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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

VERONICA MARMOLEJO, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

HIGH CALIBER ORGANICS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIVSB2131844

CLASS ACTION

[Honorable David Cohn, Department S26]

**JOINT STIPULATION OF CLASS AND
PAGA ACTION SETTLEMENT**

Complaint Filed: November 10, 2021
Trial Date: Not Set

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1. RECITALS.

1.2 On November 10, 2021, Plaintiff filed a Class Action Complaint in the Superior Court of California, County of San Bernardino, which alleged the following claims on behalf of all non-exempt employees of Defendant in California from the date four years before its filing to the date the Class Notice is sent: (1) Failure to Pay Minimum Wage [*Labor Code* §§ 204, 1194, 1194.2 and 1197]; (2) Failure to Pay Overtime Compensation [*Labor Code* §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [*Labor Code* §§ 226.7 and 512]; (4) Failure to Authorize and Permit Rest Breaks [*Labor Code* § 226.7]; (5) Failure to Indemnify Necessary Business Expenses [*Labor Code* § 2802]; (6) Failure to Timely Pay Final Wages at Termination [*Labor Code* §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [*Labor Code* § 226]; and (8) Unfair Business Practices [*Business & Professions Code* §§ 17200, *et seq.*].

1.4 On February 2, 2023, the Parties engaged in a successful mediation with experienced, professional mediator, Lynn Frank, Esq.

1.5 On March 10, 2023, the Parties executed a binding Memorandum of Understanding, which reflects their good faith compromise of the claims raised in the Action and which was reached through assessment of the mutual risks and costs of further litigation and an arms-length negotiation and mediation with experienced, professional mediator, Lynn Frank, Esq.

1.6 Plaintiff obtained, through informal discovery and prior to mediation, the number of putative Class Members, their average rate of pay, a sample of time records, Defendant's written policies, and related information. This information enabled Plaintiff to complete an investigation sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

1.7 The Parties wish to fully, finally and forever settle, compromise and discharge all disputes and claims arising from or related to the Operative Complaint and the Action, and represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

1.8 The Parties recognize that the Court has not granted class certification.

1.9 Now, therefore, the Parties enter into the instant Joint Stipulation and, solely for purposes of settling the Action and addressing any discrepancies identified herein, stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met, including that the putative Class is ascertainable and so numerous as to make it impracticable to join all putative Class Members; there are common questions of law and fact which predominate over any question(s) affecting any individual putative Class Member; Plaintiff's claims are typical of the claims of the putative Class; Plaintiff and Class Counsel will fairly and adequately protect the interests of the putative Class; the prosecution of separate actions by individual members of the putative Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct; and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

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2.11. "Class Period" means the period from November 10, 2017, through May 11, 2023.

2.12. "Class Representative" means Veronica Marmolejo, the named Plaintiff in the Action, who seeks Court approval to serve as the Class Representative.

2.13. "Class Representative Service Payment" means the payment to the Class Representative for initiating and providing services in support of the Action and for her general release, as described in Paragraph 5.1 below.

2.14. "Court" means the Superior Court of California, County of San Bernardino.

2.15. "Defendant" means High Caliber Organics, Inc.

2.16. "Defense Counsel" means Collins + Collins LLP.

2.17. "Effective Date" means the date that both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Settlement Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Settlement Class Members object to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

2.18. "Final Approval" means the Court's order granting final approval of the Settlement.

2.19. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

2.20. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

2.21. "Gross Settlement Amount" means \$290,000.00, which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation

1 Expenses Payment, Class Representative Service Payment, and Administration Expenses
2 Payment. Defendant shall pay the Gross Settlement Amount in eleven \$25,000.00 monthly
3 increments and one \$15,000.00 final increment, beginning on April 1, 2023. Defendant's
4 employer's-side payroll taxes, which are paid in addition to the Gross Settlement Amount, shall
5 be added to and paid at the time of the final payment.

6 2.22. "Individual Class Payment" means the individual payment to each Settlement
7 Class Member equal to the Net Settlement Amount divided by the total number of Settlement
8 Class Members.

