

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
12/26/2023 10:48 AM
By: Narzralli Baksh , Deputy

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA BARBARA – SOUTH COUNTY DIVISION**

10
11 EAST WEST BANK, a California state
banking corporation,
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Plaintiff,
13
v.
14 HERBL, INC., California corporation, dba
15 HERBL, HERBL DISTRIBUTION
SOLUTIONS, and HDS NATURALS,
16
Defendant.

Case No. 23CV02629

Hon. Colleen K. Sterne

**RECEIVER KEVIN SINGER'S NOTICE
OF MOTION AND MOTION FOR
ISSUANCE OF ORDER AUTHORIZING
AND CONFIRMING SALE OF
RECEIVERSHIP PERSONAL
PROPERTY; DECLARATION OF KEVIN
SINGER; MEMORANDUM OF POINTS
AND AUTHORITIES**

Date: January 8, 2024
Time: 10:00 a.m.
Dept. 5

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20 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE** that on January 8, 2024, at 10:00 a.m. or as soon thereafter as
22 the matter may be heard, in Department 5 of the above-entitled Court located at 1100 Anacapa
23 Street, Santa Barbara, California 93121-1107, counsel for Court Appointed Receiver Kevin Singer
24 ("**Receiver**") will appear remotely and move the Court for the issuance of an Order Authorizing
25 and Confirming Sale of Receivership Personal Property comprised of accounts receivable
26 ("**Accounts Receivable**").

27 This motion is made pursuant to California Code of Civil Procedure §568.5, on the
28 following grounds:

1 On June 28, 2023, this Court issued an Order (1) Approving Stipulation for Appointment
 2 of Receiver; (2) Appointing Receiver; and (3) Issuing Preliminary Injunction (the “**Order**”). The
 3 Order appointed the Receiver with authority to sell “any assets of the Receivership Estate in
 4 [Receiver’s] possession on a commercially reasonable basis,” subject to Plaintiff’s reasonable
 5 approval and the general sale provisions in the order, and that all applications for approval of
 6 receivership assets with a proposed purchase price of more than \$250,000 be brought before the
 7 Court on noticed motion or ex parte notice.


8 Since the issuance of that Order, the Receiver has diligently carried out the work directed
 9 and has entered into an Asset Purchase Agreement (“**APA**”) to sell the Accounts Receivable to
 10 Distro Accounts Receivable LLC (“**Buyer**”) for \$600,000.00, with the sale subject to the final
 11 approval of this Court.

12 The APA that the Receiver has reached with Buyer confers a significant benefit on the
 13 parties and helps accomplish the purpose for which the Receiver was appointed in this matter.
 14 The Receiver therefore seeks the issuance of an Order by this Court allowing him to close the sale
 15 in question to Buyer so that the Receiver can close the sale.

16 This motion will be based on the pleadings, papers and records on file herein, the
 17 accompanying memorandum of points and authorities, the declaration of Kevin Singer, and all
 18 exhibits attached thereto, and any evidence, both oral and documentary, as may be presented at the
 19 hearing of this Motion.

20 **PLEASE TAKE FURTHER NOTICE** that pursuant to the Court’s December 21, 2023
 21 ruling on the Receiver’s Ex Parte Application for Order Shortening Time, any opposition to the
 22 motion is to be filed and served electronically no later than January 3, 2024, and any reply is to be
 23 filed and served electronically no later than January 5, 2024 at noon.

24 DATED: December 21, 2023 ERVIN COHEN & JESSUP LLP

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 26 By: 
 27 _____
 Blake C. Alsbrook
 Attorneys for Receiver Kevin Singer

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DECLARATION OF KEVIN SINGER

I, Kevin Singer, declare as follows:

1. I am the duly-appointed and acting State Court Receiver in the above-referenced matter. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, I could and would testify competently to such facts under oath.

2. On or about June 28, 2023, this Court entered an Order (1) Approving Stipulation for Appointment of Receiver; (2) Appointing Receiver; and (3) Issuing Preliminary Injunction ("**Appointment Order**"), appointing me as the Receiver to take complete possession, custody and control of defendant HERBL, Inc. ("**Defendant**" or "**HERBL**") and its assets. A true and correct copy of the Appointment Order is attached hereto as **Exhibit 1**.

3. The Appointment Order appointed me as the Receiver over HERBL and "all the assets" of HERBL. (Ex. 1 at ¶1.) The Appointment Order provides that I may "sell any assets of the Receivership Estate in [my] possession on a commercially reasonable basis," subject to Plaintiff's reasonable approval and the general sale provisions in the order, and that all applications for approval of receivership assets with a proposed purchase price of more than \$250,000 be brought before the Court on noticed motion or ex parte notice." (Ex. 1 at ¶3(q) and (x).)

4. One of HERBL's primary assets is a significant amount of outstanding, uncollected accounts receivable due from various cannabis dispensaries, totaling approximately \$8,728,240. For purposes of simplification and clarification for the Court, HERBL was a distributor of cannabis, meaning that it purchased from growers/manufacturers and sold to retailers on "terms", meaning that it would be paid within a predetermined time period. In many cases the retailers thereafter failed to remit payment, and HERBL therefore retains a right to collect.

5. Unfortunately, in many cases, HERBL's failure to recover from retailers meant that it was incapable of paying its own debts due and owing to manufacturers and brands for the purchase of products.

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1 6. After my appointment, I retained WeCann, a notable California cannabis asset
2 broker, to assist me in the marketing process for the various assets in this matter. WeCann and my
3 Receivership Administration team spent significant time valuing and marketing the Accounts
4 Receivable, among other property of HERBL.

5 7. In an effort to assist the various brands and manufacturers who were not paid by
6 HERBL, my team scheduled a round table and discussed an arrangement by which the
7 brands/manufacturers could purchase accounts receivable related to the sale of their own products
8 and attempt to collect themselves. Unfortunately, this proposal was rejected by the brands and
9 manufacturers, many of whom were angry and unhappy regarding the demise of HERBL and the
10 general state of the cannabis market in California. I explained to these brands and manufacturers
11 that, to the extent they did not purchase their own accounts receivable, it was my job as Receiver
12 to sell the Accounts Receivable on the open market to the highest bidder, free and clear of liens
13 and claims, meaning that it was quite possible they would not be paid anything, as unsecured
14 creditors. Despite my attempts, the retailers were not forthcoming, and I continued my marketing
15 efforts.

16 8. I received an initial offer from Distro Accounts Receivable LLC ("**Buyer**") of
17 \$900,000.00 for the Accounts Receivable, which was the highest offer I received. My counsel
18 prepared an Asset Purchase Agreement ("**APA**") that was fully executed on November 9, 2023, a
19 true and correct copy of which is attached hereto as **Exhibit 2**. The offer from Buyer was
20 ultimately reduced to \$600,000.00 (the "**Purchase Price**") to account for a reduced amount of
21 Accounts Receivable that would be transferred to Buyer as well as market factors such as the
22 closure of certain retailers to be collected from, pursuant to the First Amendment to the APA
23 ("**First Amendment**") and the Second Amendment to the APA ("**Second Amendment**"), true and
24 correct copies of which are attached hereto as **Exhibits 3 and 4**.

25 9. After exercising my business judgment and working directly with my broker, I
26 determined \$600,000.00 to be a fair and reasonable purchase price for the Accounts Receivable
27 under the circumstances. Moreover, the sale of the Accounts Receivable is beneficial to the Estate
28 because it accomplishes the sale of a significant asset, does so at market value, and by selling as a


1 large bundle avoids the transaction costs and legal fees that would be associated with smaller sales
2 of accounts receivable amounts due and owing.

3 10. The APA provides for the sale of the Accounts Receivable free and clear of liens
4 and interests, meaning that no individual or entity will be allowed to claim amounts due and owing
5 from any Accounts Receivable actually collected. Selling free and clear of liens is the only
6 manner in which the Accounts Receivable can be marketed and sold. To the extent that any
7 brands and manufacturers claim rights under payments received, their recovery will be made
8 available from the Receivership Estate funds in their position as unsecured creditors.

9 11. On or about December 11, 2023, pursuant to the PSA, Buyer wired \$300,000.00 to
10 my receivership account, and I am currently holding Buyer's funds pending Court approval of the
11 APA. As agreed upon in the APA, until this Court approves the sale and enters its Order, the
12 funds cannot be used for any purpose. If the sale is denied, the funds will be returned to the Buyer.

