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12 Raw Garden and Defendant NABIONE, INC.  
dba NABIS

**REDACTED VERSION - Public-Redacts  
materials from conditionally sealed  
record**

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF SANTA BARBARA**  
16 **ANACAPA DIVISION**

16 HERBL, INC.,  
17  
18 Plaintiff,  
19  
20 v.  
21 CENTRAL COAST AGRICULTURE, INC.  
dba Raw Garden; NABIONE, INC. dba  
22 NABIS; DOES 1-25, inclusive,  
23  
24 Defendants.

Case No. 22CV00077

**VERIFIED CROSS-COMPLAINT FOR:**

1. **BREACH OF CONTRACT;**
2. **BREACH OF IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING;**
3. **ACCOUNT STATED; AND**
4. **OPEN BOOK ACCOUNT.**

**JURY TRIAL DEMANDED**

23 CENTRAL COAST AGRICULTURE, INC.  
dba Raw Garden;  
24  
25 Cross-Complainant,  
26  
27 v.  
28 HERBL, INC.; ROES 1 through 10, inclusive,  
29  
30 Cross-Defendants.

Dept: 4  
Judge: Hon. Donna D. Geck

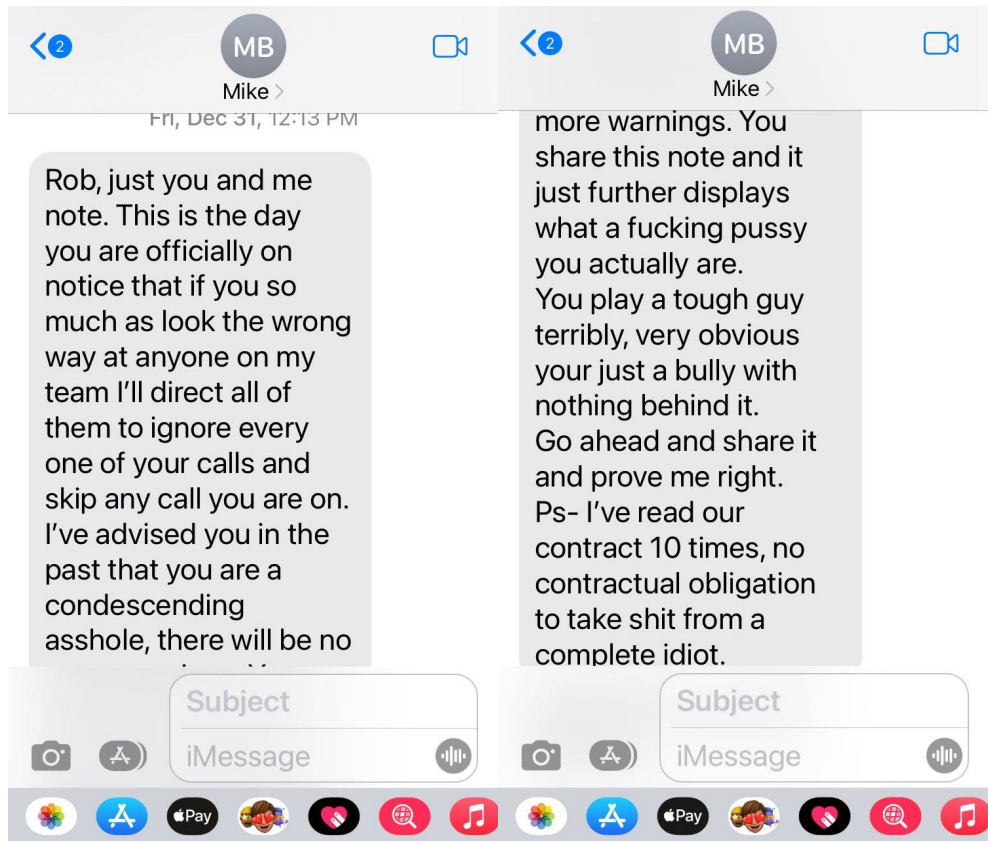
Initial Complaint Filed: January 10, 2022  
Amended Complaint Filed: January 28, 2022  
Trial Date: TBD

1 Defendant and Cross-Complainant CENTRAL COAST AGRICULTURE, INC. dba Raw  
2 Garden (“CCA”) brings this Cross-Complaint against Plaintiff and Cross-Defendant HERBL, INC.  
3 (“Herbl”) and Roes 1–10 and alleges as follows:

4 **NATURE OF ACTION**

5 1. CCA brings this action to recover significant damages caused by Herbl’s breach of  
6 the parties’ written agreement. On October 1, 2019, the parties entered into a Supplier Agreement  
7 for Distribution of Products. (*See* Herbl First Amended Complaint, Ex. A (hereinafter the  
8 “Agreement”).) In the Agreement, Herbl (the distributor) agreed to, among other things, sell and  
9 distribute CCA’s industry-leading cannabis concentrate products. Herbl agreed to meet CCA’s  
10 sales goals and also agreed to hire a dedicated staff to achieve those targets. Herbl assured CCA  
11 that it was up to the task and could meet CCA’s expectations. Over time, however, CCA realized  
12 that Herbl had badly over-promised and was unable to fulfill its contractual obligations under the  
13 Agreement. Herbl was incompetent, unorganized, and incapable of following through on the key  
14 terms of the Agreement. Despite clear, regular communication from CCA emphasizing the need  
15 for Herbl to meet the agreed-upon sales goals and deliver CCA’s products on time, Herbl simply  
16 did not, and could not, perform. With invoices stacking up and Herbl not paying, product not  
17 moving as scheduled, and customer frustration growing, CCA had no alternative but to mitigate its  
18 damages, terminate the Agreement, and start anew with another distributor. And it was only then,  
19 for the first time in January 2022, that Herbl made any overture about wanting to “cure its defects.”

20 2. But by then Herbl had been given multiple opportunities to fix the many problems  
21 it had caused for CCA. Herbl simply failed to put in the time, effort, and resources needed to fulfill  
22 its obligations under the Agreement. Despite CCA’s numerous complaints and warnings to Herbl  
23 about its many failures to perform under the Agreement, Herbl dragged its feet and made little to  
24 no effort to turn the relationship around. And when confronted with its failures and CCA’s  
25 impending termination of the Agreement, Herbl took no responsibility. Rather, Herbl’s founder  
26 and CEO, Mike Beaudry, demonstrated the same lack of professionalism that had been the root  
27 cause of the deteriorating relationship with Herbl in the following text he sent to CCA’s head of  
28 sales:



3. Although Herbl beat CCA in the proverbial race to the courthouse, it is plainly Herbl—not CCA—that breached the parties’ Agreement. Herbl put CCA in a position where it could no longer overlook these failures and Herbl’s inability to fix them. Something had to be done or CCA would continue losing customers and revenue. So CCA mitigated its damages by contracting with another distributor to keep CCA’s products on retailer’s shelves and avoid the significant business losses that it would have incurred (and would have sought from Herbl as additional damages) by delaying a switch from Herbl to the replacement distributor. Herbl filed this lawsuit against CCA in a desperate attempt to shift blame for its own failures.

4. CCA brings this Cross-Complaint to be made whole for the harms caused by Herbl’s breaches of its Agreement with CCA.

### **PARTIES**

5. Central Coast Agriculture, Inc. is a Delaware corporation with its principal place of business in Santa Barbara County, California.

1 6. Upon information and belief, Herbl, Inc. is a California corporation with its principal  
2 place of business in Santa Barbara County, California.

3 7. Cross-Complainant is ignorant of the true names and capacities of Cross-Defendants  
4 sued as Roes 1 through 10, inclusive, and therefore sues these Cross-Defendants by these fictitious  
5 names. CCA will amend this Cross-Complaint to allege their true names and capacities when they  
6 have been ascertained. CCA is informed and believes and thereon alleges that each of the  
7 fictitiously named Cross-Defendants is legally responsible in some manner for the occurrences  
8 alleged in this Cross-Complaint.

9 **JURISDICTION AND VENUE**

10 8. Herbl availed itself of the benefits and protections of this Court by filing suit against  
11 Cross-Complainant and other parties in the matter *Herbl, Inc. v. Central Coast Agriculture, Inc., et*  
12 *al.*, Case No. 22-CV-00077, which is currently pending before this Court.

13 9. Herbl and CCA consented to the exclusive jurisdiction and venue of the  
14 administrative agencies and courts of California for all disputes arising out of their Agreement and  
15 that all such disputes would be adjudicated in the County of Santa Barbara.

16 **STATEMENT OF FACTS**

17 **A. The California Cannabis Industry and CCA's Reliance on Distribution.**

18 10. In California, cannabis companies are regulated by the California Department of  
19 Cannabis Control ("DCC"). The DCC issues licenses to those who "perform[] any commercial  
20 cannabis activity," including, but not limited to, those who engage in cultivation (growing  
21 cannabis), manufacturing (making cannabis products), distribution (transporting cannabis), and  
22 retail (selling cannabis).<sup>1</sup>

23 11. CCA grows and manufactures cannabis products exclusively in California under  
24 cultivation and manufacturing licenses issued by state and local governments, including the DCC.  
25 CCA sells its cannabis concentrate products under the "Raw Garden" brand through California-  
26 licensed dispensaries and mobile delivery services. CCA began selling cannabis products at  
27 dispensaries in California as early as April 2014.