9 2.23. "Individual PAGA Payment" means the individual payment to each Aggrieved
10 Employee equal to the PAGA Settlement Payment divided by the total number of Aggrieved
11 Employees.

12 2.24. "Judgment" means the judgment entered by the Court based upon the Final
13 Approval.

14 2.25. "LWDA" means the California Labor and Workforce Development Agency.

15 2.26. "LWDA PAGA Payment" means the allocation of seventy-five percent of the
16 PAGA Penalties to be paid to the LWDA, pursuant to Labor Code section 2699, subdivision (i).

17 2.27. "Net Settlement Amount" means the Gross Settlement Amount, less the
18 following payments in the amounts approved by the Court: the Individual PAGA Payments,
19 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
20 Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. The
21 remainder is to be paid to Settlement Class Members as Individual Class Payments.

22 2.28. "Non-Participating Class Members" means Class Members who submit a valid
23 and timely Request for Exclusion from the Settlement.

24 2.29. "PAGA Period" means the period from November 4, 2020, through May 11,
25 2023.

26 2.30. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

27 2.31. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid
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1 from the Gross Settlement Amount, allocated 75% to the LWDA (i.e., \$15,000.00) and 25% to
2 the Aggrieved Employees (i.e., \$5,000), in settlement of the Released PAGA Claims.

3 2.32. "PAGA Settlement Payment" means the allocation of twenty-five percent of the
4 PAGA Penalties to be paid to the Aggrieved Employees, pursuant to Labor Code section 2699,
5 subdivision (i).

6 2.33. "Plaintiff" means Veronica Marmolejo.

7 2.34. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
8 of the Settlement.

9 2.35. "Preliminary Approval Order" means the proposed Order Granting Preliminary
10 Approval and Approval of PAGA Settlement.

11 2.36. "Released Class Claims" means the claims being released as described in
12 Paragraph 5.2 below.

13 2.37. "Released PAGA Claims" means the claims being released as described in
14 Paragraph 5.3 below.

15 2.38. "Released Parties" means: Defendant and each of its former and present
16 directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
17 assigns, subsidiaries, affiliates, managers, employees, agents, representatives, partners,
18 investors, administrators, parent companies, DBAs, divisions, and joint venturers.

19 2.39. "Request for Exclusion" means the submission of a written request by a Class
20 Member to be excluded from the Settlement, which is signed by the Class Member.

21 2.40. "Response Deadline" means 60 calendar days after the Administrator mails
22 Notice to the Class Members and Aggrieved Employees and the last date on which Class
23 Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax,
24 email or mail Objections to the Settlement. Class Members to whom Notice Packets are resent
25 after having been returned undeliverable to the Administrator shall have an additional 14
26 calendar days beyond the Response Deadline.

27 2.41. "Settlement" means the disposition of the Action effected by this Agreement.

2.42. “Settlement Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$290,000.00 as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Settlement Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: The Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and Individual PAGA Payment the Class Representative is entitled to receive as a Settlement Class Member and Aggrieved Employee). Defendant will not oppose a request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

1 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one
2 third of the Gross Settlement Amount, which is estimated to be \$96,666.67, and a Class Counsel
3 Litigation Expenses Payment of not more than \$16,000.00. Defendant will not oppose a request
4 for these payments that do not exceed these amounts. Plaintiff and/or Class Counsel will file a
5 motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no
6 later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class
7 Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment less than the
8 amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount.
9 Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising
10 from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel
11 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and
12 Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel
13 assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and
14 Class Counsel Litigation Expenses Payment, and hold Defendant harmless from and indemnify
15 Defendant for any dispute or controversy regarding division or sharing of any of such payments.

16 3.2.3. To the Administrator: An Administration Expenses Payment not to
17 exceed \$8,000.00, except for a showing of good cause and as approved by the Court. To the
18 extent the Administration Expenses Payment is less or the Court approves payment less than
19 \$8,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

20 3.2.4. To Each Settlement Class Member: An Individual Class Payment
21 calculated by dividing the Net Settlement Amount by the total number of Settlement Class
22 Members during the Class Period.