13 12. Pursuant to the terms of the Appointment Order, I have obtained the approval of the
14 Plaintiff in this matter for the current transaction.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct and that this Declaration was executed on December 21, 2023 at Los
17 Angeles, California.

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Kevin Singer

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MEMORANDUM OF POINTS AND AUTHORITIES

A receiver’s powers in any particular action are established by statute, the appointment order, and the court’s subsequent orders governing the scope and extent of the receiver’s power. (*See Cal-American Income Property Fund VII v. Brown Development Corp.* (1982) 138 Cal.App.3d 268, 273.) “If authorized by court order, a receiver may sell real or personal property in the receiver’s possession.” (Miller & Starr, 12 Cal. Real Est. (4th ed. 2023) § 41:13 [citing C.C.P. § 568.5].) The Receiver’s sale of property may be made free and clear of liens. (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 684.) Here, the relevant statutory authority, and this Court’s Appointment Order, establish the Receiver’s authority to sell the Accounts Receivable as described in the APA.

As described in the Declaration of Kevin Singer above, after exercising his business judgment, the Receiver determined that the sale of the Accounts Receivable for the Purchase Price of \$600,000.00 is fair and reasonable under the circumstances. Disposing of the Accounts Receivable in this manner meets the exigencies of the case and is in the best interests the creditors. Consequently, the Receiver respectfully requests this Court authorize and confirm the sale immediately.

DATED: December 21, 2023

ERVIN COHEN & JESSUP LLP

By: 

 Blake C. Alsbrook
 Attorneys for Receiver Kevin Singer

EXHIBIT “1”

FILED

SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

06/28/2023

Darrel E. Parker, Executive Officer

BY Chavez, Terri

Deputy Clerk

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10 Attorneys for Plaintiff
EAST WEST BANK

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SANTA BARBARA– SOUTH COUNTY DIVISION

16 EAST WEST BANK, a California state
banking corporation,

17 Plaintiff,

18 vs.

19 HERBL, INC., a California corporation,
20 dba HERBL, HERBL DISTRIBUTION
SOLUTIONS, and HDS NATURALS,

21 Defendant.

CASE NO. 23CV02629

Assigned to: Hon. Colleen K. Stern

~~[PROPOSED]~~ ORDER

(1) APPROVING STIPULATION FOR
APPOINTMENT OF RECEIVER;

(2) APPOINTING RECEIVER; AND

(3) ISSUING PRELIMINARY
INJUNCTION

Hearing Information:

Date: June 28, 2023

Time: 8:30 A.M.

Dept.:5

Complaint Filed: June 20, 2023

Snell & Wilmer
L.L.P.
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000

1 The Court, having considered (i) the Complaint filed by Plaintiff East West Bank
2 (“Plaintiff”), (ii) the Stipulation for Appointment of Receiver and Issuance of Preliminary
3 Injunction (“Stipulation”); (iii) the Nomination of Kevin Singer as Receiver; and (iv) the Oath of
4 Receiver; and good cause appearing, makes and enters the following Order:

5 IT IS ORDERED that the Stipulation is granted.

6 **RECEIVER’S APPOINTMENT AND DUTIES**

7 IT IS FURTHER ORDERED that:

8 1. Kevin Singer shall be and is appointed as Receiver (“Receiver”) of defendant
9 HERBL, Inc. (“Defendant”) and all the assets of Defendant (collectively, the “Receivership
10 Estate”), with the full power of a general equity receiver.

11 2. Upon the entry of this Order, and because the Receiver has already filed his Oath
12 of Receiver, the Receiver shall be vested with all the powers and responsibilities of a general
13 equity receiver as provided by law to receivers and as specifically set forth herein.

14 3. The Receiver is authorized and directed to perform the following duties:
15 a. Take possession, custody and control of the Receivership Estate.
16 b. Assume full control of Defendant, including by removing, as the Receiver
17 deems necessary or advisable, any director, officer, manager, independent contractor, employee,
18 or agent of any Defendant, from control of, management of, or participation in, the affairs of
19 Defendant.

20 c. Acquire from Defendant, its members, officers, managers, accountants,
21 managing members, and agents, all keys, contracts, agreements, all books and records, books of
22 account, ledgers, operating statement, budgets, all banking records, tax bills wherever located,
23 applicable to the Receivership Estate, documentation pertaining to all contracts, completed or in
24 progress, all lease and/or rental agreements, leasehold interests, and all documents, records and
25 accounts pertaining to the operation, development, and operation of Defendant and the
26 Receivership Estate, expressly including, but not be limited to, all information contained on
27 computers and any and all software relating thereto, including any and all passwords, usernames,
28 security questions to access any systems or online portals or accounts necessary to operate or

1 administer the business and/or any of the Receivership Estate.

2 d. Notify the United States Post Office or other mail depository of this Order
3 and instruct it to divert mail to the Receiver;

4 e. Notify applicable local, state and federal taxing authorities of the
5 commencement of the receivership and communicate with said authorities on behalf of the
6 Receivership Estate.

7 f. Open one or more bank accounts for the deposit of assets subject to the
8 receivership, deposit all assets collected in such designated account(s) and, make all payments
9 and disbursements from the Receivership Estate from such account(s).

10 g. Subject to an operating budget reasonably acceptable to Plaintiff, continue
11 to conduct the business, or cease operation of the business, of Defendants in such manner, and to
12 such extent, and for such duration as Receiver may in good faith deem to be necessary or
13 appropriate to operate the businesses profitably and lawfully, if at all.

14 h. Terminate or, subject to an operating budget reasonably acceptable to
15 Plaintiff, retain existing employees or related parties in order to continue any business operations,
16 and in case of such retention, all payroll taxes, workers' compensation insurance, and related
17 costs will be carried and reported as those of Defendant or such related parties, and not of the
18 Receivership Estate.

19 i. Demand, receive, take control of, and collect all income, rents, issues,
20 profits, proceeds, sales, and all other monies arising from assets of the Receivership Estate,
21 including but not limited to, cash, bank accounts, funds in safety deposit boxes, funds in safes,
22 accounts receivable, monies, checks, drafts, securities, letters of credit and any tangible and
23 intangible pledges as security for the letters of credit; collect debts and compromise same; and
24 take any action respecting assets of the Receivership Estate which the Court may authorize. The
25 Receiver shall have the authority to change signatures to the Receiver on signature cards for
26 existing accounts, and to transfer existing accounts, or funds in existing accounts, into account(s)
27 established by the Receiver. Receiver shall have the authority to receive and endorse checks
28 constituting income from the Receivership Estate.

1 j. Instruct any individuals making payments to Defendant to instead make all
2 payments to Receiver.

3 k. Subject to an operating budget reasonably acceptable to Plaintiff, enter into
4 contracts and purchase insurance as the Receiver reasonably deems necessary. If the Receivership
5 Estate has insufficient funds to purchase adequate insurance coverage for the Receivership Estate,
6 funds may be supplied by Plaintiff, or Receiver will seek instructions from the Court with respect
7 to whether insurance will be obtained and how it is to be paid for. Consistent with existing law,
8 the Receiver shall not be responsible for claims or damages arising from not procuring or inability
9 to obtain insurance.

10 l. Subject to an operating budget reasonably acceptable to Plaintiff, obtain
11 and pay for any licenses or permits that the Receiver reasonably believes to be necessary for
12 operation of the Receivership Estate. The Receiver is authorized to assume and utilize and pre-
13 existing licenses or permits, including without limitation licenses governed by the California
14 Department of Cannabis Control, subject to applicable regulations and requirements. This Order
15 shall constitute sufficient documentation under section 15024(b)(4) of Article 3, Division 19 of
16 Title 4 of the California Code of Regulations to show that the Defendant is incapable of
17 performing the duties associated with any license issued under the Medicinal and Adult-Use
18 Cannabis Regulation and Safety Act throughout the term of the receivership. The Receiver may
19 also enter into agreements with local and state government to use or extend licenses, permits, or
20 other authorizations currently in place with respect to the Receivership Estate.

21 m. Subject to an operating budget reasonably acceptable to Plaintiff, incur
22 expenses as Receiver deems advisable or necessary for the care, preservation, and maintenance of
23 the Receivership Estate.