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28 <sup>1</sup> <https://cannabis.ca.gov/applicants/license-types/>

1           12.     Herbl is a licensed distributor. As noted on Herbl’s own website, “[i]n California  
2 and Nevada, only a licensed distributor may legally distribute cannabis goods, cannabis accessories,  
3 and licensees’ branded merchandise or promotional materials.”<sup>2</sup> Only licensed distributors can  
4 transport cannabis legally in California, making them an instrumental part of the supply chain,  
5 connecting companies that cultivate and manufacture cannabis, like CCA, to licensed dispensaries  
6 throughout the state. CCA must work with a reliable distributor in order to get its products to stores  
7 and ultimately to end customers—patients and consumers in the California legal cannabis market.  
8 Any failure by a distributor results in a supply chain disruption and lost sales, which is exactly what  
9 CCA encountered with Herbl.

10           **B.     The Agreement between CCA and Herbl.**

11           13.     CCA began working with Herbl in or around June 2019. CCA and Herbl entered  
12 into the Agreement on October 1, 2019.

13           14.     Under the Agreement, Herbl was expected to “purchase [CCA’s] cannabis products,  
14 hold such product[s] in inventory, fulfill orders placed by [dispensaries],” and deliver products to  
15 “retail storefronts and/or delivery services.” (Agreement, Recital B.)

16           15.     Furthermore, CCA only entered into the Agreement because Herbl agreed to the  
17 following material terms:

- 18           •     **Sales Goals:** Because sales and distribution goals were critical, CCA was entitled  
19 to terminate the Agreement if Herbl “fail[ed] to achieve at least eighty-five percent  
20 (85%) of the Agreed Sales & Distribution Goals during any Contract Year and the  
21 following quarter, six months or year.” (*See* Agreement § 11(a)(iv).) Herbl was  
22 required to “use all commercially reasonable efforts to sell CCA products” and meet  
23 annual performance goals. (*Id.* § 10.) The Agreement also expressly noted that  
24 “[s]ixty (60) days prior to the start of each Contract Year,” CCA and Herbl were  
25 required to “mutually agree upon certain targets and objectives regarding the Sales  
26 and Distribution of the Products.” (*Ibid.*)

27  
28  

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<sup>2</sup> <https://herbl.com/>

- 1                   • **Sales Personnel:** Herbl was required under the Agreement to “provide an Account  
2                   Manager whose primary responsibility [was] to be a liaison and singular point of  
3                   contact” between Herbl, CCA, and CCA’s customers. (Agreement § 23.)  
4                   Furthermore, Herbl was required to “hire, train, maintain and support a minimum of  
5                   six (6) full time sales and management personnel to be 100% dedicated to the  
6                   exclusive Promotion and Sale of all CCA Products,” including by providing office  
7                   space for the sales team dedicated to CCA. (*Ibid.*) Ultimately, Herbl was required  
8                   to “use all commercially reasonable efforts to maintain a fully informed and trained  
9                   sales force of adequate size to represent and promote the sale of CCA’s Products.”  
10                  (*Id.* § 3(e).)
- 11                 • **Delivery Window:** It was “essential” to CCA to have a “maximum of 3 day[]  
12                 window between Customer orders and delivery” and thus, Herbl was required to  
13                 “promptly deliver to its customers in the Territory the Products in accordance with  
14                 good business practice.” (Agreement §§ 3(f), 27.)
- 15                 • **Reporting Requirements:** Herbl was required to “provide reports” to CCA “that  
16                 include[d] all information and data materially relevant to an evaluation of [CCA’s]  
17                 brand and Herbl’s performance, including, but not limited to, all reports reasonably  
18                 requested by [CCA] to demonstrate compliance with the material terms of the  
19                 Agreement.” (Agreement § 24.) The Agreement allowed CCA to “submit requests  
20                 to Herbl for additional information and data relating to [CCA’s] account” and  
21                 mandated that Herbl “prepare reports setting forth the requested information and  
22                 data,” using “commercially reasonable efforts to provide all such information and  
23                 data in a timely manner and in the format requested.” (*Ibid.*)
- 24                 • **Prompt Payment of Invoices:** Herbl was required to “purchase and take control of  
25                 all inventory for Products from [CCA] and pay all invoices on net 30-day terms from  
26                 the date when the cannabis was released from quarantine and released for sale and  
27                 delivery.” (Agreement § 3(a).)
- 28

- **Storage:** Herbl was also required to provide cold storage for CCA products in a manner approved by CCA. (Agreement § 7.)