23 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each
24 Settlement Class Member's Individual Class Payment will be allocated to settlement of wage
25 claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be
26 reported on an IRS W-2 Form. 80% of each Settlement Class Member's Individual Class
27 Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
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1 Portion”). The Non-Wage Portion is not subject to wage withholdings and will be reported on
2 IRS 1099 Forms. Settlement Class Members assume full responsibility and liability for any
3 employee taxes owed on their Individual Class Payment.

4 3.2.4.2. Effect of Non-Participating Class Members on Calculation of
5 Individual Class Payments. Non-Participating Class Members will not receive any Individual
6 Class Payments. The Administrator will retain amounts equal to their Individual Class
7 Payments in the Net Settlement Amount for distribution to Settlement Class Members on a pro
8 rata basis.

9 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
10 amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (i.e., \$15,000.00)
11 allocated to the LWDA PAGA Payment and 25% (i.e., \$5,000.00) allocated to the PAGA
12 Settlement Payment.

13 3.2.6. The Administrator will calculate each Individual PAGA Payment by
14 dividing the PAGA Settlement Payment by the total number of Aggrieved Employees during
15 the PAGA Period.

16 3.2.6.1. If the Court approves PAGA Penalties of less than the amount
17 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
18 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

19 **4. SETTLEMENT FUNDING AND PAYMENTS.**

20 4.1. Class Data. Not later than 15 days after the Court grants Preliminary Approval
21 of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
22 the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
23 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
24 of this Settlement and for no other purpose, and restrict access to the Class Data to
25 Administrator employees who need access to the Class Data to effect and perform under this
26 Agreement. Defendant has a continuing duty to immediately (a) notify Class Counsel if it
27 discovers the Class Data omitted a class member and (b) provide corrected/updated Class Data

1 as soon as reasonably feasible. Without any extension of the deadline by which Defendant must
2 send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
3 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to omitted data.

4 4.2. Funding of Gross Settlement Amount. Defendant shall fund the Gross
5 Settlement Amount, and also fund the amounts necessary to pay Defendant's share of payroll
6 taxes, by transmitting eleven \$25,000.00 monthly increments and one \$15,000.00 final
7 increment to the Administrator, to be held in trust pending the Effective date, beginning on
8 April 1, 2023. The last installment plan shall include Defendant's employer's-side payroll taxes.
9 If Defendant fails to timely transfer the funds as set forth in this Agreement, Defendant shall
10 have 14 calendar days from the last day the payment is due to cure the untimely payment.
11 Defendant shall transmit the funds pursuant to the Settlement Administrator's electronic transfer
12 instructions. Defendant's payment obligations with respect to the Gross Settlement Amount,
13 Defendant's share of payroll taxes and any cure payment shall be met upon initiating the
14 electronic transfer of funds to the Administrator, pursuant to the Administrator's instructions. In
15 the event of an unsuccessful electronic transfer of funds, the Parties agree to cooperate in good
16 faith to resolve the issues.

17 4.3. Payments from the Gross Settlement Amount. Within 14 days after Defendant
18 fully funds the Gross Settlement Amount, the Administrator will mail checks for all Individual
19 Class Payments and Individual PAGA Payments, the LWDA PAGA Payment, the
20 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
21 Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of
22 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class
23 Representative Service Payment shall not precede disbursement of the Individual Class
24 Payments and Individual PAGA Payments.

25 4.3.1. The Administrator will issue checks for the Individual Class Payments
26 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S.
27 Mail, postage prepaid. The face of each check shall prominently state the date (not less than
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1 180 days after the date of mailing) when the check will be voided. The Administrator will
2 cancel all checks not cashed by the void date. The Administrator will send checks for
3 Individual Settlement Payments to all Settlement Class Members (including those for whom
4 Class Notice was returned undelivered). The Administrator will send checks for Individual
5 PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who
6 qualify as Aggrieved Employees (including those for whom Class Notice was returned
7 undelivered). The Administrator may send Settlement Class Members a single check combining
8 his or her Individual Class Payment and Individual PAGA Payment. Before mailing any
9 checks, the Administrator must update the recipients' mailing addresses using the National
10 Change of Address Database.