24 n. Maintain accurate records of all receipts and expenditures that the Receiver
25 makes.

26 o. Choose, engage, and employ agents, employees, attorneys, accountants,
27 appraisers, property managers, and other independent contractors and technical specialists as
28 Receiver deems advisable or necessary in the performance of duties and responsibilities under the

1 authority granted by this Order. Subject to an operating budget reasonably acceptable to Plaintiff,
2 Receiver shall be permitted to pay such individuals out of funds that come into his possession as
3 Receiver to administer the Receivership Estate. Any liability arising therefrom shall be the sole
4 risk and obligation of the Receivership Estate, and not the personal liability of the Receiver.

5 p. Do all things and incur the risks and obligations in managing assets of the
6 Receivership Estate as ordinarily incurred by owners, managers, and operators of similar assets;
7 *provided, however*, that no such risk or obligation so incurred shall be the personal risk or
8 obligation of Receiver, but shall be the risk and obligation of the Receivership Estate.

9 q. Subject to Plaintiff's reasonable approval and paragraph 3.x., *infra*, sell any
10 assets of the Receivership Estate in Receiver's possession on a commercially reasonable basis.

11 r. Use any tax identification or social security numbers previously used in
12 collection with the operation of assets or documents of the Receivership Estate. For the avoidance
13 of doubt, the Receiver may use the State and Federal taxpayer identification numbers of
14 Defendant in connection with all accounts and accounting for the Receivership Estate.

15 s. Issue subpoenas and conduct and participate in discovery, take depositions,
16 pursue contempt actions, and otherwise pursue all remedies available on behalf of the
17 Receivership Estate and/or to ensure compliance with Receiver's authority granted herein.

18 t. Cooperate with reasonable requests for information or assistance from
19 applicable law enforcement agencies.

20 u. Institute, adjust, appear in, intervene in, defend, or compromise or
21 otherwise dispose of legal actions in state, federal, or foreign courts or arbitration proceedings as
22 the Receiver deems necessary or advisable to recover, protect, maintain, or sell assets of the
23 Receivership Estate, or that the Receiver deems necessary or advisable to carry out the Receiver's
24 mandate under this Order, including, but not limited to, actions challenging fraudulent or voidable
25 transfers.

26 v. Exercise any power authorized by statute or ordered by the Court.

27 w. Apply to this Court, at any time, for further or other instructions or orders
28 or for additional or other powers necessary to enable Receiver to properly perform his duties.

1 x. Market for sale, and subject to notice to all parties and with the consent of
2 the Court, sell all, or substantially all, of the receivership assets, including the Defendant's
3 business as a going concern, execute all documents required for such sale, and undertake any and
4 all duties required to effectuate such sale. All applications for approval of such sale, or any other
5 sale of assets with a proposed purchase price of more than \$250,000, shall be brought before this
6 Court by the Receiver on noticed motion or if time does not allow, by *ex parte* notice to all
7 parties. Where such application is brought on *ex parte* notice, all parties shall, unless the Court
8 indicates otherwise, have seven (7) calendar days within which they may file objections together
9 with supporting evidence as to the price or terms of such sale, in which case the Court may either
10 order further briefing, and/or set a hearing for further argument or rule on the pleadings then on
11 file. If no objection is filed within said seven (7) day time period to any *ex parte* application, the
12 Court will conclude that there is no opposition to the Receiver's application.

13 y. Upon a sale of assets pursuant to the immediately preceding paragraph, the
14 Receiver shall disburse, or if appropriate, instruct escrow to distribute all net funds resulting from
15 said sale(s) as follows:

- 16 (i) First to the payment of all fees and expenses incurred by the
17 Receiver and its professionals in managing the Receivership Estate;
- 18 (ii) Second to the expenses of administering the receivership;
- 19 (iii) Third to the payment of Plaintiff's claim;
- 20 (iv) Fourth to the payment of any taxes which, if not paid, would form
21 the basis for a lien on the Receivership Estate; and
- 22 (v) The remainder to be held by the Receiver until further order of this
23 Court in an interest-bearing segregated account with all liens attaching to those
24 funds in the priority in which they are entitled to be paid. However, the Receiver,
25 at any time, may use these segregated funds to pay any taxes, fines, fees or other
26 governmental agency costs or assessments attributable to the Property as they
27 become due.

28 4. All expenses of the operation of Defendant's business are the risk of the

1 Receivership Estate and not the personal obligation of the Receiver.

2 5. A conformed copy of this Order shall be as good as a certified copy for the
3 Receiver's purposes of taking possession and control of Defendant's business and the assets and
4 documents subject to this order.

5 **PRELIMINARY INJUNCTION, REQUIRED COOPERATION, AND**
6 **STAY OF ACTIONS**

7 IT IS FURTHER ORDERED that:

8 6. Defendant and its agents, partners, joint venturers, property managers, officers,
9 employees, assignees, successors, attorneys, representatives, and all persons acting under, in
10 concert with, or for them, and all other persons in possession, custody, or control of any
11 documents or assets of Defendant, who have actual or constructive notice of this order and their
12 agents and employees, shall not:

13 a. Commit or permit any waste of the assets or any part thereof, or suffer or
14 commit or permit any act or any part thereof in violation of law, or remove, transfer, encumber or
15 otherwise dispose of any of Defendant's assets or other property of the Receivership Estate or any
16 part thereof.

17 b. Demand, collect, receive, discount or in any other way divert or use any of
18 the monies or accounts receivable of the Defendant or the Receivership Estate.

19 c. Excuse any debts owed to Defendant.

20 d. Directly or indirectly interfere in any manner with the discharge of the
21 Receiver's duties under this Order or the Receiver's possession of and operation or management
22 of the Defendant's assets and the Receivership Estate.

23 e. Expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage,
24 create a security interest in, encumber, foreclose, conceal or in any manner whatsoever deal in or
25 dispose of the whole or any part of the assets of the Defendant's assets or the Receivership Estate.

26 f. Terminate or otherwise affect any of the contracts or utilities that service
27 the Receivership Estate.

28 g. Destroy, secrete, deface, transfer, or otherwise alter or dispose of any assets

1 or documents subject to the receivership, including, but not limited to, scripts, telephone call logs,
2 audio or visual recordings, correspondence, computer records, websites, other data compilations,
3 electronically-stored records, books, records, accounts, writings, drawings, graphs, charts,
4 photographs, or any other papers or electronic data of any kind or nature.

5 h. Fail to notify the Receiver of any assets subject to the receivership, or to
6 provide any assistance or information requested by the Receiver in connection with obtaining
7 possession, custody, or control of such assets.

8 i. Take any act which will, or would tend to, materially impair, defeat, divert,
9 prevent or prejudice the preservation of the assets of the Defendant or the Receivership Estate.

10 7. Defendant and its agents, officers and employees and all persons acting under, in
11 concert with, or for it, shall cooperate with and assist the Receiver with respect to his possession
12 of and operation or management of the Defendant's assets and documents subject to the
13 receivership, and shall relinquish and turn over immediately, possession to the Receiver, all assets
14 comprising the Receivership Estate, both real and personal property, tangible and intangible
15 property including but not limited to electronic files and records, including, without limitation, all
16 documentation, records, and information set forth in Paragraph 3.c above, and any other
17 documentation, records, and information pertaining to the Receivership Estate reasonably
18 requested by the Receiver.

19 8. All monies, funds, cash, certificates of deposit (CDs) and other fungible assets
20 which are received, or have been received, by Defendant, its agents, servants, employees or
21 representatives, or any persons or entities acting under or in concert with Defendant, shall be
22 turned over to the Receiver within forty-eight (48) hours of the date that this order is served on
23 Defendant, and that Defendant shall simultaneously, upon said turnover, deliver to the Receiver
24 written verification of the source of all said monies being turned over.

25 9. Defendant shall turn over to the Receiver and direct all other third parties in
26 possession thereof to turn over all keys, leases, books, records, books of account, ledgers,
27 operating statements, budgets, any and all passwords, usernames, security questions to access any
28 systems, electronic or online portals or accounts necessary to operate the business, and all other

1 Receivership Estate records relating to the Receivership Estate, wherever located, and in
2 whatever mode maintained, including information stored electronically or contained on
3 computers and any and all software relating thereto as well as all banking records, statements and
4 cancelled checks.