16. In discussions that preceded the execution of the Agreement, Herbl assured CCA that it could meet these obligations and perform according to the metrics and expectations set forth in the Agreement.

**C. History of Herbl's Numerous Breaches of Contract.**

17. Not long after CCA and Herbl began working together, it became clear that Herbl was unable and unwilling to meet its obligations with respect to: (1) setting and meeting sales goals; (2) maintaining an adequately sized sales force to help represent and promote CCA's products; (3) meeting the agreed-upon essential delivery windows; (4) paying invoices; (5) accurately reporting its sales and delivery metrics; and (6) providing adequate storage for CCA's products. CCA repeatedly notified Herbl that it was breaching the Agreement, and CCA repeatedly tried to make the relationship work.

**Herbl Failed to Meet Sales Goals**

18. As contemplated under the Agreement, Herbl was to agree with CCA to a sales goal for 2021 and Herbl was required to meet that sales goal. (See Agreement §§ 10, 11(a)(iv).) Herbl did neither.

19. In November 2020, CCA approached Herbl about establishing a sales goal for 2021 pursuant to Section 10 of the Agreement. CCA proposed a sales goal of [REDACTED], but Herbl failed to respond in any meaningful way to this proposed sales goal or provide CCA with a counterproposal. Because Herbl would not agree to CCA's proposal, Herbl and CCA entered 2021 without an agreed upon sales goal as required by the Agreement.

20. In February 2021, Herbl for the first time responded to CCA's proposal for sales in 2021. But instead of agreeing to the [REDACTED] number, Herbl rejected the proposal without providing a counterproposal or any solution to break the stalemate. It wasn't until three months into 2021 that Herbl finally agreed to the CCA-proposed [REDACTED] sales goal.

21. Herbl's performance fell woefully short of that agreed goal. Total sales for the year only reached 50% of that goal, which is a breach of Section 11(a)(iv) of the Agreement. Herbl also

1 implemented policies that harmed CCA’s sales, in breach of the Agreement. For example, Herbl  
2 refused to allow the sales representatives to fulfill orders for CCA’s products if dispensary clients  
3 had an outstanding balance due on *another brand’s* account. And in some instances, if one  
4 dispensary was in arrears on amounts due to Herbl—having nothing to do with CCA—Herbl would  
5 block the sales team from selling CCA’s products to any dispensaries in that retailer’s chain of  
6 stores. These policies drastically impacted CCA’s sales and hindered the ability of the sales team  
7 to reach their goals.

8 22. Herbl’s failure to come close to meeting its sales goal became abundantly clear to  
9 CCA no later than June 2021. By July 2021, CCA realized it would need to take over Herbl’s sales  
10 obligation entirely in order to achieve anything close to the agreed sales goal.

11 **Herbl Failed to Maintain an Adequate Sales Force**

12 23. A key component of the Agreement between CCA and Herbl was Herbl’s  
13 commitment to maintaining a minimum sales staff of six people dedicated solely to promoting  
14 CCA’s products. (*See* Agreement §§ 3(e), 23.)

15 24. This minimum number of salespeople was agreed to when CCA was selling  
16 approximately one half of the volume that it was selling in 2021 and approximately one quarter of  
17 the volume that Herbl had committed to. Notwithstanding, Herbl refused to even maintain this  
18 minimum sales force when it was very clear that a substantially larger, better trained and better  
19 managed sales force was required. Herbl was failing to “use all commercially reasonable efforts to  
20 maintain a fully informed and trained sales force of adequate size to represent and promote the sale  
21 of CCA’s Products” and refused to provide any indication that it was willing to meet its obligations.

22 25. Herbl did not even maintain the minimum of six sales people, refused to come up  
23 with any corrective actions for its continued failure to perform, and was unable to reach even half  
24 of the agreed-upon monthly sales goal. At that point, in an effort to salvage the relationship, CCA  
25 suggested that the parties revisit the Agreement. In May 2021, CCA sent multiple drafts of  
26 amendments to the Agreement and worked with Herbl through July 2021. However, Herbl  
27 continued to remain unable to live up to its commitment and an agreement on a reasonable  
28 modification of the distribution fee was not going to be reached. So CCA determined it had no



1 choice but to bring the sales function in-house in order to mitigate the damages caused by Herbl’s  
2 breach. CCA hired the three sales people at Herbl that had been working on CCA’s account and  
3 took over the majority of sales from that point forward.<sup>3</sup>

4 26. The inadequate sales force maintained by Herbl could not handle the increased  
5 volume of sales sought by CCA and the increased number of dispensaries that were now open in  
6 California, so CCA immediately increased the size of this dedicated sales team to thirteen sales  
7 people and three regional managers.

