agreement expressly sets forth Raw Garden’s limited rights to
16 terminate the Agreement arising from a failure to remit payment of an invoice, stating, Raw Garden
17 may only terminate the Agreement prior to the end of the Contract Term if “HERBL has failed to
18 make payment of any invoice in accordance with the credit terms of the Supplier (except for bona
19 fide disputes) and has not remedied the failure within (30) days from receipt of written notice
20 thereof.”

21 40. Three days later, on January 7, 2022, Raw Garden sent HERBL an email terminating
22 the Agreement “effective immediately” (“Termination Notice”), for failure to cure the purported
23 supplemental payment default, despite an express term of the Agreement providing HERBL 30 days
24 to cure a payment default.

25 41. On January 7, 2022, less than two hours after providing the Termination Notice, Raw
26 Garden disseminated a printed announcement (the “Nabis Announcement”) to all of its customers
27 and contacts, informing them “Effective January 7th, 2022, Raw Garden products will be distributed
28 to your business by Nabis.”

1 42. The Breach Notice was a thinly veiled attempt to justify the forthcoming early
2 termination of the Agreement that Raw Garden and Nabis had been planning and preparing for
3 months. Raw Garden never intended to provide HERBL with an opportunity to cure any alleged
4 defaults and acted in bad faith by terminating the agreement without providing the requisite
5 opportunity to cure. In fact, Raw Garden and Nabis brazenly flaunted their illegal conduct by
6 broadcasting in the Nabis Announcement they had been “working diligently behind the scenes with
7 the Nabis team to ensure this transition is as seamless as possible...”

8 43. Not content to just wrongfully terminate the Agreement, Raw Garden and Nabis acted
9 to diminish HERBL’s ability to mitigate its damages through the sale of Raw Garden product still in
10 HERBL’s possession by undertaking efforts to ensure HERBL would have to sell its remaining
11 supply of Raw Garden product at a steep discount, if it could sell it at all. Those efforts included, in
12 part, offering a coupon in the Nabis Announcement for a discount on orders of Raw Garden products
13 made through Nabis.

14 44. On information and belief, Nabis intentionally induced Raw Garden to breach its
15 written contract with HERBL by initiating a business relationship with Raw Garden and persuading
16 Raw Garden to ship its products to Nabis while Raw Garden was still bound by the exclusivity
17 provisions of the Agreement.

18 45. On information and belief, Nabis intended to deprive HERBL of sales and
19 distribution opportunities and harm its reputation with Raw Garden, as well as other product
20 manufacturers and retailers, by inducing Raw Garden, a known key brand partner of HERBL, to
21 wrongfully terminate the Agreement.

22 46. At all relevant times, by demanding that HERBL expend time, resources and energy
23 to negotiate its requests while having no intention of honoring the Agreement, Raw Garden acted in
24 bad faith.

25 47. On information and belief, claims of breach in Raw Garden’s January 3 notice were
26 based on misrepresentations of the parties’ Agreement and course of conduct. These claims were
27 crafted to create a pretext through which Raw Garden could avoid its obligations to use HERBL as
28 the exclusive distributor of its products through at least the end of September 2023.

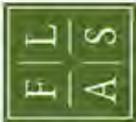
1 the Agreement and entering into a distribution relationship with Nabis after representing that it had
2 no intention of doing so.

3 52. On information and belief, when Raw Garden and Does 1 through 12, and each of
4 them, made these misrepresentations, concealed information, and failed to disclose material
5 information as set forth herein, they knew their statements to be false and misleading or acted in
6 reckless disregard of their truth or falsity, and made the misrepresentations and/or concealed
7 information with the intent to defraud and deceive HERBL, and with the intent to induce HERBL to
8 perform under the Agreement while Raw Garden simultaneously obtained HERBL's confidential
9 trade secret information and retail contacts so that it could more easily terminate the Agreement
10 prior to the end of the Contract Term without experiencing any drop off in sales or business
11 disruption.

12 53. HERBL justifiably relied on the foregoing express representations provided by Raw
13 Garden when HERBL agreed to modify its conduct under the Agreement and transfer its sales team
14 to Raw Garden despite the lack of a formal amendment to the Agreement. At no time did Raw
15 Garden and Does 1 through 12, and each of them, inform HERBL of the true facts. Had HERBL
16 been made aware of the material misrepresentations by Raw Garden and Does 1 through 12, and
17 each of them, and the material facts Raw Garden hid from HERBL, it would not have agreed to
18 modify its conduct under the Agreement.