5 10. Defendant shall turn over to the Receiver, all documents which pertain to all
6 licenses, permits and any local, State and Federal government approvals relating to its business,
7 and shall immediately advise the Receiver of their Federal Taxpayer Identification Number used
8 in connection with the operation of the business which the Receiver is authorized to use in
9 connection with the administration of the Receivership Estate.

10 11. With respect to any existing insurance coverage, Defendant shall immediately
11 instruct its insurance company(ies) or agent(s) to name the Receiver as additional insured on all
12 insurance policies covering the Receivership Estate or the Defendant's employees and/or the
13 Receiver and his agents including property managers and employees who are working with the
14 Receivership Estate for the period that the Receiver is in possession and/or control of the
15 Receivership Estate.

16 12. The Plaintiff and its officers, employees, attorneys and agents shall have access to
17 inspect the Receivership Estate and the monies (upon reasonable advance notice to the Receiver)
18 to enable them to review the same from time to time during the pendency of this Receivership.

19 13. Upon service of a copy of this Order, all banks, broker-dealers, savings and loans,
20 escrow agents, title companies, commodity trading companies, or other financial institutions shall
21 cooperate with all reasonable requests of the Receiver or his agents relating to implementation of
22 this order, including transferring funds at his direction and producing records related to the assets
23 of the Receivership.

24 14. Except by leave of this Court, during pendency of the receivership ordered herein,
25 Defendant and all clients, vendors, and creditors of Defendant, and all others acting on behalf of
26 any such client, vendor, or creditor, including sheriffs, marshals, other officers, deputies, servants,
27 agents, employees, and attorneys, aside from the Receiver, are hereby stayed from taking any
28 action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the

1 name of, Defendant, any of their partnerships or entities, or the Receiver or the Receiver's duly
2 authorized agents acting in their capacities as such, including, but not limited to, the following
3 actions:

4 a. Commencing, prosecuting, continuing, entering, or enforcing any suit or
5 proceeding, except that such actions may be filed to toll any applicable statute of limitations.

6 b. Accelerating the due date of any obligation or claimed obligation; filing or
7 enforcing any lien; taking or attempting to take possession, custody or control of any asset subject
8 to the receivership; attempting to foreclose, forfeit, alter or terminate any interest in any asset,
9 whether such acts are part of a judicial proceeding or are acts of self-help or otherwise.

10 c. Executing, issuing, serving or causing the execution, issuance or service of,
11 any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of
12 replevin, writs of execution, or any other form of process whether specified in this order or not;

13 d. Doing any act or thing whatsoever to interfere with Receiver taking
14 custody, control, possession, or management of the receivership assets or documents, or to harass
15 or interfere with Receiver in any way, or to interfere in any manner with the exclusive jurisdiction
16 of this Court over Defendant's business.

17 15. This Order does not stay:

18 a. The commencement or continuation of a criminal action or proceeding.

19 b. The commencement or continuation of an action or proceeding by a
20 governmental unit, to enforce such governmental unit's police or regulatory power.

21 c. The enforcement of a judgment, other than a money judgment, obtained in
22 an action or proceeding by a governmental unit to enforce such governmental unit's police or
23 regulatory power.

24 d. The issuance to Defendant of a notice of tax deficiency.

25 16. No individual or entity may sue the Receiver or initiate any action against the
26 Property or the Receivership Estate, including the filing of a bankruptcy petition(s) under Title 11
27 of the United States Code, without first obtaining permission of this Court. The Receiver is vested
28 with the sole authority to file a bankruptcy petition on behalf of Defendant, and any such power

1 residing with any (i) defendant in this case (or its agent(s), successor(s), or any person(s) or entity
2 acting on its behalf) (ii) third party, or (iii) creditor of Debtor, has been and is revoked and vested
3 solely with the Receiver until further order of this Court.

4 **COMPENSATION OF RECEIVER**

5 IT IS FURTHER ORDERED that:

6 17. The Receiver may employ or continue to employ, without further order of this
7 Court: (i) professionals from the Receiver’s firm, Receivership Specialists, as necessary to fulfill
8 the Receiver’s duties under the terms of this order, (ii) an attorney licensed to practice in the State
9 of California and in any additional jurisdiction, as may be necessary, wherever the receivership
10 assets may be found, and (iii) an accountant.

11 18. The Receiver and his professionals, and all personnel hired by the Receiver as
12 herein authorized, including counsel to the Receiver and accountant, are entitled to reasonable
13 compensation for the performance of duties pursuant to this order and for the cost of actual out-
14 of-pocket expenses incurred by them, which compensation shall be derived exclusively from
15 assets now held by, or in the possession or control of, or which may be received by, Defendant or
16 which are otherwise recovered by the Receiver.

17 19. The Court hereby approves the following hourly rates, plus expenses, as follows:
18 \$350.00 per hour for the Receiver and his partners, \$295.00 per hour for Senior Project Manager,
19 \$250.00 per hour for the Receiver’s accountant, \$95.00 per hour for the Receiver’s bookkeeper,
20 and \$85 per hour for administrative employees and assistants. The Receiver is authorized to pay
21 his reasonable out-of-pocket expenses “as incurred” each month from Receivership Estate funds
22 (including, but not limited to necessary expenses applicable for the protection and preservation of
23 the Receivership Estate such as fees for security guards, utilities, reasonable travel expenses,
24 postage, and court filing fees), or if insufficient funds exist, from funds that may provided by
25 Plaintiff, or third parties, as provided in Paragraph 21 below. The Receiver shall also be entitled
26 to reasonable fees for work performed prior to the receivership appointment pertaining to due
27 diligence and the Application, his Declaration, Oath and Nomination.

28 20. The Receiver and each professional shall file with the Court and serve on the

1 parties statements on a monthly basis, which shall include a description of all services provided
2 and expenses incurred, with the first such statement filed no later than thirty (30) days from the
3 date of this order. If no objection to the fees and expenses in the statements is filed with the Court
4 by any party within fourteen (14) days of service of the statements, then Receiver shall be
5 authorized to pay such statements on an interim basis, with final approval thereof to be reserved
6 until the closing of the case. The Receiver shall not increase the hourly rates used as the bases for
7 such fee applications without prior approval of the Court.

8 21. If the Receiver does not have sufficient funds to administer the Receivership
9 Estate as prescribed above, the Receiver may, without further order of this Court, issue
10 Receivership Certificates in increments of no less than \$10,000 bearing interest at ten percent
11 (10%) per annum, up to \$200,000 in the aggregate, to any person or parties including, but not
12 limited to, the Plaintiff; provided that this provision shall not be construed in any way as an
13 obligation on the part of the Plaintiff to advance any funds to the Receiver for the maintenance of
14 the Receivership Estate. Any such borrowing shall be the sole and exclusive responsibility of the
15 Receivership Estate, and no such borrowing or obligation so incurred shall be the personal risk or
16 obligation of the Receiver. All funds loaned to the Receiver pursuant to Receivership
17 Certificates shall be deemed to be a lien of senior priority subordinated only to (i) the payment of
18 all fees and expenses incurred by the Receiver and its professionals in managing the Receivership
19 Estate; (ii) the expenses of administering the Receivership Estate; and (iii) Plaintiff's secured
20 claim, and shall be repaid prior to all other encumbrances and claims other than Plaintiff's
21 secured claim, which shall retain first priority.

22 **RECEIVER'S INVENTORY, MONTHLY STATEMENTS, DISCHARGE**

23 IT IS FURTHER ORDERED that:

24 22. Within thirty (30) days after qualification hereunder, the Receiver shall file a
25 detailed inventory of all property of the Receivership Estate. Receiver shall also file a
26 supplemental inventory and report related thereto, if applicable.

27 23. Discharge of the Receiver shall require a court order upon a properly noticed
28 motion approving Receiver's Final Report and Account and exoneration of the Receiver's bond,

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unless the parties and the Receiver entering into a Stipulation and Order for the Receiver's discharge.

IT IS FURTHER ORDERED that the Receiver and any of the parties may, at any time, apply to this Court for further or other instructions or orders and for further powers necessary to enable the Receiver to perform the Receiver's duties properly on either an ex-parte basis or via noticed application or motion on regular or shortened time.

IT IS FURTHER ORDERED that the Plaintiff shall post a bond or cashier's check in lieu of the bond in the amount of \$10,000.00 as required by Code of Civil Procedure Section 529.