8 27. Even though CCA took over about 70% of the volume of the sales orders from Herbl  
9 starting in July 2021, Herbl insisted that it be able to continue to sell, market and promote CCA’s  
10 products. Herbl’s general sales staff needed CCA on their roster of brands in order to access  
11 dispensaries not otherwise available to Herbl. Herbl took advantage of CCA’s brand recognition  
12 and customer loyalty to try to push its other brands, to CCA’s detriment. Herbl rode CCA’s  
13 coattails while CCA picked up the slack and did the work Herbl was contractually required to do.  
14 Herbl also sought to ensure that it would be “entitled to a 3% gross margin for the delivery of  
15 products” that CCA generated with regards to direct-to-consumer sales.

16 **Herbl Failed to Deliver CCA Products during the Agreed-Upon Delivery Window**

17 28. In addition to the above-mentioned breaches of the Agreement, Herbl also failed to  
18 meet the critical 3-day delivery window that the Agreement recognized was “essential” to CCA.  
19 (*See* Agreement §§ 3(f), 27.)

20 29. Herbl’s operations and sales fulfillment team was disorganized and unsophisticated.  
21 They did not communicate effectively—or in some cases at all—with CCA’s dedicated sales team.  
22 They prevented orders from being fulfilled and delivered if they were placed outside of Herbl’s  
23 randomly selected “anchor” dates. Shipments were missed or delayed simply because Herbl could  
24 not figure out the logistics necessary to get CCA’s products to dispensaries within the 3-day  
25 delivery window. Customers were frustrated and CCA’s dedicated sales team at Herbl was on the  
26 receiving end of numerous complaints.

27  
28 <sup>3</sup> Notably, at the time, Herbl was in breach of Section 23 of the Agreement as Herbl only employed  
four instead of six dedicated sales staff to the CCA account.

1           30.     On March 3, 2020, CCA sent an email to Herbl’s CEO providing him with CCA’s  
2 Distribution Scorecard showing that Herbl was missing the delivery times required under the  
3 contract in clear violation of Section 27 of the Agreement, which noted that it was an “essential”  
4 goal to have a maximum three-day window between customer orders and delivery. Herbl did not  
5 respond to the email and never provided any suggested solution for how it would meet the  
6 Agreement’s 3-day delivery window.

7           31.     In April 2020, after missing numerous payment deadlines, Herbl requested the first  
8 of several amendments to extend the payment terms under the Agreement. Because CCA knew  
9 that the delivery window was not being met, CCA responded with new service level agreements  
10 (“SLAs”), in the hopes that it could bring Herbl back into compliance with its obligations. CCA’s  
11 proposed amendments allowed for 45-day payment terms with some security for its increased  
12 accounts receivable (“AR”) and provided for new SLAs that would increase Herbl’s percentage of  
13 sales if it could hit its agreed-upon 72-hour order to delivery requirement.

14           32.     Even though CCA was willing to further incentivize Herbl to achieve the  
15 contractually required delivery window, Herbl never agreed to the amendment and never proposed  
16 an alternative solution. Herbl just continued to miss the target of having only three days pass  
17 between a customer’s order and Herbl’s delivery of CCA products.

18           33.     Not only did Herbl fail to meet this delivery window, it also provided CCA with a  
19 completely false analysis of its delivery cycle time in an attempt to hide the fact that it was failing  
20 to meet one of CCA’s essential expectations in the Agreement.

21           34.     On August 30, 2021, Herbl provided CCA with a report showing that between 88–  
22 90% of CCA’s orders were being delivered within 48 hours. However, CCA was able to easily  
23 determine that this simply wasn’t true. Numerous dispensary customers had complained they  
24 weren’t getting CCA’s products on time, so CCA decided to run its own analysis of the order to  
25 delivery cycle times.