19 54. The conduct herein alleged by Raw Garden and Does 1 through 12, and each of them,
20 was the direct and proximate cause of HERBL's damages, in an amount to be proven at trial.

21 55. The aforementioned acts were carried out by Raw Garden and Does 1 through 12, and
22 each of them, in a malicious, willful, and oppressive manner with the intent to injure and damage
23 HERBL, entitling HERBL to recover exemplary damages from Raw Garden under California Civil
24 Code, section 3294. Raw Garden's decision to make misrepresentations, conceal information, and
25 fail to disclose material information was done with the intent to injure HERBL. Raw Garden's
26 officers, directors, and managerial and supervisory employees participated in the unlawful conduct
27 as alleged above or had actual knowledge that the above-alleged conduct was unlawful and
28



1 nevertheless authorized and/or ratified the practices with conscious disregard for the rights of
2 HERBL.

3 **SECOND CAUSE OF ACTION**

4 **(Negligent Misrepresentation – Raw Garden)**

5 56. HERBL re-alleges and incorporates by reference each prior allegation of this Second
6 Amended Complaint.

7 57. Raw Garden, as a party to the Agreement, owed a duty to provide truthful
8 representations to HERBL.

9 58. Raw Garden and Does 1 through 12, and each of them, breached said duty by
10 providing false and untrue representations to HERBL. Such misrepresentations include but are not
11 limited to: (1) stating that Raw Garden would assume all responsibility for sales and release HERBL
12 from all prior sales obligations under the Agreement; (2) stating that Raw Garden would continue
13 the process to document the change in an amendment to the Agreement; and (3) committing to work
14 with HERBL as its exclusive distributor through the end of the Agreement term and would not be
15 switching to Nabis or any other competing distributor in California.

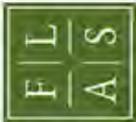
16 59. On information and belief, Raw Garden and Does 1 through 12, and each of them,
17 made said representations without any reasonable grounds for believing them to be true.

18 60. The representations were made with the intent to induce HERBL to perform under the
19 Agreement and to devote substantial time and money to developing a market for Raw Garden's
20 products, which are the subject of the Agreement, and with the intent to induce HERBL to continue
21 performing under the Agreement while Raw Garden simultaneously obtained HERBL's confidential
22 trade secret information and retail contacts so that it could more easily terminate the Agreement
23 prior to the end of the Contract Term without experiencing any drop off in sales or business
24 disruption.

25 61. The conduct by Raw Garden and Does 1 through 12, and each of them, was the
26 proximate cause of HERBL's damages, in an amount to be proven at trial.

27 ///

28 ///



THIRD CAUSE OF ACTION

(Breach of Contract – Raw Garden)

62. HERBL re-alleges and incorporates by reference each prior allegation of this Second Amended Complaint.

63. Raw Garden is a party to the binding Agreement with HERBL.

64. HERBL has performed all conditions, covenants, and promises required of it in accordance with the terms and conditions of the Agreement alleged herein except where performance was fully excused by Raw Garden.

65. HERBL’s obligation to meet specific sales goals for 2021 and maintain a six-member sales team was excused by Raw Garden when Raw Garden took over responsibility for its own sales and made the members of HERBL’s sales team employees of Raw Garden.

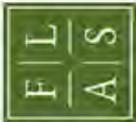
66. Raw Garden and Does 1 through 12, and each of them, have breached the Agreement by their actions described above and by wrongfully terminating the Agreement without justification or excuse before HERBL had been provided notice or opportunity to cure any purported default as expressly provided in the Agreement, following the notices sent on January 3rd and 4th.

67. Implicit in the Agreement is a covenant of good faith a fair dealing obligating the parties to act towards each other in good faith, to deal fairly with one another, to make all material disclosures, and not to do anything which might deprive the other of the expectations and benefits of the Agreement and obligating each party to do everything that the Agreement presupposes to accomplish its purpose. For the reasons stated herein, Raw Garden and Does 1 through 12, and each of them, have breached the covenant of good faith and fair dealing.

68. As a direct and proximate result of the breach of the Agreement by Raw Garden and Does 1 through 12, and each of them, HERBL has been damaged through, among other things, the incurrence of fees and costs associated with mitigating Raw Garden’s breach and lost sales and profits in a sum not yet ascertained, in amounts yet to be fully ascertained and which will be proven at trial.