IT IS SO ORDERED.

Dated: 06/28/2023, 2023



Judge of the Superior Court
Colleen K. Sterne

EXHIBIT “2”

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “**Agreement**”) is entered into as of November 9th, 2023, by and among HERBL, Inc., a California corporation (the “**Business**”), by Kevin Singer, acting solely in his capacity as court-appointed receiver (the “**Receiver**” or “**Seller**”) with respect to all outstanding accounts receivable of the Business (“**Accounts Receivable**”), as defined further below, and Distro Accounts Receivable LLC (the “**Purchaser**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, the Accounts Receivable of the Business are under receivership pursuant to a Court Order dated June 28, 2023 (“**Court Order**”) issued by the Superior Court of California, County of Santa Barbara (the “**Court**”) in *East West Bank v. HERBL, Inc.*, Santa Barbara Superior Court, Case No. 23CV02629 (the “**Case**”). See **EXHIBIT A**, the Court Order, attached hereto and incorporated herein. The Receiver enters into this Agreement solely in his capacity as Receiver and not in his personal capacity;

WHEREAS, the Business is a California cannabis distribution company and a direct-to-consumer software solutions company;

WHEREAS, the Business has significant outstanding Accounts Receivable, including Accounts Receivable currently being actively collected by Jonathan Neil & Associates, Inc. (“**JNA**”);

WHEREAS, Purchaser desires to purchase from the Seller, and the Seller desires to sell to the Purchaser, the Accounts Receivable;

WHEREAS, the acquisition of the Accounts Receivable is accomplished through the sale, transfer and assignment of the Accounts Receivable by Seller to Purchaser, free and clear of all Encumbrances (as hereinafter defined);

WHEREAS, this Agreement is subject to final approval pursuant to the terms of the Court’s Order (the “**Sale Order**”) to be entered upon a motion or ex parte application by the Receiver, as described further below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements set forth above and in the body of this Agreement, upon the terms and subject to the conditions hereinabove and hereinafter set forth, the Parties hereto agree as follows:

I. DEFINITIONS

The following capitalized terms used in this Agreement shall have the meanings set forth below:

A. **“Accounts Receivable”** means those certain amounts due and owing to the Business from approximately 589 retailers, totaling approximately \$9,169,669, as summarized in **EXHIBIT B**, attached hereto and incorporated herein. Accounts Receivable includes all open files currently being collected by JNA, totaling approximately \$1,839,305.17, as reflected in Exhibit B.

B. **“Actions”** means any claim, action, suit, arbitration, audit, hearing, litigation, proceeding, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before any Governmental Authority or arbitrator.

C. **“Business”** means HERBL, Inc., a California corporation.

D. **“Business Day”** means any day that is not a federal holiday or a Saturday, a Sunday, or other day on which banks are required or authorized by Law to be closed in the State of California.

E. **“Closing”** means the consummation of the transactions contemplated by this Agreement.

F. **“Closing Date”** means the date on which the Closing occurs.

G. **“Consent”** means any approval, consent, ratification, waiver, or other authorization from any Person (including any approvals under applicable Law).

H. **“Contract”** means any oral or written contract, commitment, purchase order, mortgage, instrument, indenture, sales order, license, lease, or other agreement or arrangement.

I. **“Control”** (including the terms **“controlled by”** and **“under common control with”**), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative, or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative, or executor, or by contract, credit arrangement, or otherwise.

J. **“Due Diligence Period”** means that period, lasting 14 calendar days after the Effective Date, wherein the Receiver shall provide and Purchaser shall review all information related to the Accounts Receivable, as further detailed in Section III below.

K. **“Effective Date”** is the date this Agreement is fully executed.

L. **“Encumbrance”** means any claim, lien, right, restriction, option, pre-emptive right, security interest, pledge, mortgage, easement, leasehold, assessment, tax, covenant, reservation, conditional sale, prior assignment, deed of trust, hypothecation, assessment, or any other encumbrance, **“claim”** (as defined in Section 101(5) of the Bankruptcy Code), burden, action, or charge of any nature whatsoever.

M. **“Governmental Authority”** means any federal, national, supranational, state, provincial, local, or other government, governmental, regulatory, or administrative authority, agency, commission, self-regulatory organization or any court, tribunal, or judicial or arbitral body.

N. **“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

O. **“Law”** means (i) the common law of any state, province or territory, or any provision of any foreign, federal, state, provincial or local law, statute, rule, code, ordinance, regulation, treaty, Governmental Order, permit, or other codified requirement of any Governmental Authority applicable to the relevant Person or its properties, and (ii) the constitution, by-laws, rules, regulations, orders, regulatory circulars, customs, and usage of any foreign, federal, or state governmental, regulatory, or self-regulatory organization, in each case having jurisdiction over the relevant Person or its properties.

P. **“Person”** means any individual, proprietorship, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization, Governmental Authority or other entity.

Q. **“Purchaser”** means Distro Accounts Receivable, LLC, or designee.

R. **“Receiver”** means Kevin Singer of Receivership Specialists, Inc.

S. **“Seller”** means Kevin Singer, acting solely in his capacity as Court-Appointed Receiver in the Case.

II. PURCHASE AND SALE OF ASSETS AND ASSUMPTION OF LIABILITIES

A. **Purchase and Sale of Assets.** Subject to the conditions set forth below, at the Closing, the Seller will sell and deliver to the Purchaser, and the Purchaser will purchase from the Seller, the Accounts Receivable.

B. **No Assumption of Liabilities.** The Accounts Receivable will be transferred to Purchaser free and clear of all Encumbrances. For the avoidance of doubt, the Accounts Receivable being purchased by Purchaser is not subject to any claim by third parties, including but not limited to cannabis cultivators or manufacturers, based on any contractual or other right claimed to exist with the Business. Any interest or claim of right to payment by a third party of any portion of the Accounts Receivable shall be transferred to the sales proceeds resulting therefrom and determined by the Court in the Case. Purchaser shall have no responsibility to third parties resulting from its purchase of the Accounts Receivable.

C. **Collection Risk.** Purchaser shall assume all collection risk associated with the Accounts Receivable. The Receiver makes no warranties or representations as to validity or collectability of the Accounts Receivable.

III. DUE DILIGENCE PERIOD

A. Upon the Effective Date of this Agreement, Receiver shall provide for Purchaser's review the following financial information related to the Accounts Receivable, and the Receiver agrees to use reasonable efforts to provide such information in his possession:

B. Purchaser shall have fourteen (14) days from the Effective Date to review all due diligence materials produced by the Receiver. Upon the expiration of the Due Diligence Period, all contingencies to this agreement shall be removed, except for approval of this Agreement by the Court, and the Partial Purchase Price shall be due and payable as described in Section IV, *infra*. Prior to the expiration of the Due Diligence Period, either Party may unilaterally terminate this Agreement, and the Receiver shall return the Deposit to Purchaser. For the avoidance of any doubt, the Due Diligence Period shall expire at 12:00 a.m. on the fourteenth day after the Effective Date.

IV. PURCHASE PRICE

The aggregate consideration for the sale of the Accounts Receivable to the Purchaser (the "**Purchase Price**") will be \$900,000 to be paid as follows:

A. Within two business days of the Effective Date, Purchaser shall deposit \$100,000 in US currency with the Receiver (the "**Deposit**") by wire pursuant to the Wire Instructions attached hereto as **Exhibit C**. The Receiver shall hold the Deposit in a segregated, FDIC insured, Receivership Estate bank account opened in his name only, in his capacity as the Court's Receiver (banking location to be selected by the Receiver, at his discretion).

B. Within two business days of the expiration of the Due Diligence Period, \$400,000 in US currency (the "**Partial Purchase Price**") shall be paid by Purchaser to the Receiver by wire pursuant to the Wire Instructions attached hereto as **Exhibit C** to Seller. Receiver shall hold the Partial Purchase Price in the same account as the Deposit. These funds can only be released from the Receiver's segregated bank account as follows: (1) upon the written consent of Purchaser and Receiver or (2) by an order of the Court.

C. Within 48 hours of the Receiver obtaining and providing a copy to Purchaser of the Court Order, as described below in Section V, the remaining \$400,000 of the Purchase Price will be paid in US currency by Purchaser to the Receiver by wire pursuant to the Wire Instructions attached hereto as **Exhibit C**.