11 4.3.2. The Administrator must conduct a Class Member Address Search for all
12 other Class Members whose checks are returned undelivered without USPS forwarding
13 addresses. Within 7 days of receiving a returned check the Administrator must re-mail checks
14 to the USPS forwarding address provided or to an address ascertained through the Class
15 Member Address Search. The Administrator need not take further steps to deliver checks to
16 Class Members whose re-mailed checks are returned as undelivered. The Administrator shall
17 promptly send a replacement check to any Class Member whose original check was lost or
18 misplaced, requested by the Class Member prior to the void date.

19 4.3.3. For any Class Member whose Individual Class Payment check or
20 Individual PAGA Payment check is uncashed and cancelled after the void date, the
21 Administrator shall transmit the funds represented by such checks to the California Controller's
22 Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid
23 residue," subject to the requirements of California Code of Civil Procedure Section 384,
24 subdivision (b).

25 4.3.4. The payment of Individual Class Payments and Individual PAGA
26 Payments shall not obligate Defendant to confer any additional benefits or make any additional
27 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
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1 this Agreement.

2 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
3 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of
4 the Individual Class Payments, Plaintiff, Class Members and Class Counsel will release claims
5 against all Released Parties as follows:

6 5.1. Plaintiff's Release. In addition to the Released Class Claims and Released
7 PAGA Claims described below, Plaintiff and her respective former and present spouses,
8 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
9 release and discharge Released Parties from all claims, demands, rights, liabilities and causes of
10 action of every nature and description whatsoever, whether known or unknown, asserted or that
11 might have been asserted, whether in tort, contract, or for violation of any state or federal
12 statute, rule, law or regulation arising out of, relating to, or in connection with any act or
13 omission of the Released Parties through the date of full execution of this Settlement Agreement
14 in connection with his or her employment or the termination thereof ("Plaintiff's Release").
15 Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to
16 those rights that as a matter of law cannot be waived, including, but not limited to any claims
17 for vested benefits, unemployment benefits, disability benefits, social security benefits, or
18 workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff
19 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now
20 knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain
21 effective in all respects, notwithstanding such different or additional facts or Plaintiff's
22 discovery of them.

23 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542.
24 For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
25 rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:
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1 **A general release does not extend to claims that the creditor or**
2 **releasing party does not know or suspect to exist in his or her favor at**
3 **the time of executing the release, and that if known by him or her would**
4 **have materially affected his or her settlement with the debtor or**
5 **Released Party.**

6 5.2. Released Class Claims by Settlement Class Members: All Settlement Class
7 Members, on behalf of themselves and their respective former and present representatives,
8 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from
9 all claims that were alleged, or reasonably could have been alleged, in the Operative Complaint,
10 and ascertained in the course of the Action, that arose during the Class Period including with
11 respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay
12 minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant
13 meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant
14 rest periods; (e) failure to issue accurate, itemized wage statements and maintain payroll
15 records; (f) failure to pay all wages due upon separation of employment; (g) failure to reimburse
16 for necessary business expenses; (h) all claims under California Business & Professions Code §
17 17200 for unfair business practices that could have been premised on the facts, claims, causes of
18 action or legal theories described above; (i) violation of or claims under the following sections
19 of the California Labor Code sections 201, 202, 203, 204, 206, 218.6, 226, 226.3, 226.7, 510,
20 512, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and (j) violation of the California
21 Industrial Wage Orders that could have been premised on the facts, claims, causes of action or
22 legal theories described above, as well as any potential penalties, interest or attorneys' fees
23 associated with all of such causes of action under California law ("Released Class Claims").
24 Except as set forth in Section 5.3 of this Agreement, Settlement Class Members do not release
25 any other claims, including claims for vested benefits, wrongful termination, violation of the
26 Fair Employment and Housing Act, unemployment insurance, disability, social security,
27 workers' compensation, or claims based on facts occurring outside the Class Period.