///

///



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing – Raw Garden)

69. HERBL re-alleges and incorporates by reference each prior allegation of this Second Amended Complaint.

70. The Agreement contained an implied covenant of good faith a fair dealing, which includes a covenant that the parties will not deprive each other of the intended benefits of the contract.

71. As a result of its conduct as alleged above, Raw Garden and Does 1 through 12, and each of them, breached the implied covenant of good faith and fair dealing in the Agreement.

72. As a direct and proximate result of the breach of the implied covenant of good faith and fair dealing by Raw Garden and Does 1 through 12, and each of them, HERBL has been damaged by, among other things, the incurrence of fees and costs associated with mitigating Raw Garden’s breach and lost sales and profits in a sum not yet ascertained, in amounts yet to be fully ascertained and which will be proven at trial.

FIFTH CAUSE OF ACTION

(Express Indemnity – Raw Garden)

73. HERBL re-alleges and incorporates by reference each prior allegation of this Second Amended Complaint.

74. The Agreement includes an express indemnification clause at Section 33(a), which provides Raw Garden agrees to and shall ... defend, indemnify and hold HERBL ... harmless from and against any and all ... losses, ... damages, ... costs and expenses (including but not limited to attorney’s fees) incurred by HERBL related to, caused by, arising from or on account of ... any breach by Raw Garden of the Agreement.

75. HERBL has and does hereby make a demand upon Raw Garden that it indemnify and hold harmless HERBL from any and all losses, damages, costs and expenses arising from Raw Garden’s breach of the Agreement and on-performance of certain covenants and obligations contained therein.

///

1 it known that Raw Garden had no intention of honoring the Agreement and planned to partner with a
2 rival distributor.

3 83. HERBL is entitled to restitution of all money and property acquired by Raw Garden
4 and Does 1 through 12, and each of them, as a result of its unlawful business practices.

5 **SEVENTH CAUSE OF ACTION**

6 **(Intentional Interference with Contractual Relations – Nabis)**

7 84. HERBL re-alleges and incorporates by reference each prior allegation of this Second
8 Amended Complaint.

9 85. Raw Garden is a party to the binding Agreement with HERBL.

10 86. HERBL is informed and believes, and thereon alleges Nabis and Does 13 through 25,
11 and each of them, had full knowledge of the existence of the Agreement at all relevant times.

12 87. HERBL is informed and believes, and thereon alleges Nabis and Does 13 through 25,
13 and each of them, without privilege or justification, intentionally induced Raw Garden to breach the
14 Agreement, preventing HERBL from receiving the full benefit of its bargain with Raw Garden.

15 88. HERBL is informed and believes, and thereon alleges Nabis and Does 13 through 25,
16 and each of them, engaged in wrongful conduct with the intent to harm HERBL, including but not
17 limited to working as a distributor for Raw Garden while Raw Garden was still bound to exclusivity
18 with HERBL under the Agreement and persuading Raw Garden to breach the Agreement by
19 improperly terminating it early. Nabis and Does 13 through 25, and each of them, knew that as a
20 result of its conduct and intentional interference, a breach of the Agreement by Raw Garden was
21 likely to occur.

22 89. As a result of the improper acts by Nabis and Does 13 through 25, and each of them,
23 inducing Raw Garden to breach the Agreement, HERBL has suffered damages including, but not
24 limited to, lost revenue, increased expenses, and damage to HERBL's reputation and customer
25 goodwill, in an amount yet to be fully ascertained and which will be proven at trial.

26 90. The aforementioned acts were carried out by Nabis and Does 13 through 25, and each
27 of them, in a malicious, willful, and oppressive manner with the intent to injure and damage
28 HERBL, entitling HERBL to recover exemplary damages from Nabis under *California Civil Code*,



1 section 3294. Nabis's decision to induce a breach of the Agreement was made with the intent to
2 injure HERBL. Nabis's officers, directors, and managerial and supervisory employees participated in
3 the unlawful conduct as alleged above or had actual knowledge that the above-alleged conduct was
4 unlawful and nevertheless authorized and/or ratified the practices with conscious disregard of the
5 rights and safety of HERBL.

6 EIGHTH CAUSE OF ACTION

7 **(Intentional Interference with Prospective Economic Relations – Nabis)**

8 91. HERBL re-alleges and incorporates by reference each prior allegation of this Second
9 Amended Complaint.