V. COURT APPROVAL.

Within ten (10) days of the Receiver's receipt of the Partial Purchase Price, the Receiver shall file an appropriate motion or ex parte application before the Court in the Case seeking issuance of an order confirming and approving this Agreement (the "Sale Order"). Such approval shall act as a condition precedent to the consummation of the Agreement.

VI. TRANSFER OF SAP SOFTWARE AND FINANCIAL INFORMATION RE ACCOUNTS RECEIVABLE.

After issuance of the Court Order and payment of the Purchase Price, the Receiver shall as quickly as practicable take all necessary action to transfer all financial information related to the Accounts Receivable as well as the Business's SAP accounting software containing all of said information. After transfer of the SAP software, Purchaser shall be responsible for all costs related to maintaining that software, and shall allow reasonable access to the Receiver of the financial information contained therein, as necessary for the purposes of the receivership.

VII. TRANSFER OF JNA FILES.

After issuance of the Court Order and payment of the Purchase Price, all Accounts Receivable being collected by JNA as of the Effective Date shall be transferred to Purchaser as quickly as practicable.

VIII. CONDITIONS TO CLOSING

A. **As to Seller.** The obligations of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver on or prior to the Closing Date of all of the following conditions:

1. the Purchaser shall have paid the full amount of the Purchase Price to Seller;
2. the Sale Order shall not have been reversed, modified, amended or stayed, except for such immaterial modifications or amendments which do not, individually or in the aggregate, materially adversely affect the Seller;
3. all representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the date of this Agreement and, if the Closing occurs other than on the date of this Agreement, true and correct in all material respects as of the Closing Date as though such representations and warranties had been made on and as of that date (except those representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct in all respects only as of such other specified date); all of the terms, covenants and conditions of this Agreement to be complied with and performed by the Purchaser on or before the Closing Date shall have been duly complied with and performed in all material respects;
4. the Seller shall have received the deliveries required to be made to them by the Purchaser at the Closing; and

B. **As to Purchaser.** The obligations of the Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver on or prior to the Closing Date of all of the following conditions:

1. the Sale Order shall not have been reversed, modified, amended or stayed, except for such immaterial modifications or amendments which do not, individually or in the aggregate, materially adversely affect the Seller;

2. the Receiver shall have transferred all Accounts Receivable being collected by JNA to Purchaser pursuant to Section VII, *supra*;
3. the Receiver shall have transferred all necessary financial information regarding the Accounts Receivable and the SAP software to Purchaser, pursuant to Section VI, *supra*;
4. the Sale Order shall remain in effect and no action or proceeding resulting in a stay of the order issued by the Court or otherwise invalidating that order shall have occurred as of the Closing Date.

IX. CLOSING

Closing shall take place upon the completion of the Receiver's responsibilities under Sections VI and VII, *supra*. The actual date as of which the Closing occurs is referred to herein as the "Closing Date." As of the Closing Date, the Receiver can release the Purchase Price from any segregated account in which it is held and may use those funds at his discretion.

X. REPRESENTATIONS AND WARRANTIES OF SELLER

Any and all representations and warranties provided by Seller are limited, given that the Receiver has not owned or operated the Business since its formation, but rather is the Court's Receiver and has no knowledge regarding the Business outside of the limited information that he has obtained since his appointment pursuant to the Court Order. Based on that limited information, Seller hereby represents and warrants to Purchaser as follows:

A. **No Encumbrances.** The Accounts Receivable shall be transferred to Purchaser free and clear of any and all Encumbrances.

XI. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

A. **Consents and Approvals.** No consent, waiver, approval, order, permit, or authorization of, or declaration or filing with, or notification to, any person or governmental body is required on the part of the Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents or the compliance by the Purchaser with any of the provisions hereof or thereof.

B. **Purchaser Acknowledgments.** The Purchaser specifically acknowledges that, except for Seller's representations herein, and subject to Seller's obligations as contained in this Agreement, Purchaser is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, or any director, officer, employee, representative, broker, or other agent of either of them, as to any matters concerning the Accounts Receivable, including: (a) the legal or tax consequences of this Agreement or the transactions contemplated hereby; (b) the collectability or validity of the Accounts Receivable and (c) the completeness or accuracy of any information provided to Purchaser by Seller or their agents. Purchaser

understands the legal significance of the foregoing provisions and acknowledges that they are a material inducement to Seller's willingness to enter into this Agreement.

XII. ADDITIONAL AGREEMENTS

A. **Cooperation.** On and after the Closing, each party hereto shall deliver or cause to be delivered to the other parties hereto such additional documents, releases, assignments and instruments as the other parties may reasonably request for the purpose of carrying out the purposes of this Agreement. Seller will cooperate and use reasonable efforts to have the present and former officers, directors and employees of the Seller cooperate with the Purchaser on and after the Closing in furnishing information, evidence, testimony and other assistance in connection with any filing obligations, actions, proceedings, arrangements or disputes of any nature with respect to matters pertaining to periods prior to the Closing Date.

B. **Turnover of Payments.** In the event that any party hereto receives any payment, instrument of payment or other property to which any other party hereto is entitled, such party shall deliver the same or cause the same to be delivered promptly to the party entitled thereto (with endorsement if necessary but otherwise in the same form as received) and until so delivered hold the same in trust for the benefit of and as the property of the party entitled thereto.

C. **Disclaimer of Other Representations and Warranties.** PURCHASER AGREES THAT THE ACCOUNTS RECEIVABLE SHALL BE SOLD AND THAT PURCHASER SHALL ACCEPT THAT SELLER OWNS THE ACCOUNTS RECEIVABLE AT CLOSING STRICTLY ON AN "AS IS, WHERE IS, WITH ALL FAULTS" BASIS, WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE EXCEPT FOR ADJUSTMENTS EXPRESSLY CONTEMPLATED BY THIS AGREEMENT AND THAT, EXCEPT FOR SELLER'S LIMITED REPRESENTATIONS SET FORTH HEREIN, THE SALE OF THE ASSETS CONTEMPLATED BY THIS AGREEMENT SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY.

D. **No Successor Liability.** The parties hereto intend that, except where expressly prohibited under applicable Law, upon the Closing, Purchaser shall not be deemed to: (a) be the successor of the Business, (b) have, de facto, or otherwise, merged with or into the Business, (c) be a mere continuation or substantial continuation of the Business or the enterprise(s) of the Business, or (d) be liable for any acts or omissions of the Business arising under or related to the Accounts Receivable other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the parties hereto intend that Purchaser shall not be liable for any Encumbrance against the Business or any of the Business's predecessors or Affiliates, and Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Accounts Receivable or any Liabilities of Seller arising prior to the Closing Date.

XIII. SURVIVAL

The representations, warranties and agreements made by the parties in the Agreement or the other Transaction Documents or any other document or certificate delivered pursuant to this Agreement or any Transaction Document will survive the Closing, except that any agreement on the part of Seller shall terminate as of the Court discharging him from his duties as Receiver in the Case, and no representation, warranty, or other agreement related hereto shall be considered made by Seller in his personal capacity .

XIV. TERMINATION OF AGREEMENT

A. **Termination.** This Agreement may be terminated at any time prior to the Closing Date as follows:

1. Prior to the expiration of the Due Diligence period established in Section III, *supra*, unilaterally by either Party;
2. By mutual consent of the Seller and Purchaser;
3. By Purchaser or the Seller if a material breach or default shall be made by the other parties or party in the observance or in the due and timely performance of any of the covenants or agreements contained herein, and the curing of such breach or default shall not have been made before the earlier of (i) five business days after receipt of notice specifying the breach and requesting that such breach be cured and (ii) the Closing Date; or if the conditions to the obligations of such party set forth in this Agreement have not been satisfied or waived as of the Closing Date.
3. By Court order.

B. **Liabilities.** The termination of this Agreement will in no way limit any obligation or liability of any party based on or arising from a breach or default by such party with respect to any of its representations, warranties, covenants or agreements contained in this Agreement.