26           35.     On September 17, 2021, CCA provided its analysis of the delivery cycle times to  
27 Herbl. Unlike the report from Herbl, CCA’s analysis indicated that it took an average of 3–4 weeks  
28 (not 48 hours) for Herbl to complete all the orders taken during a single week. Based upon this

1 report and the metrics available to CCA, it became clear to CCA that Herbl's reports were  
2 fraudulent. CCA then provided Herbl with another notice that it was in breach of the Agreement.

3 36. CCA caught Herbl in this lie and demanded that Herbl meet the delivery standards  
4 required under the contract and provide accurate reporting. On September 30, 2021, CCA met with  
5 Herbl about its failure to meet the delivery standards required under the contract. Herbl promised  
6 to provide an accurate report of the delivery cycle.

7 37. In December 2021, over two months after Herbl had been notified that it was in  
8 breach of the Agreement with regard to delivery times and that the report that it provided to CCA  
9 was inaccurate, Herbl produced a report covering the prior six weeks of delivery performance. The  
10 report showed that Herbl still wasn't able to deliver CCA's products within the agreed upon 72-  
11 hour window. Herbl did not provide any solution to cure this breach.

### 12 **Herbl Failed to Pay Its Invoices**

13 38. As noted above, Herbl missed payment deadlines starting as early as April 2020. In  
14 February 2021, Herbl requested another extension of its accounts receivable due to CCA because  
15 of a delay in a bridge loan coming through for Herbl. CCA was willing to agree to the extension,  
16 so long as Herbl was committed to fulfilling its other contractual obligations related to  
17 management, order fulfillment, sales and reporting.

18 39. Then, in December 2021, Herbl once again failed to make timely payments as  
19 required under the Agreement. CCA began pressing Herbl to make the outstanding payments. At  
20 that point, Herbl owed CCA [REDACTED] in overdue invoices. Herbl promised it would pay the  
21 overdue invoices by January 4, 2022. The date came and went with no payment by Herbl.

22 40. To date, Herbl has an outstanding balance of [REDACTED].

### 23 **Herbl Failed to Provide Required Reporting Metrics**

24 41. On November 13, 2019, CCA provided Herbl with notice of the early issues it had  
25 with Herbl's performance related to sales metrics, specifically pointing out Herbl's lack of sales  
26 metrics and lack of communication around inventory management and logistics.

27 42. Relying on Sections 3, 23, and 24 of the Agreement, CCA requested that Herbl  
28 provide the contractually required reporting metrics and sales team management from Herbl that it

1 was not getting, such as QBRs, year to date performance metrics, key initiatives, and a 2020 market  
2 outlook. Herbl failed to respond.

3 **Herbl Failed to Provide Adequate Storage for CCA's Products**

4 43. In addition to the above-mentioned breaches of the Agreement, Herbl also failed to  
5 provide adequate cold storage for CCA's products.

6 44. In February 2021, Herbl complained about the large inventory that it was being  
7 required to carry to supply customers with CCA products. But, as CCA clearly pointed out to Herbl  
8 at the time, the reason that Herbl was carrying so much inventory was due in part to its failure to  
9 provide storage for CCA-owned products in its facility as required by the Agreement in Section 7.  
10 Herbl did not suggest any alternatives or otherwise attempt to remedy the breaches it was on notice  
11 of in February 2021. Herbl likewise never provided CCA with a solution for this breach or a  
12 timeline to cure it.

13 **CCA Had No Choice But to Terminate the Agreement**

14 45. On January 3, 2022, based on these numerous and continuous breaches of the  
15 Agreement summarized above, CCA sent a letter notifying Herbl that it intended to terminate,  
16 asking that Herbl no longer sell any CCA products after January 18, 2022.

17 46. On January 4, 2022, CCA sent Herbl a supplemental notice of an additional breach  
18 as Herbl had also failed to make payment on outstanding invoices totaling [REDACTED] that was  
19 due on or before January 4, 2022, even though Herbl had responded by demanding that CCA  
20 continue to comply with the terms of the contract.

21 47. Finally, on January 7, 2022, CCA sent notice to Herbl terminating the Agreement  
22 effective immediately. Herbl filed this lawsuit on January 10, 2022, the same date Herbl  
23 substantively responded to CCA's January 3, 2022 letter.

24 **D. CCA Mitigates Its Damages By Finding Another Distributor.**

25 48. For over a year, Herbl had made no effort to repair the relationship or cure its  
26 performance defects including, but not limited to, its total failure to meet the parties' agreed sales  
27 goals for CCA products.

1           49.     However, for most of that time, CCA had no other option for a distribution partner.  
2     There were no other companies licensed to distribute cannabis in California that could handle  
3     CCA’s sales volume. CCA was stuck. It needed to get its products into retail stores and had to  
4     rely on a licensed distributor to do that.