10 92. Raw Garden is a party to the binding Agreement with HERBL.

11 93. With regards to Raw Garden, a probable future economic benefit to HERBL existed
12 in the short term insofar as HERBL received product from Raw Garden in December 2021 that it
13 would have been able to sell for a profit if not for Raw Garden's breach, and in the long term insofar
14 as Raw Garden would have continued its relationship with HERBL throughout the term of the
15 Agreement and likely beyond.

16 94. HERBL is additionally a party to many other distribution agreements with cannabis
17 brand partners across the state.

18 95. With regards to these other brand partners, a probable future economic benefit to
19 HERBL existed insofar as HERBL has a pristine reputation that allows it to maintain profitable
20 business relationships with current partners and attract the business of future brand partners.

21 96. Nabis and Does 13 through 25, and each of them, had full knowledge of the
22 Agreement and of HERBL's agreements with its other brand partners at all relevant times.

23 97. HERBL is informed and believes, and thereon alleges Nabis and Does 13 through 25,
24 and each of them, engaged in wrongful conduct with the intent to harm HERBL, including but not
25 limited to causing a key brand partner to breach its exclusivity agreement for the express purpose of
26 harming HERBL's reputation in the marketplace amongst other producers and retailers so that other
27 producers might be similarly willing to breach their agreements with HERBL, encouraging Raw
28 Garden to make false representations to HERBL to help Raw Garden obtain HERBL's confidential



1 trade secret information and retail contacts so that it would not suffer any drop off in sales or
2 business disruption after terminating the Agreement prior to the end of the contract term, conspiring
3 with Raw Garden to burden HERBL with Raw Garden products and offer a discount on Nabis
4 products such that HERBL would have to either sell at a loss or not sell at all, thus denying HERBL
5 potential profit on those sales, and inducing Raw Garden to breach the Agreement, causing HERBL
6 to not only not realize the benefit of the full Contract Term, but also curtailing the likely continuance
7 of the business relationship between HERBL and Raw Garden after the expiration of the Agreement.

8 98. HERBL is informed and believes, and thereon alleges that by engaging in this
9 conduct, Nabis and Does 13 through 25, and each of them, intended to disrupt the relationship
10 between HERBL and Raw Garden and the relationships between HERBL and its other brand
11 partners across the state or knew that such a disruption of these relationships was substantially
12 certain to occur.

13 99. As a result of the independently wrongful and fraudulent acts by Nabis and Does 13
14 through 25, and each of them, HERBL has suffered damages including, but not limited to, lost
15 revenue, increased expenses, and damage to HERBL's reputation and customer goodwill, in an
16 amount yet to be fully ascertained and which will be proven at trial.

17 100. The aforementioned acts were carried out by Nabis and Does 13 through 25, and each
18 of them, in a malicious, willful, and oppressive manner with the intent to injure and damage
19 HERBL, entitling HERBL to recover exemplary damages from Nabis under *California Civil Code*,
20 section 3294. Nabis's decision to commit wrongful acts to disrupt HERBL's business relationships
21 with Raw Garden and its other partners was made with the intent to injure HERBL. Nabis's officers,
22 directors, and managerial and supervisory employees participated in the unlawful conduct as alleged
23 above or had actual knowledge that the above-alleged conduct was unlawful and nevertheless
24 authorized and/or ratified the practices with conscious disregard for the rights of HERBL.

NINTH CAUSE OF ACTION

(Negligent Interference with Prospective Economic Relations – Nabis)

25
26
27 101. HERBL re-alleges and incorporates by reference each prior allegation of this Second
28 Amended Complaint.





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

102. Raw Garden is a party to the binding Agreement with HERBL.

103. With regards to Raw Garden, a probable future economic benefit to HERBL existed in the short term insofar as HERBL received product from Raw Garden in December 2021 that it would have been able to sell for a profit if not for Raw Garden’s breach, and in the long term insofar as Raw Garden would have continued its relationship with HERBL throughout the term of the Agreement and likely beyond.

104. HERBL is additionally a party to many other distribution agreements with cannabis brand partners across the state.

105. With regards to these other brand partners, a probable future economic benefit to HERBL existed insofar as HERBL has a pristine reputation that allows it to maintain profitable business relationships with current partners and attract the business of future brand partners.