28 5.3. Released PAGA Claims by Aggrieved Employees: All Class Members who are
Aggrieved Employees, regardless of whether they are Settlement Class Members or Non-

1 Participating Class Members, are deemed to release, on behalf of themselves and their
2 respective former and present representatives, agents, attorneys, heirs, administrators,
3 successors, and assigns, the Released Parties from all claims demands, rights, liabilities and
4 causes of action under the California Labor Code Private Attorneys General Act that were
5 alleged, or reasonably could have been alleged, based on the claims asserted in the Operative
6 Complaint or the PAGA Notice and ascertained in the course of the Action arising during or
7 with respect to the PAGA Period (“Released PAGA Claims”).

8 5.3.1. The foregoing release shall be binding on Plaintiff, the Aggrieved
9 Employees, and the State of California, and shall bar by res judicata any claim under the PAGA
10 brought by any person, including the Aggrieved Employees, on behalf of the State of California,
11 as to any claims predicated on the Released PAGA Claims.

12 **6. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff will prepare and file a motion
13 for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s
14 current checklist for Preliminary Approval.

15 6.1. Responsibilities of Counsel. Class Counsel is responsible for timely finalizing
16 and filing the Motion for Preliminary Approval. The Parties are jointly responsible for
17 appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel
18 is responsible for delivering the Court’s Preliminary Approval to the Administrator.

19 6.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
20 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
21 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
22 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
23 Preliminary Approval or conditions Preliminary Approval on any material change to this
24 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
25 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement
26 and otherwise satisfy the Court’s concerns.

1 **7. SETTLEMENT ADMINISTRATION.**

2 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
3 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group,
4 Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in
5 this Agreement in exchange for payment of Administration Expenses. The Parties and their
6 Counsel represent that they have no interest or relationship, financial or otherwise, with the
7 Administrator other than a professional relationship arising out of prior experiences
8 administering settlements.

9 7.2. Employer Identification Number. The Administrator shall have and use its own
10 Employer Identification Number for purposes of calculating payroll tax withholdings and
11 providing reports to state and federal tax authorities.

12 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund
13 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
14 Regulation section 468B-1.

15 7.4. Notice to Class Members.

16 7.4.1. No later than 3 business days after receipt of the Class Data, the
17 Administrator shall notify Class Counsel that the list has been received and provide the number
18 of Class Members and Aggrieved Employees.

19 7.4.2. Using best efforts to perform as soon as possible, and in no event later
20 than 14 calendar days after receiving the Class Data, the Administrator will send to all Class
21 Members identified in the Class Data, via first-class United States Postal Service (“USPS”)
22 mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The
23 Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment
24 and/or Individual PAGA Payment payable to the Settlement Class Member and/or Aggrieved
25 Employee. Before mailing Class Notices, the Administrator shall update Class Member addresses
26 using the National Change of Address database.

7.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notices to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, the Defendant, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received a Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email or mail, a signed written Request for Exclusion no later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the

1 Class Member's name, address and email address or telephone number. To be valid, a Request
2 for Exclusion must be timely faxed, emailed or postmarked by the Response Deadline.

3 7.5.2. The Administrator may not reject a Request for Exclusion as invalid
4 because it fails to contain all the information specified in the Class Notice. The Administrator
5 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
6 identity of the person as a Class Member and the Class Member's desire to be excluded. The
7 Administrator's determination shall be final and not appealable or otherwise susceptible to
8 challenge. If the Administrator has reason to question the authenticity of a Request for
9 Exclusion, the Administrator may demand additional proof of the Class Member's identity.

10 7.5.3. Every Class Member who does not submit a timely and valid Request for
11 Exclusion is deemed to be a Settlement Class Member under this Agreement, entitled to all
12 benefits and bound by all terms and conditions of the Settlement, including the Settlement Class
13 Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the
14 Settlement Class Member actually receives the Class Notice or objects to the Settlement.

15 7.5.4. Every Class Member who submits a valid and timely Request for
16 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class
17 Payment or have the right to object to the class action components of the Settlement. Because
18 future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
19 Participating Class Members who are Aggrieved Employees are deemed to release the claims
20 identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

21 7.6. Objections to Settlement.

22 7.6.1. Only Settlement Class Members may object to the class action
23 components of the Settlement and/or this Agreement, including contesting the fairness of the
24 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment and/or Class Representative Service Payment.

