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8 **Attorney for Plaintiff: GX FARMS**

9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **FRESNO DISTRICT**

12 **GX FARMS, a California Corporation**) **CASE NO. _____**
13)
14 **Plaintiff,**) **COMPLAINT FOR DAMAGES**
15)
16 **vs.**) **DEMAND FOR JURY TRIAL**
17)
18 **H.E.M.P. GROUP, LLC, JOHN LEE,**)
19 **S. MARK SPOONE, a person currently)**
20 **known only as JAY MR. NICE GUY, and)**
21 **DOES 1-20, inclusive.**)
22)
23 **Defendants.**)
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29 Plaintiff, GX FARMS, alleges:

30 1. This court has jurisdiction by reason of diversity of citizenship pursuant to 28
31 U.S.C. 1331, in that the Complaint is between a citizen of this state and a citizen of another state
32 and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

33 2. Venue is appropriate in this judicial district because this district is where a
34 substantial part of the events or omissions giving rise to the claims occurred, or a substantial
35 amount of the property that is subject to the action is situated.

1 3. Plaintiff GX FARMS is and at all times relevant to this complaint was, a
2 corporation lawfully formed and doing business in Kern County, California. Plaintiff GX
3 FARMS is a commercial agricultural grower, and grows various crops, including hemp.

4 4. Defendant H.E.M.P. GROUP LLC (HEMP) is and at all times relevant to this
5 complaint was, a limited liability company (LLC) lawfully formed and doing business in the
6 Aurora, Arapahoe County, Colorado. Defendant HEMP is a commercial seller of seed, including
7 but not limited to hemp.

8 5. Defendant John LEE (LEE) is and at all times relevant to this complaint was,
9 either an agent or employee of defendant HEMP who had direct contact with, and made
10 representations to, agents of GX FARMS during the time frame of this dispute.

11 6. Defendant S. Mark SPOONE (SPOONE) is, and at all times relevant to this
12 complaint was, either an agent or employee of defendant HEMP who had direct contact with,
13 and made representations to, agents of plaintiff GX FARMS during the time frame of this dispute.

14 7. Defendant currently known only as “Jay Mr. Nice Guy,” (JAY) is, and at all times
15 relevant to this complaint was, either an agent or employee of defendant HEMP who had direct
16 contact with, and made representations to, agents of plaintiff GX FARMS during the time frame
17 of this dispute. Plaintiff GX FARMS will promptly seek to amend this complaint when defendant
18 JAY’s true name is discovered.

19 8. Plaintiff, GX FARMS, is ignorant of the true names and capacities of defendants
20 sued herein as DOES 1 through 20, inclusive, and therefore sues these Defendants by these
21 fictitious names. Plaintiff GX FARMS will amend this complaint to allege their true names and
22 capacities when ascertained. Plaintiff GX FARMS is informed and believes and thereon alleges
23 that each of the fictitiously named defendants is responsible in some manner for the occur-
24 rences herein alleged, and that plaintiff GX FARMS's damages as herein alleged were proximately
25 caused by those defendants.

1 9. Plaintiff GX FARMS is informed and believes and thereon alleges that at all times
2 material to this complaint, defendants, and each of the defendants fictitiously named in this
3 complaint, in addition to acting for himself, herself, or itself and on his, her, or its own behalf
4 individually, is and was acting as the agent, servant, employee and representative of, and with
5 the knowledge, consent and permission of, and in conspiracy with, each and all of the defendants
6 and within the course, scope and authority of that agency, service, employment, representation,
7 and conspiracy. Plaintiff GX FARMS further alleges on information and belief that the acts of
8 each of the defendants were fully ratified by each and all of the defendants. Specifically, and
9 without limitation, plaintiff GX FARMS alleges on information and belief that the actions,
10 failures to act, breaches, conspiracy, and misrepresentations alleged herein and attributed to one
11 or more of the specific defendants were approved, ratified, and done with the cooperation and
12 knowledge of each and all of the defendants.

13 10. The true names and capacities of DOES 1-20, whether individual, corporate,
14 associate or otherwise are unknown to plaintiff GX FARMS, who therefore sue Defendants by
15 such fictitious names, and plaintiff will amend this complaint to show their true names and
16 capacities when the same have been ascertained. Plaintiff GX FARMS is informed and believes
17 and thereon alleges that each of the defendants and DOES 1-20, are responsible in some
18 manner—negligently, in warranty, strictly, or otherwise, for the events and happenings referred
19 to herein.

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21 **STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION**

22 11. On or about May 30, 2019, plaintiff GX FARMS asked for and defendant HEMP
23 sold plaintiff GX FARMS 520,000 high quality Cherry Blossom hemp seeds at a price of \$0.70
24 per seed, and a price of \$364,000 to be paid to defendant HEMP and a \$25,000 broker fee to be
25 paid to defendant JAY, which were both paid on May 30, 2019. After much discussion about
26 the product, and in exchange for this monetary consideration, defendant JAY specifically
27 warranted that the seeds were to have a germination rate of 99% and a 99.6% feminization rate
28 on May 29, 2019.

1 12. At the time plaintiff GX FARMS acquired the seeds, they were in the container(s)
2 with the name Hemp Group, LLC's on the label. The labels on the packaging indicated that the
3 seed variety was 99.47% "pure seed" (meaning female seed) and that the seeds had a germination
4 rate of 89%.

5 13. Implied in the agreement for the purchase of 520,200 hemp seeds was that the
6 seeds were suitable for growing a high-end commercial quality hemp crop, as plaintiff GX
7 FARMS was prepared to plant over a 220 to 240-acre portion of GX FARMS land in 2019.