106. Nabis and Does 13 through 25, and each of them, had full knowledge or should have known of the Agreement and of HERBL’s agreements with its other brand partners at all relevant times.

107. Nabis and Does 13 through 25, and each of them, engaged in wrongful conduct that they knew or should have known would disrupt the business relationship between HERBL and Raw Garden, including but not limited to causing a key brand partner to breach its exclusivity agreement for the express purpose of harming HERBL’s reputation in the marketplace amongst other producers and retailers so that other producers might be similarly willing to breach their agreements with HERBL, encouraging Raw Garden to make false representations to HERBL to help Raw Garden obtain HERBL’s confidential trade secret information and retail contacts so that it would not suffer any drop off in sales or business disruption after terminating the Agreement prior to the end of the contract term, conspiring with Raw Garden to burden HERBL with Raw Garden products and offer a discount on Nabis products such that HERBL would have to either sell at a loss or not sell at all, thus denying HERBL potential profit on those sales, and inducing Raw Garden to breach the Agreement, causing HERBL to not only not realize the benefit of the full Contract Term, but also curtailing the likely continuance of the business relationship between HERBL and Raw Garden after the expiration of the Agreement.

1 108. Nabis and Does 13 through 25, and each of them, failed to exercise reasonable care in
2 ensuring that its fraudulent actions would not cause HERBL to lose the future economic benefit of
3 its relationship with Raw Garden under the Agreement or unfairly damage HERBL's reputation
4 within the cannabis industry.

5 109. As a result of the independently wrongful and fraudulent acts by Nabis and Does 13
6 through 25, and each of them, HERBL has suffered damages including, but not limited to, lost
7 revenue, increased expenses, and damage to HERBL's reputation and customer goodwill, in an
8 amount yet to be fully ascertained and which will be proven at trial.

9 110. The aforementioned acts were carried out by Nabis and Does 13 through 25, and each
10 of them, in a malicious, willful, and oppressive manner with the intent to injure and damage
11 HERBL, entitling HERBL to recover exemplary damages from Nabis under *California Civil Code*,
12 section 3294. Nabis's decision to commit wrongful acts to disrupt HERBL's business relationships
13 with Raw Garden and its other partners was done with the intent to injure HERBL. Nabis's officers,
14 directors, and managerial and supervisory employees participated in the unlawful conduct as alleged
15 above or had actual knowledge that the above-alleged conduct was unlawful and nevertheless
16 authorized and/or ratified the practices with conscious disregard of the rights of HERBL.

17 **TENTH CAUSE OF ACTION**

18 **(Civil Conspiracy to Commit Fraud – Nabis and Raw Garden)**

19 111. HERBL re-alleges and incorporates by reference each prior allegation of this Second
20 Amended Complaint.

21 112. Within the past seven months and continuing until the present, Nabis, Raw Garden
22 and Does 1 through 25, and each of them, knowingly and willfully conspired and agreed to defraud
23 HERBL and gain economic advantage for themselves. Nabis, Raw Garden and Does 1 through 25,
24 and each of them, did the acts and things herein alleged pursuant to, and in furtherance of, the
25 conspiracy.

26 113. On information and belief, Nabis, Raw Garden and Does 1 through 25, and each of
27 them, engaged in meetings dating back to the spring of 2021 wherein they agreed that Nabis would
28



1 serve as Raw Garden's distributor if Raw Garden terminated the Agreement before the expiration of
2 the Agreement's term and improperly revoked HERBL's exclusive distribution rights.

3 114. The fraudulent conduct herein alleged by Nabis, Raw Garden and Does 1 through 25,
4 and each of them, was the proximate cause of HERBL's damages, in an amount to be proven at trial.

5 115. The aforementioned acts were carried out by Nabis, Raw Garden and Does 1 through
6 25, and each of them, in a malicious, willful, and oppressive manner with the intent to injure and
7 damage HERBL, entitling HERBL to recover exemplary damages under California Civil Code,
8 section 3294. The agreement to conspire to defraud HERBL was done with the intent to injure
9 HERBL. Raw Garden's and Nabis's respective officers, directors, and managerial and supervisory
10 employees participated in the unlawful conduct as alleged above or had actual knowledge that the
11 above-alleged conduct was unlawful and nevertheless authorized and/or ratified the practices with
12 conscious disregard of the rights and safety of HERBL.