26 7.6.2. Settlement Class Members may send written objections to the
27 Administrator, by fax, email, or mail. In the alternative, Settlement Class Members may appear

1 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final
2 Approval Hearing. A Settlement Class Member who elects to send a written objection to the
3 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
4 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

5 7.6.3. Non-Participating Class Members have no right to object to any of the
6 class action components of the Settlement.

7 7.7. Administrator Duties. The Administrator has a duty to perform or observe all
8 tasks to be performed or observed by the Administrator contained in this Agreement or
9 otherwise.

10 7.7.1. Website, Email Address and Toll-Free Number. The Administrator will
11 establish and maintain and use an internet website to post information of interest to Class
12 Members including the date, time and location for the Final Approval Hearing and copies of the
13 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
14 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
15 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
16 Approval and the Judgment. The Administrator will also maintain and monitor an email address
17 and a toll-free telephone number to receive Class Member calls, faxes and emails.

18 7.7.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
19 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
20 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
21 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
22 and other identifying information of Class Members who have timely submitted valid Requests
23 for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
24 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
25 Exclusion from Settlement submitted (whether valid or invalid).

26 7.7.3. Weekly Reports. The Administrator must, on a weekly basis, provide
27 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
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1 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
2 Exclusion (whether valid or invalid) received, objections received, and checks mailed for
3 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly
4 Reports must include the Administrator’s assessment of the validity of Requests for Exclusion
5 and attach copies of all Requests for Exclusion and objections received.

6 7.7.4. Administrator’s Declaration. Not later than 14 days before the date by
7 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
8 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
9 for filing in Court attesting to its due diligence and compliance with all of its obligations under
10 this Agreement, including, but not limited to, its mailing of the Class Notice, the Class Notices
11 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
12 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
13 number of written objections and attach the Exclusion List. The Administrator will supplement
14 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is
15 responsible for filing the Administrator’s declaration(s) in Court.

16 7.7.5. Final Report by Administrator. Within 10 days after the Administrator
17 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class
18 Counsel and Defense Counsel with a final report detailing its disbursements by employee
19 identification number only of all payments made under this Agreement. At least 15 days before
20 any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and
21 Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of
22 all payments required under this Agreement. Class Counsel is responsible for filing the
23 Administrator’s declaration in Court.

24 **8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
25 Defendant estimates that, as of the date of this Settlement Agreement, there are 210 Class
26 Members. If the number of Class Members as of May 11, 2023, increases by more than 15%
27 (more than 32), the Gross Settlement Amount will increase pro rata based on the number of
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1 Class Members above the additional 15% increase.

2 **9. DEFENDANT’S RIGHT TO WITHDRAW.** If the number of valid Requests for
3 Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members,
4 Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree
5 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
6 whatsoever, and that neither Party will have any further obligation to perform under this
7 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
8 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
9 Court of its election to withdraw not later than 7 days after the Administrator sends the final
10 Exclusion List to Defense Counsel; late elections will have no effect.

11 **10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the
12 calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of
13 the Settlement that includes a request for approval of the PAGA settlement under Labor Code
14 section 2699, subd. (1), a Proposed Final Approval Order, and a proposed Judgment
15 (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to
16 Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval.
17 Class Counsel and Defense Counsel will expeditiously meet and confer in person or by
18 telephone, and in good faith, to resolve any disagreements concerning the Motion for Final
19 Approval.

20 10.1. Response to Objections. Each Party retains the right to respond to any
21 objection raised by a Settlement Class Member, including the right to file responsive documents
22 in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered
23 or accepted by the Court.

24 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions
25 Final Approval on any material change to the Settlement (including, but not limited to, the
26 scope of release to be granted by Class Members), the Parties will expeditiously work together
27 in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain

1 Final Approval. The Court's decision to award less than the amounts requested for the Class
2 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
3 Expenses Payment and/or Administration Expenses Payment shall not constitute a material
4 modification to the Agreement within the meaning of this paragraph.