5           50.     Herbl’s Mr. Beaudry also made it very clear that he would retaliate against CCA if  
6     CCA’s tried to part ways with Herbl. In a thinly veiled threat, Mr. Beaudry told CCA that other  
7     brands had left Herbl in the past, and as a parting shot, Herbl told those companies they had to  
8     immediately “come pick up their shit” without any lead time. If Mr. Beaudry followed through on  
9     this threat with CCA, it would mean a supply chain disruption of three to four weeks and further  
10    sales shortfalls. CCA could not afford to take this risk.

11          51.     Notwithstanding Mr. Beaudry’s threat, by the end of 2021, it was clear to CCA that  
12    it could no longer do business with Herbl. Instead of putting the distribution of its products on hold  
13    for a month, as threatened by Herbl’s CEO, CCA set out to mitigate its damages by finding a  
14    replacement distributor. CCA began discussing its distribution needs with Nabione, Inc. (“Nabis”),  
15    another company licensed in California to distribute cannabis products.

16          52.     CCA began exploring the option of working with Nabis to distribute CCA’s  
17    products as a backup plan. When Nabis demonstrated that it would be able to handle the scope of  
18    CCA’s distribution needs, CCA decided to make the switch. CCA could no longer handle or  
19    accommodate Herbl’s failures, which Herbl had notice of but did not cure. As demonstrated  
20    repeatedly, Herbl could not give CCA what it needed and would not commit to fulfilling its  
21    contractual obligations. CCA avoided a month-long lapse in sales by onboarding Nabis to take  
22    over distribution promptly upon Herbl’s termination.

23          53.     Herbl failed to live up to its own promises, refused to acknowledge it was unable to  
24    perform under the Agreement, and ignored CCA’s repeated attempts to mend the relationship.  
25    CCA reached a breaking point and simply had to move on, so it terminated the Agreement with  
26    Herbl. CCA now seeks to recover the damages caused by Herbl’s multiple breaches of its  
27    Agreement with CCA.

1 **FIRST CAUSE OF ACTION**

2 **(BREACH OF CONTRACT)**

3 54. Cross-Complainant incorporates by reference the allegations in the foregoing  
4 paragraphs.

5 55. CCA and Herbl entered into the Agreement, a valid and binding contract. CCA  
6 performed all that the contract required of it, and all conditions required under the contract for  
7 Herbl's performance were met. Herbl breached the Agreement in numerous ways including, but  
8 not limited to, by:

- 9
- 10 • failing to meet the stated goals of the Agreement (Agreement § 3);
  - 11 • failing to make 85% of its deliveries within the 3-day window between customer  
12 orders and delivery<sup>4</sup> (Agreement §§ 11, 27);
  - 13 • failing to meet the annual sales goals of [REDACTED] by more than the required  
14 15% margin (Agreement §§ 10, 11, Ex. B);
  - 15 • failing to provide sales support, including leading weekly sales performance  
16 calls and hiring, training, maintaining and supporting at least six full-time sales  
17 and management personnel to be 100% dedicated to the exclusive promotion  
18 and sale of all CCA products (Agreement §§ 3(e), 23);
  - 19 • failing to make timely payments on invoices (Agreement § 25);
  - 20 • failing to comply with the Agreement's provisions mandating office space for  
21 six CCA employees at the Herbl facilities and cold storage for CCA finished  
22 goods (Agreement §§ 6, 7), among other things; and
  - 23 • dumping the remaining CCA products in Herbl's inventory in the market at a  
24 steep discount to the agreed upon wholesale price (Agreement § 9).

25 56. CCA has been harmed<sup>4</sup> by Herbl's failure to fulfill its obligations under the  
26 Agreement, and Herbl's breach of the Agreement was a substantial factor in causing that harm. As  
27

28 <sup>4</sup> Not only did this failure violate the sales and distribution goals of the Agreement, Herbl also provided incorrect metrics, falsely telling CCA that it was meeting its goals when it was not.

1 noted above, CCA relied on Herbl to timely distribute its products and by failing to meet sales goals  
2 and delivery times, CCA lost footing in the market and suffered setbacks in growing its business.