13 **ELEVENTH CAUSE OF ACTION**

14 **(Aiding and Abetting Fraud – Nabis)**

15 116. HERBL re-alleges and incorporates by reference each prior allegation of this Second
16 Amended Complaint.

17 117. Within the past seven months and continuing until the present, Nabis and Does 13
18 through 25, and each of them, aided and abetted Raw Garden and Does 1 through 12, and each of
19 them, in their efforts to defraud HERBL and gain economic advantage for themselves and Nabis.

20 118. On information and belief, Nabis and Does 13 through 25, and each of them,
21 encouraged Raw Garden to terminate the Agreement before the expiration of the Contract Term and
22 improperly revoke HERBL's exclusive distribution rights. HERBL is further informed and believes
23 that Nabis and Does 13 through 25, and each of them, encouraged Raw Garden to breach the
24 Agreement over the course of 2021 by citing examples of other brands that Nabis had persuaded to
25 breach agreements with HERBL. HERBL is further informed and believes that Nabis and Does 13
26 through 25, and each of them, received shipments of Raw Garden products in December 2021, with
27 full knowledge that Raw Garden was still bound by the Agreement, and undertook other
28





1 preparations to become Raw Garden’s distributor on or before the moment Raw Garden improperly
2 terminated the Agreement.

3 119. The conduct herein alleged by Nabis and Does 13 through 25, and each of them, was
4 a substantial factor in causing harm to HERBL, and as a result, HERBL has suffered damages in an
5 amount to be proven at trial.

6 120. The aforementioned acts were carried out by Nabis and Does 13 through 25, and each
7 of them, in a malicious, willful, and oppressive manner with the intent to injure and damage
8 HERBL, entitling HERBL to recover exemplary damages from Raw Garden under *California Civil*
9 *Code*, section 3294. Nabis’s decision to aid and abet Raw Garden’s fraud against HERBL was made
10 with the intent to injure HERBL. Nabis’s officers, directors, and managerial and supervisory
11 employees participated in the unlawful conduct as alleged above or had actual knowledge that the
12 above-alleged conduct was unlawful and nevertheless authorized and/or ratified the practices with
13 conscious disregard for the rights of HERBL.

14 **TWELFTH CAUSE OF ACTION**

15 **(Unfair Business Practices Under Business & Professions Code Section 17200, et. seq. – Nabis)**

16 121. HERBL re-alleges and incorporates by reference each prior allegation of this Second
17 Amended Complaint.

18 122. *California Business and Professions Code*, section 17200 prohibits any “unlawful,
19 unfair or fraudulent business act or practice.”

20 123. The conduct by Nabis and Does 13 through 25, and each of them, in conspiring with
21 Raw Garden to divest HERBL of its contractual right under the Agreement to serve as Raw Garden’s
22 exclusive distributor until at least the end of September 2023 and encouraging Raw Garden’s
23 misrepresentations to HERBL constitutes an unlawful violation of California’s fraud statutes and
24 therefore amounts to unlawful business practice.

25 124. HERBL is entitled to restitution of all money and property acquired by Nabis and
26 Does 13 through 25, and each of them, as a result of its unlawful business practices.

27 ///

28 ///



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For actual damages according to proof;
2. For consequential and incidental damages according to proof;
3. For restitution of money lost;
4. For exemplary and punitive damages in an amount determined by the Court to be reasonable as authorized by section 3294 of the California Civil Code;
5. For pre-judgment and post-judgment interest at the maximum legal rate;
6. For costs and attorneys' fees (as allowable by law and/or contract); and
7. For all such other and further relief as the Court deems just and proper.

Dated: May 5, 2022

FAUVER, LARGE, ARCHBALD & SPRAY, LLP

By: _____

Michael S. Fauver
Marcus J. Kocmur
Ian L.M. Durdle
Attorneys for Plaintiff HERBL, INC.

EXHIBIT A

SUPPLIER AGREEMENT FOR DISTRIBUTION OF PRODUCTS

This agreement for the distribution of products is entered on October 1, 2019 (date) between HERBL, Inc., a California corporation, dba HERBL Distribution Solutions ("HERBL") and CENTRAL COAST AGRICULTURE, INC., including its wholly owned subsidiaries with C11-0001094-LIC & C11-0000496-LIC CA License Number, Distributor Type. ("CCA", or the "Supplier"), collectively referred to as "The Party" or "The Parties".