5 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
6 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely
7 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
8 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
10 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
11 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties,
12 their respective counsel, and all Settlement Class Members who did not object to the Settlement
13 as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights
14 to post-judgment and appellate proceedings, the right to file motions to vacate judgment,
15 motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include
16 any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the
17 Judgment, the Parties' obligations to perform under this Agreement will be suspended until such
18 time as the appeal is finally resolved and the Judgment becomes final, except as to matters that
19 do not affect the amount of the Net Settlement Amount.

20 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
21 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
22 material modification of this Agreement (including, but not limited to, the scope of release to be
23 granted by Class Members), this Agreement shall be null and void. The Parties shall
24 nevertheless expeditiously work together in good faith to address the appellate court's concerns
25 and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional
26 Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate,
27 reverse, or modify the Court's award of the Class Representative Service Payment or any

1 payments to Class Counsel shall not constitute a material modification of the Judgment within
2 the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

3 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
4 Procedure section 384, the Parties will work together in good faith to jointly submit and a
5 proposed amended judgment.

6 **12. ADDITIONAL PROVISIONS.**

7 12.1. No Admission of Liability, Class Certification or Representative Manageability
8 for Other Purposes. This Agreement represents a compromise and settlement of highly
9 disputed claims. Nothing in this Agreement is intended or should be construed as an admission
10 by Defendant that any of the allegations in the Operative Complaint have merit or that
11 Defendant has any liability for any claims asserted; nor should it be intended or construed as an
12 admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree
13 that class certification and representative treatment is for purposes of this Settlement only. If,
14 for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment,
15 Defendant reserves the right to contest certification of any class for any reasons, and Defendant
16 reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to
17 move for class certification on any grounds available and to contest Defendant's defenses. The
18 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on,
19 and will not be admissible in connection with, any litigation (except for proceedings to enforce
20 or effectuate the Settlement and this Agreement).

21 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
22 Defendant and Defense Counsel separately agrees that, until the Motion for Preliminary
23 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
24 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
25 terms of the Agreement directly or indirectly, specifically or generally, to any person,
26 corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,
27 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2)

1 counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
2 authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or
3 subpoena issued by a state or federal government agency.

4 12.3. Each Party agrees to immediately notify each other of any judicial or agency
5 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and
6 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
7 communication, before the filing of the Motion for Preliminary Approval, with any third party
8 regarding this Agreement or the matters giving rise to this Agreement except to respond only
9 that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class
10 Counsel’s communications with Class Members in accordance with Class Counsel’s ethical
11 obligations owed to Class Members.

12 12.4. No Solicitation. The Parties separately agree that they and their respective
13 counsel and employees will not solicit any Class Member to opt out of or object to the
14 Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to
15 restrict Class Counsel’s ability to communicate with Class Members in accordance with Class
16 Counsel’s ethical obligations owed to Class Members.

17 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this
18 Agreement together with its attached exhibits shall constitute the entire agreement between the
19 Parties relating to the Settlement, superseding any and all oral representations, warranties,
20 covenants, or inducements made to or by any Party.

21 12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant
22 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
23 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
24 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
25 terms of this Agreement including any amendments to this Agreement.

26 12.7. Cooperation. The Parties and their counsel will cooperate with each other and
27 use their best efforts, in good faith, to implement the Settlement by, among other things,

1 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
2 points and authorities as requested by the Court. In the event the Parties are unable to agree
3 upon the form or content of any document necessary to implement the Settlement, or on any
4 modification of the Agreement that may become necessary to implement the Settlement, the
5 Parties will seek the assistance of a mediator and/or the Court for resolution.

6 12.8. No Prior Assignments. The Parties separately represent and warrant that they
7 have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
8 transfer, or encumber to any person or entity and portion of any liability, claim, demand, action,
9 cause of action, or right released and discharged by the Party in this Settlement.

10 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
11 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
12 Settlement be relied upon as such within the meaning of United States Treasury Department
13 Circular 230 (31 CFR Part 10, as amended) or otherwise.

14 12.10. Modification of Agreement. This Agreement, and all parts of it, may be
15 amended, modified, changed, or waived only by an express written instrument signed by all
16 Parties or their representatives, and approved by the Court.