XV. MISCELLANEOUS

A. **Expenses and Taxes.** Whether or not the transactions herein contemplated shall be consummated, the Purchaser, on the one hand, and the Seller, on the other hand, will pay their own fees, expenses and disbursements incurred in connection with the subject matter of this Agreement, including all costs and expenses incurred in the performance and compliance with all conditions to be performed by such party under this Agreement, except that the Purchaser (and not the Seller) shall pay all sales, use, transfer, real property transfer, recording, gains, transfer and other similar taxes and fees ("**Transfer Taxes**") imposed in connection with the purchase and other transactions contemplated by this Agreement. The Purchaser shall file, or cause to be filed, all necessary documentation and tax returns with respect to such Transfer Taxes.

B. No Liability by Receiver. Receiver is not the owner of the Business and/or the Accounts Receivable. Receiver is selling the Accounts Receivable solely in his capacity as the court-appointed receiver in the Case. Receiver is not acting in his personal capacity and no liability or obligations shall accrue to him personally or to any of his managers, attorneys, accountants, employees, agents, representatives, heirs, partners, other advisors, and/or lenders that directly or indirectly caused him to be appointed receiver in the Case. As used in this Agreement, the term "Receiver" and/or "Seller" shall mean and refer to Receiver herein named, acting solely in his capacity as receiver in the Case. As of the date this Agreement is entered into, the owner of the Accounts Receivable is the Business. Purchaser, Purchaser's successors, agents, assigns, affiliates, and heirs hereby agree not to make any claim and/or seek any recourse for any actual or alleged liability against Receiver arising out of this Agreement, either to Receiver personally, or against Receiver's personal assets, Receiver's partners (either general or limited), shareholders, members, managers, officers, directors, attorneys, accountants, agents, employees, advisors, heirs, or lenders that directly or indirectly caused or motioned Receiver's appointment as Receiver.

C. Notices. All notices and consents to be given hereunder shall be in writing and shall be deemed to have been duly given if (a) (i) delivered personally, (ii) mailed (postage prepaid) by certified mail (in this case, notice to be deemed given three days after mailing), or (iii) delivered by a recognized commercial courier to the Party entitled thereto at the address set forth below or such other address as such Party shall have designated by five (5) days' notice to the other; and (b) delivered by email, as set forth below:

Seller: Kevin Singer, Receiver
Receivership Specialists
11500 W. Olympic Blvd., #530
Los Angeles, CA 90064
kevin@receivershipspecialists.com

With copy to: Blake Alsbrook
Ervin Cohen & Jessup, LLP
9401 Wilshire Boulevard, 12th Fl
Beverly Hills, CA 90212
balsbrook@ecjlaw.com

Purchaser: Distro Accounts Receivable
LLC
3941 Park Dr Suite 20626
El Dorado Hills Ca 95762

With copy to: _____

D. **Severability.** The Parties hereto intend and believe that each provision in this Agreement comports with all applicable Laws. If, however, any provision in this Agreement is found by a court of law to be in violation of any applicable Law or public policy, or if in any other respect such a court declares any such provision to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all Parties hereto that, consistent with and with a view towards preserving the economic and legal arrangements among the Parties hereto as expressed in this Agreement, such provision shall be given force and effect to the fullest possible extent, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable provision were not contained herein, and that the rights, obligations, and interests of the Parties under the remainder of this Agreement shall continue in full force and effect.

E. **Interpretation.** The representations, warranties, agreements and covenants of the parties made in the Transaction Documents shall survive the consummation of the transactions contemplated hereby and the consummation of such transactions shall not be deemed a waiver of a breach of or inaccuracy in any representation, warranty, agreement or covenant or of any party's rights and remedies with regard thereto. No specific representation, warranty, agreement or covenant contained herein shall limit the applicability of a more general representation, warranty, agreement or covenant contained herein. The use of the terms "including" or "include" shall in all cases mean "including without limitation" or "include without limitation", respectively.

F. **Time of the Essence.** TIME IS OF THE ESSENCE WITH RESPECT TO EACH PROVISION OF THIS AGREEMENT. Without limiting the foregoing, Purchaser and Seller hereby confirm their intention and agreement that time shall be of the essence with respect to each and every provision of this Agreement, notwithstanding any subsequent modification or extension of any date or time period that is provided for under this Agreement. The agreement of Purchaser and Seller that time is of the essence with respect to each and every provision of this Agreement shall not be waived or modified by any conduct of the Parties, and the agreement of Purchaser and Seller that time is of the essence with respect to each and every provision of this Agreement may only be modified or waived by the express written agreement of Purchaser and Seller that time shall not be of the essence with respect to a particular date or time period, or any modification or extension thereof, which is provided under this Agreement.

G. **Construction of Contract.** This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that both Purchaser and Seller have contributed substantially and materially to the preparation of this Agreement.

H. **No Implied Contract.** Neither Seller nor Purchaser shall have any obligations in connection with the transaction contemplated by this Agreement unless the Seller, on the one hand, and Purchaser, on the other hand acting in its sole discretion, elect to execute and deliver this Agreement to the other Party. No correspondence, course of dealing, or submission of drafts or final versions of this Agreement between Seller and Purchaser shall be deemed to create any binding obligations in connection with the transaction contemplated hereby, and no contract or obligation on the part of Seller or Purchaser shall arise unless and until a counterpart of this

Agreement is fully executed by all the Seller and Purchaser. Once so executed and delivered by Seller and Purchaser, this Agreement shall be binding upon them.

I. **Waiver.** The excuse or waiver of the performance by a Party of any obligation of the other Party under this Agreement shall only be effective if evidenced by a written statement signed by the Party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Purchaser of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

J. **Remedies Cumulative.** No right, remedy or election given by any term of this Agreement shall be deemed exclusive but each shall be cumulative with all other rights, remedies and elections available at law or in equity.

K. **Governing Law.** This Agreement shall be deemed to be a contract entered into in the State of California and it and all matters arising out of the transactions contemplated hereby or related thereto shall be governed, construed and interpreted in all respects according to the Laws of the State of California, without reference to principles of conflicts of law thereof.

L. **Business Days.** If the day for performance of any action described in this Agreement shall fall on a Saturday, Sunday or a day on which the banks are closed in the State of California the time for such action shall be extended to the next business day after such Saturday, Sunday or day on which the banks are closed.

M. **Venue.** Any action to enforce this Agreement, or to interpret or construe the meaning of this Agreement, shall be brought in the Court and Purchaser hereby expressly waives venue in any other jurisdiction.

N. **Waiver of Jury Trial and Jurisdiction For Any Legal Disputes.** Purchaser and Seller waive any and all rights to a jury trial as to any legal dispute, proceeding or action between Purchaser and Seller arising out of this Agreement and/or the sale of the Accounts Receivable, whether it involves Purchaser, Seller and/or the Receiver. Purchaser and Seller agree that if there is any legal dispute, proceeding, or action arising out of or related to this Agreement and/or the sale of the Accounts Receivable, the Court presiding over the Case shall have exclusive jurisdiction over any such legal dispute, proceeding or action. Purchaser and Seller also agree that any dispute may be resolved, without the need for discovery or taking of testimony, by summary proceedings on noticed motion.

O. **Attorneys' Fees.** In the event of a judicial or administrative proceeding or action by one Party against the other Party with respect to the interpretation of, enforcement of, or any action under this Agreement, the predominantly-prevailing Party shall be entitled to recover reasonable costs and expenses including reasonable attorneys' fees and expenses. The predominantly-prevailing Party shall be determined by the Court based upon an assessment of which Party's major arguments or position prevailed.

P. **Assignment of Agreement.** This Agreement and the rights and obligations of the Seller hereunder may not be assigned, whether by operation of law or otherwise, without the prior written consent of the Seller.

Q. Entire Agreement. This Agreement (including the Exhibits attached hereto) and the documents referred to herein set forth the entire agreement of the parties hereto concerning the subject matter of this Agreement and supersede any and all prior agreements and understandings relating to the subject matter of this Agreement. This Agreement may only be modified or amended by an agreement in writing executed by each of the parties hereto and any term of this Agreement may be waived only with the written consent of the party sought to be bound.

R. Obligations of Parties; Successors and Assigns. Subject to following provisions, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns. If more than one person or entity is named as Purchaser, the term "Purchaser" shall refer to each person or entity so named and any one or more of them in any combination, and the representations, warranties, covenants, obligations and liabilities of Purchaser herein shall constitute their joint and several representations, warranties, covenants, obligations and liabilities.

S. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or attachment of a PDF file to e-mail shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or attachment of a PDF file to e-mail shall be deemed to be their original signatures for all purposes.

T. Descriptive Headings; Word Meaning. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement. Words such as "herein," "hereinafter," "hereof" and "hereunder" when used in reference to this Agreement, refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The word "including" shall not be restrictive and shall be interpreted as if followed by the words "without limitation." Each exhibit referenced herein shall be deemed part of this Agreement and incorporated herein wherever any reference is made thereto. Unless otherwise defined therein, capitalized terms used in the exhibits to this Agreement shall have the meanings given to such terms respectively in the body of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Purchase and Sale Agreement as of the date first above written.

SELLER:



PURCHASER:

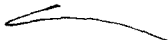


EXHIBIT “3”

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This First Amendment to Asset Purchase Agreement ("**Amendment**") is entered into as of November 22, 2023 by and between **HERBL, Inc., a California corporation ("HERBL"**, by Kevin Singer, acting solely in his capacity as court-appointed receiver ("**Seller**"), and **Distro Accounts Receivable LLC ("Purchaser" and collectively with Seller the "Parties")** with respect to the Asset Purchase Agreement dated as of November 9, 2023 (the "**Agreement**"), between Purchaser and Seller for the purchase and sale of the Accounts Receivable as described therein. Purchaser and Seller desire to amend the Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Definitions.** Unless otherwise defined in this Amendment, all capitalized terms used herein shall have the meanings given such terms in the Purchase Agreement.
2. **Removal of Certain Accounts Receivable Amounts From Agreement.** The Parties agree that the Accounts Receivable in the Agreement shall not include certain amounts due and owing to HERBL and WTO Essentials, a California corporation dba Friendly Farms ("**Friendly**"), as detailed in **Exhibit A** hereto, totaling approximately \$444,421.48.
3. **Reduction in Purchase Price.** Given the reduced amount of Accounts Receivable to be transferred to Purchaser, the Purchase Price shall be reduced from \$900,000 to \$855,857.16. To account for this reduction in Purchase Price, Section IV.C. of the Agreement is amended such that Purchaser shall only be responsible for paying only \$355,857.16, rather than \$400,000 as set forth in the Agreement, after Seller obtains a Court Order approving the sale.
4. **Effect on Agreement.** Except as set forth in this Amendment, the terms and provisions of the Agreement shall remain the same, are hereby ratified and are in full force and effect. Each reference to the Agreement in any agreement contemplated thereby or executed in connection therewith, whether or not accompanied by reference to this Amendment, shall be deemed a reference to the Agreement as amended by this Amendment.
5. **Counterparts and Electronic Signatures.** This Amendment may be executed in one or more counterparts that together shall constitute one Amendment, and each counterpart shall be deemed an original. The delivery of an executed copy of this Amendment by electronic mail or docu-sign shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Amendment had been delivered.

-Signatures On Next Page-

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IN WITNESS WHEREOF the Parties have executed this Amendment as of the date above.

PURCHASER:

SELLER:

DISTRO ACCOUNTS RECEIVABLE LLC HERBL INC., BY RECEIVER KEVIN SINGER

By: *Sidney Dunmore*
Sidney Dunmore, Managing Member

By: *Kevin Singer*
Kevin Singer, Receiver

Signature Certificate

Reference number: JS3PE-YM9RK-YR9U9-M9ME5

Signer

Timestamp

Signature

Sidney Dunmore

Email: sid.wrf@gmail.com

Sent:

27 Nov 2023 20:43:04 UTC

Viewed:

28 Nov 2023 17:44:56 UTC

Signed:

28 Nov 2023 17:45:47 UTC



Recipient Verification:

✓ Email verified

28 Nov 2023 17:44:56 UTC

IP address: 70.120.51.170

Location: Dripping Springs, United States

Document completed by all parties on:

28 Nov 2023 17:45:47 UTC

Page 1 of 1



Signed with PandaDoc

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EXHIBIT “4”

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

This Second Amendment to Asset Purchase Agreement ("**Amendment**") is entered into as of December 7, 2023 by and between **HERBL, Inc., a California corporation ("HERBL"**, by Kevin Singer, acting solely in his capacity as court-appointed receiver ("**Seller**"), and **Distro Accounts Receivable LLC ("Purchaser" and collectively with Seller the "Parties")** with respect to the Asset Purchase Agreement dated as of November 9, 2023 (the "**Agreement**"), as amended by the First Amendment to Asset Purchase Agreement (the "**First Amendment**") dated November 22, 2023, between Purchaser and Seller for the purchase and sale of the Accounts Receivable as described therein. Purchaser and Seller desire to amend the Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Definitions.** Unless otherwise defined in this Amendment, all capitalized terms used herein shall have the meanings given such terms in the Purchase Agreement.
2. **Reduction in Purchase Price and Waiver of Due Diligence Contingency.** The Purchase Price of the Accounts Receivable shall be reduced from \$855,857.16 to \$600,000.00. Sections IV.B. and C. of the Agreement are amended such that Purchaser shall be responsible for paying \$300,000.00 within 48 hours of the execution of this Amendment, and the remaining \$300,000.00 within 48 hours of the Receiver obtaining and providing a copy to Purchaser of the Court Order approving the sale. The Due Diligence contingency provided for in Section IV.B is hereby waived by Purchaser.
3. **Effect on Agreement and First Amendment.** Except as set forth in this Amendment, the terms and provisions of the Agreement and the First Amendment shall remain the same, are hereby ratified and are in full force and effect. Each reference to the Agreement in any agreement contemplated thereby or executed in connection therewith, whether or not accompanied by reference to this Amendment, shall be deemed a reference to the Agreement as amended by this Amendment.
4. **Counterparts and Electronic Signatures.** This Amendment may be executed in one or more counterparts that together shall constitute one Amendment, and each counterpart shall be deemed an original. The delivery of an executed copy of this Amendment by electronic mail or docu-sign shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Amendment had been delivered.

-Signatures On Next Page-

-Remainder of this Page Intentionally Left Blank-

IN WITNESS WHEREOF the Parties have executed this Amendment as of the date above.

PURCHASER:

SELLER:

DISTRO ACCOUNTS RECEIVABLE LLC HERBL INC., BY RECEIVER KEVIN SINGER

By: *Sidney Dunmore*
Sidney Dunmore, Managing Member

By: *Kevin Singer*
Kevin Singer, Receiver

Signature Certificate

Reference number: HLPPM-N2SA4-MBR4H-GZUVB

Signer

Timestamp

Signature

Sidney Dunmore

Email: sid.wrf@gmail.com

Sent:

07 Dec 2023 05:42:32 UTC

Viewed:

07 Dec 2023 16:57:57 UTC

Signed:

07 Dec 2023 16:58:10 UTC



Recipient Verification:

✓ Email verified

07 Dec 2023 16:57:57 UTC

IP address: 70.120.51.170

Location: Dripping Springs, United States

Document completed by all parties on:

07 Dec 2023 16:58:10 UTC

Page 1 of 1



Signed with PandaDoc

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PROOF OF SERVICE

**East West Bank v. HERBL, Inc. et al.
Santa Barbara County Superior Court, Case No. 23CV02629**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 9401 Wilshire Boulevard, Twelfth Floor, Beverly Hills, CA 90212-2974.

On December 21, 2023, I served true copies of the following document(s) described as **RECEIVER KEVIN SINGER'S NOTICE OF MOTION AND MOTION FOR ISSUANCE OF ORDER AUTHORIZING AND CONFIRMING SALE OF RECEIVERSHIP PERSONAL PROPERTY; DECLARATION OF KEVIN SINGER; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

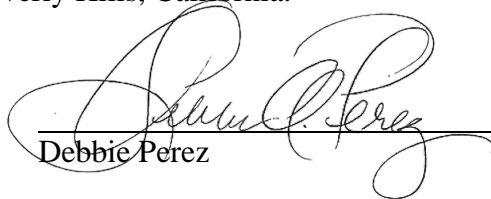
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Ervin Cohen & Jessup LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address dperez@ecjlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on December 21, 2023, at Beverly Hills, California.


Debbie Perez

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SERVICE LIST
East West Bank v. HERBL, Inc. et al.
Santa Barbara County Superior Court, Case No. 23CV02629

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Delux Transport Refrigeration
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