RECITALS

- A. CCA and its affiliates and wholly owned subsidiaries are primarily engaged in the cultivation, manufacturing and sale of cannabis branded products.
- B. HERBL and its affiliates, subsidiaries and related parties including but not limited to, all distribution arms of the foregoing parties (together with HERBL, the "HERBL Parties") operate a group of distribution centers (individually a "HERBL DC" and collectively the "HERBL DCs") that distribute cannabis products. HERBL DC's will purchase cannabis products, hold such product in inventory, fulfil orders placed by and ship product to Supplier Customers lawfully engaged in the selling of cannabis through retail storefronts and/or delivery services. HERBL will have full responsibility for the procurement and ownership of cannabis products being shipped to Supplier Customers.

NOW, THEREFORE, the parties agree as follows:

1. **Term:** Commencing from the full execution of this agreement for a period of four (4) years, this Agreement will automatically renew for successive one-year terms unless canceled in writing by either party with a minimum of 90-days written notice prior to the anniversary date of the Agreement.
2. **Territory & Customers:** For the purposes of this agreement, the Territory is defined exclusively as the State of California and Customers are exclusively those Licensed Cannabis Dispensaries who operate lawfully in the State of California.
3. **Scope:** HERBL will serve as the (Exclusive) California distributor in the Licensed Cannabis Dispensary Market Channel in the Territory for all current and future Supplier products and related items (in any case a "Product" and collectively "Products") sold to Supplier Customers and new products during the Term. Services to include:
 - a. HERBL will purchase and take control of all inventory for Products from Supplier and pay all invoices on net 30-day terms from the date when Product is released from quarantine and released for sale and delivery to Supplier Customers.
 - b. HERBL will sell Products to Supplier Customers.
 - c. HERBL will pick up the Products at Supplier's designated facility. HERBL assumes ownership and full liability of all Products once Products are loaded onto truck (ownership is at FOB, or "Freight on Board")
 - d. HERBL shall use all commercially reasonable efforts to maintain an adequate inventory of at least (21 Days) to meet demand from Supplier Customers. Supplier and Distributor inventory will be based on an aligned forecast between HERBL and Supplier.
 - e. HERBL will use all commercially reasonable efforts to maintain a fully informed and trained sales force of adequate size to represent and promote the sale of CCA's Products throughout the Territory.

- f. HERBL shall use all commercially reasonable efforts to maintain sufficient inventories of the Products to adequately service the requirements of the markets and customers in the Territory. HERBL shall promptly deliver to its customers in the Territory the Products in accordance with good business practice.
 - g. HERBL will invoice and collect payment from CCA's Customers for Supplier's Products delivered by HERBL, but any failure of such Customers to pay HERBL will not remove the requirement of HERBL to pay for such CCA Products as stated above.
 - h. HERBL will provide a sales and customer service team to support Supplier's business.
4. **Margins:** HERBL fee for distribution services will not exceed ^{Redacted} gross margin for CCA Products delivered exclusively to the Licensed Cannabis Dispensary Market in the Territory. For purposes of this Agreement, HERBL's cost ("Cost") shall be defined as the CCA's list price to Dispensaries minus ^{Redacted}. This Gross Margin will be reduced on a sliding scale with increasing sales dollar volume, per the table below.

Redacted

HERBL margin will be reduced in the form of a rebate payment for all Products sold the prior month on a sliding scale, coincident with average weekly volume of all CCA Products (Revenue) calculated on a HERBL fiscal monthly basis. rebate payment will be issued within 30 days of the monthly close per the table below:

Redacted

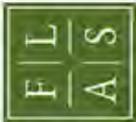
5. **Redacted**

- 6. **Office Space:** HERBL will provide office space in its Goleta Headquarters for up to six (6) CCA Employees and its affiliates.
- 7. **Cold Storage:** HERBL will provide Cold Storage for CCA Finished Goods (Products) in a manner approved by CCA and under a separate storage agreement to be approved by the parties.