17 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and
18 inure to the benefit of, the successors of each of the Parties.

19 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibits
20 will be governed by and interpreted according to the internal laws of the state of California,
21 without regard to conflict of law principles.

22 12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and
23 preparation of this Agreement. This Agreement will not be construed against any Party on the
24 basis that the Party was the drafter or participated in the drafting.

25 12.14. Confidentiality. To the extent permitted by law, all agreements made, and
26 orders entered during Action and in this Agreement relating to the confidentiality of information
27 shall survive the execution of this Agreement.

1 12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant
2 to Cal. Evid. Code section 1152, and all copies and summaries of the Class Data provided to
3 Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or
4 in connection with the Settlement, may be used only with respect to this Settlement, and no
5 other purpose, and may not be used in any way that violates any existing contractual agreement,
6 statute, or rule of court. Not later than 90 days after the date when the Court discharges the
7 Administrator's obligation to provide a Declaration confirming the final pay out of all
8 Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received
9 from Defendant unless, prior to the Court's discharge of the Administrator's obligation,
10 Defendant makes a written request to Class Counsel for the return, rather than the destructions,
11 of Class Data.

12 12.16. Headings. The descriptive heading of any section or paragraph of this
13 Agreement is inserted for convenience of reference only and does not constitute a part of this
14 Agreement.

15 12.17. Calendar Days. Unless otherwise noted, all reference to "days" in this
16 Agreement shall be to calendar days. In the event any date or deadline set forth in this
17 Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first
18 business day thereafter.

19 12.18. Notice. All notices, demands or other communications between the Parties in
20 connection with this Agreement will be in writing and deemed to have been duly given as of the
21 third business day after mailing by United States mail, or the day sent by email or messenger,
22 addressed as follows:

23 To Plaintiff

24 Kane Moon, Esq.
25 Allen Feghali, Esq.
26 Jacquelyne VanEmmerik, Esq.
27 **MOON & YANG, APC**
28 1055 West Seventh Street, Suite 1880
 Los Angeles, California 90017

To Defendant:

Megan K. Lieber, Esq.
Bianca M. Bonjean, Esq.
COLLINS + COLLINS LLP
2175 North California Boulevard, Suite 835
Walnut Creek, California 94596

12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 3/27/2023
March , 2023

By:

DocuSigned by:
Laura V
Marmolejo
92D86D873E654B7...
Veronica Marmolejo

Dated: March , 2023

By:

For High Caliber Organics, Inc.

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1 To Defendant:

2 Megan K. Lieber, Esq.
3 Bianca M. Bonjean, Esq.
4 **COLLINS + COLLINS LLP**
5 2175 North California Boulevard, Suite 835
6 Walnut Creek, California 94596

7 12.19. Execution in Counterparts. This Agreement may be executed in one or more
8 counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this
9 Agreement shall be accepted as an original. All executed counterparts and each of them will be
10 deemed to be one and the same instrument if counsel for the Parties will exchange between
11 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
12 prove the existence and contents of this Agreement.

13 12.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement
14 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties
15 further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to
16 extend the date to bring a case to trial under CCP section 583.310 for the entire period of this
17 settlement process.

18 Dated: March , 2023

19 By:

20 Veronica Marmolejo

21 Dated: March 23, 2023

22 By:

23 R. T Fogwell
24 For High Caliber Organics, Inc.

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MOON & YANG, APC

Dated: March 29, 2023

By:


Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.
Attorneys for Plaintiff, Veronica
Marmolejo

COLLINS + COLLINS LLP

Dated: March , 2023

By:

Megan K. Lieber, Esq.
Bianca M. Bonjean, Esq.
Attorney for Defendant, High Caliber
Organics, Inc.

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MOON & YANG, APC

Dated: March , 2023

By:

Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.
Attorneys for Plaintiff, Veronica
Marmolejo

COLLINS + COLLINS LLP

Dated: March 23, 2023

By:

Bianca Bonjean

Megan K. Lieber, Esq.
Bianca M. Bonjean, Esq.
Attorney for Defendant, High Caliber
Organics, Inc.

EXHIBIT A

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