3 57. As a proximate result of Herbl's multiple breaches of the Agreement, Cross-  
4 Complainant has suffered damages in an amount to be determined at trial, but which Cross-  
5 Complainant is informed and believes includes (1) an outstanding balance of [REDACTED] for  
6 unpaid invoices; (2) cost incurred by CCA in connection with transitioning the sales teams from  
7 Herbl to CCA and to expand this team to an adequate size; (3) harm caused to CCA's market value  
8 due to Herbl's conduct and breach of the Agreement in excess of \$250 million; (4) devaluation of  
9 CCA's Raw Garden brand due to Herbl's unauthorized price reductions and product dumps; and  
10 (5) damages of approximately \$70 million caused by Herbl's failure to meet the above-mentioned  
11 [REDACTED] sales goal.

## 12 **SECOND CAUSE OF ACTION**

### 13 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**

14 58. Cross-Complainant incorporates by reference the allegations in the foregoing  
15 paragraphs.

16 59. CCA and Herbl entered into the Agreement, a valid and binding contract. In  
17 addition to breaching the express terms of the Agreement as discussed in detail above, Herbl's  
18 conduct also constitutes a breach of the implied covenant of good faith and fair dealing.

19 60. Specifically, Herbl had implied duties under the Agreement to act in good faith to  
20 promote, support, and represent the CCA brand—to essentially be the spokesperson for the brand  
21 and interface directly with customers. Herbl's non-responsiveness, its failure to be a dependable  
22 partner to CCA, and its inability to truthfully assess its own shortcomings related to its performance  
23 under the Agreement all constitute breaches of the implied covenant of good faith and fair dealing.  
24 As described above, Herbl also implemented policies that inhibited the sales of CCA's products.

25 61. Herbl's breaches of these implied covenants ultimately frustrated CCA's ability to  
26 grow to expected levels or to meet the demands of its customers.

27 62. As a result of Herbl's breaches of the implied covenant of good faith and fair  
28 dealing, Cross-Complainant has suffered damages to be determined at trial.

1 **THIRD CAUSE OF ACTION**

2 **(ACCOUNT STATED)**

3 63. Cross-Complainant incorporates by reference the allegations in the foregoing  
4 paragraphs.

5 64. CCA and Herbl entered into an Agreement on October 1, 2019. Herbl owes CCA  
6 money as seen by the outstanding invoices.

7 65. CCA and Herbl explicitly agreed in writing and through their own words and actions  
8 that the amount that CCA claims to be due from Herbl is the correct amount owed.

9 66. As a party to the Agreement, Herbl promised to pay the stated amount to CCA and  
10 has not paid CCA to date the full amount owed under this account, which totals [REDACTED].

11 **FOURTH CAUSE OF ACTION**

12 **(OPEN BOOK ACCOUNT)**

13 67. Cross-Complainant incorporates by reference the allegations in the foregoing  
14 paragraphs.

15 68. CCA and Herbl had financial transactions together as seen through the terms of the  
16 Agreement. CCA, in the regular course of business, kept an electronic account of the debits and  
17 credits involved in this transaction. Herbl owes CCA money on the account totaling [REDACTED].

18 **PRAYER FOR RELIEF**

19 WHEREFORE, CCA respectfully prays for judgment against Herbl as follows:

- 20 A. Entering a judgment in favor of Cross-Complainant on all causes of action herein;  
21 B. For damages to be proven at trial;  
22 C. For an award of costs and expenses of suit herein, including attorneys' fees;  
23 D. For prejudgment interest of 10% pursuant to Cal. Civ. Code § 3289 for damages  
24 arising from contractual breach;  
25 E. For post-judgment interest as allowed by law; and  
26 F. For any and all such further or other relief as the Court may deem just and proper.



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Dated: March 7, 2022

Respectfully submitted,

By: /s/ Jennifer Briggs Fisher  
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Attorneys for Defendant/Cross-Complainant  
CENTRAL COAST AGRICULTURE, INC. dba  
Raw Garden and Defendant NABIONE, INC.  
dba NABIS

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**DEMAND FOR JURY TRIAL**

Cross-Complainant demands a jury trial on all claims that are triable to a jury.

Dated: March 7, 2022

Respectfully submitted,

By: /s/ Jennifer Briggs Fisher  
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Raw Garden and Defendant NABIONE, INC.  
dba NABIS

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I have read the foregoing Cross-Complaint

\_\_\_\_\_ and know its contents.

CHECK APPLICABLE PARAGRAPHS

- I am a party to the action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
- I am  an officer  a partner  \_\_\_\_\_ of Central Coast Agriculture, Inc.

\_\_\_\_\_ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.  I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.  The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

- I am one of the attorneys for \_\_\_\_\_ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on March 7, 2022 at Santa Barbara, California.

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

Matthew Allen

Type or Print Name

DocuSigned by:  
Matthew Allen  
815F482F030C889...

Signature