8. **Product Selection:** HERBL will procure item selection of Supplier's Products requested by Supplier Customers. HERBL will actively engage with Supplier and Supplier's Customers to ensure mutual alignment.
9. **FOB Pricing and Price Changes:** CCA will invoice HERBL for all products shipped from Supplier to HERBL per FOB (Freight On Board at Supplier dock). Supplier will inform HERBL of price changes on all Products with a minimum of 30-days in advance of said price increases taking effect, and HERBL will pass on all price changes to the Supplier Customers with the effective price change date as determined by Supplier. Supplier reserves the right to implement price reductions with a 14-day notice to HERBL. Supplier will work in good faith with HERBL to determine if any floor stock adjustments are necessary due to such price reduction activity. If a floor stock adjustment is warranted, supplier will credit HERBL for said inventory adjustment. A list of current Product Categories and Prices (FOB Lompoc or related facility), is attached to this agreement as Exhibit A.
10. **Annual Performance Goals (The "Goals"):** HERBL shall use all commercially reasonable efforts to sell CCA Products in the Territory during the Term of this Agreement. Sixty (60) days prior to the start of each Contract Year, Supplier and HERBL shall mutually agree upon certain targets and objectives regarding the Sales & Distribution of the Products (such as Product Unit Volume by SKU and/or Category for Sales Goals, and Targeted Accounts Sold (ACS) in the Territory ("Distribution and Sales Goals"). For the first Contract Year, the parties shall cooperate to develop and agree upon Sales and Distribution Goals prior to the execution of this agreement which shall include the remainder of 2019 and 2020 Distribution Goals (to be attached as Exhibit B).

11. **Termination:**

- a. CCA may terminate this Agreement and HERBL's rights hereunder prior to the expiration of this Agreement by giving written notice to HERBL for any of the following:
 - i. HERBL, through failure to renew or because of cancellation, suspension, or revocation continuing for a period in excess of thirty (30) days, has suffered the loss of any material license required by law and necessary in carrying out the material provisions of this Agreement;
 - ii. HERBL has failed to make payment of any invoice in accordance with the credit terms of the Supplier (except for bona fide disputes) and has not remedied the failure within (30) days from receipt of written notice thereof;
 - iii. HERBL has failed to fulfill any other material terms and conditions of this Agreement and has not remedied the failure within thirty (30) days after receipt of written notice from Supplier or if such failure cannot be reasonably cured within thirty (30) days, HERBL has not diligently implemented a corrective plan within thirty (30) days from receipt of written notice thereof, to cure such failure within ninety (90) days; or
 - iv. HERBL fails to achieve at least eighty-five percent (85%) of the Agreed Sales & Distribution Goals (Exhibit B) during any Contract Year and the following quarter, six months or year. If not achieving this goal is a result of supply not meeting demand forecasts then termination as a result of missing this sales and distribution goal becomes nullified.
- b. HERBL may terminate this Agreement prior to its expiration by giving written notice to Supplier based upon any of the following:
 - i. Supplier has failed to honor any material commitments with regard to sales, delivery, credits, allowances, returns, packaging quality, or product quality, and that such failure continues for a period of thirty (30) days after written notice; or



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

<p>Brett Schuman Jennifer Briggs Fisher Jessica H. Huang Goodwin Procter LLP Three Embarcadero Center, Suite 2800 San Francisco, CA 94111 Tel: (415) 733-6000 Fax: (415) 384-6034 BSchuman@goodwinlaw.com JFisher@goodwinlaw.com JHuang@goodwinlaw.com</p>	<p><i>Attorneys for Central Coast Agriculture, Inc. dba Raw Garden, and Nabione, Inc. dba Nabis</i></p>
<p>Ariel E. Rogers Goodwin Procter, LLP 601 Marshall Street Redwood City, CA 94063 Tel: (650) 752-3100 Fax: (650) 853-1038 ARogers@goodwinlaw.com</p>	<p><i>Attorneys for Central Coast Agriculture, Inc. dba Raw Garden, and Nabione, Inc. dba Nabis</i></p>
<p>Nathan D. Meyer Timothy M. Baumann Russ August & Kabat 12424 Wilshire Boulevard, Suite 1200 Los Angeles, CA 90025 Tel: (310) 826-7474 Fax: (310) 826-6991 NMeyer@raklaw.com TBaumann@raklaw.com</p>	<p><i>Attorneys for Nabione, Inc. dba Nabis</i></p>
<p>Lawrence J. Conlan (SBN: 221350) David L. Cousineau (SBN: 298801) Cappello & Noël LLP 831 State Street Santa Barbara, CA 93101 Tel: (805) 564-2444 Fax: (805) 965-5950 lconlan@cappellonoel.com dcousineau@cappellonoel.com mduong@cappellonoel.com</p>	<p><i>Attorneys for HERBL, INC.</i></p>