8 14. Hemp is a photo sensitive plant that grows and flowers according to the number
9 of hours of sunlight. The optimum hours of maximum sun light occur around August 1st. At that
10 time the sun exposure reaches approximately 12 hours a day allowing the plants to transition and
11 flower.

12 15. Plaintiff GX FARMS had prepared land to plant approximately 1,800 of
13 defendant HEMP's "Cherry Blossom seeds" per acre. The anticipated revenue to GX Farms was
14 between \$20,000 and \$100,000 per acre.

15 16. Plaintiff GX FARMS utilizes the services of *Mazzei Nursery* to start all of their
16 seeds before transplanting the seeds onto the GX FARMS land.

17 17. *Mazzei Nursery* is one of the largest seed companies in California and America.
18 They have been in business more than 50 years, and performed over 100 million tomato
19 transplants, 6 million almond tree transplants, and 8 million hemp transplants in 2018 alone.
20 *Mazzei Nursery* has top of the line seed starting and laboratory equipment.

21 18. Plaintiff GX FARMS contracted with *Mazzei Nursery* to test the quality and
22 quantity of the seeds provided by defendant Hemp. *Mazzei Nursery* informed plaintiff GX
23 FARMS that the shipment received from defendant HEMP was not of the quantity requested,
24 being short some 85,000 seeds.

25 19. Plaintiff GX FARMS promptly informed defendant JAY on or about July 23,
26 2019 that the shipment was 85,000 seeds short.

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2 20. Plaintiff GX FARMS was informed by defendant JAY “broker” that defendant
3 LEE was an Officer and Principal of HEMP. On or about August 4, 2019, plaintiff GX FARMS
4 contacted defendant LEE informing him that the shipment was 85,000 seeds short.

5 21. Subsequent to these discussions between the parties about the quantity being short
6 by 85,000 seeds, plaintiff GX FARMS learned from *Mazzei Nursery* that their test results
7 indicated the germination rate of defendant HEMP’s seeds was only 55%. This was not the 99%
8 that defendant JAY and defendant LEE had promised to GX FARMS and was far below the
9 germination rate of 89% as warranted on the seed package labels.

10 22. Plaintiff GX FARMS promptly informed defendant JAY that the shipment was
11 only germinating at 55%, not the 99% as promised.

12 23. Plaintiff GX FARMS promptly informed defendant LEE that the shipment was
13 only germinating at 55%, not the 99% as promised.

14 24. After much discussion and initial denial between plaintiff GX FARMS and
15 defendants JAY and LEE, as to both the quantity error and the quality error, the parties entered
16 into multiple agreements.

17 25. On or about August 10, 2019, the first agreement between the parties as evidenced
18 in communications between them, was an acknowledgment that defendant HEMP had failed to
19 make good on the quantity error of 85,000 seeds. This was to be rectified by a shipment from
20 defendant HEMP to plaintiff GX FARMS of an additional 85,000 high quality “Cherry Blossom”
21 hemp seeds with a germination rate of 99% and a 99.6% feminization rate.

22 26. On or about August 10, 2019, the second agreement between the parties, as
23 evidenced in communications between them, was an acknowledgment that defendant HEMP had
24 failed to make good on the quality error of a 55% germination rate, versus the 99% germination
25 rate promised, which was to be rectified by defendant HEMP shipping to plaintiff GX FARMS
26 200,000 high grade commercial quality Cannabidiol (CBD) seeds.

1 27. On or about August 10, 2019, the third agreement between the parties, as
2 evidenced in communications between them, was an acknowledgment that defendant HEMP and
3 plaintiff GX FARMS would draw up two contracts to effectuate their agreements, with lawyers
4 from defendant HEMP doing the drafting.

5 28. Defendant HEMP was well aware that the hemp growing season was nearing the
6 close of its yearly window. With this knowledge, defendant HEMP demanded plaintiff GX
7 FARMS to sign the first contract. Under this pressure, plaintiff GX FARMS signed the contract
8 on August 13, 2019.

9 29. On or about August 13, 2019 defendant HEMP shipped to plaintiff GX FARMS
10 85,000 “Cherry Blossom” seeds that were to have a germination rate of 99% and a 99.6%
11 feminization rate to make up for the initial shortage in seeds.

12 30. Beginning prior to, intensifying immediately after August 13, 2019 through
13 November 5, 2019, plaintiff GX FARMS and defendants JAY and LEE, as well as defendant
14 SPOONE, engaged in discussions about the second contract regarding the shipment of the
15 200,000 CBD seeds to address the germination rate quality error.

16 31. On or about September 22, 2019, plaintiff GX FARMS *through Mazzei Nursery*,
17 learned that the original seeds supplied by defendant HEMP were not feminized as represented.
18 Laboratory testing showed a 50% feminization rate, which was not what was promised and
19 warranted by HEMP.

20 32. On or about September 22, 2019, plaintiff GX FARMS informed defendant JAY
21 that the feminization rate of HEMP seeds was not as promised.

22 33. On or about September 22, 2019, plaintiff GX FARMS informed defendant LEE
23 that the feminization rate of HEMP seeds was not as promised.

24 34. At no time in any discussion between the parties that began before August 13,
25 2019, and until November 5, 2019, did any defendant claim, at any time, that defendant HEMP
26 was not responsible for the germination quality issue GX FARMS had been complaining about
27 for months.
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1 35. Plaintiff GX FARMS planted the “Cherry Blossom” seeds obtained from
2 defendant HEMP on their designated acreage. At that time, plaintiff GX FARMS did not know,
3 nor could plaintiff GX FARMS have known, that the seeds provided by defendant HEMP were
4 not feminized at a 99.6% rate, as promised and warrantied by defendant HEMP prior to purchase.

5 36. Only after planting and the crop flowering did plaintiff GX FARMS discover that
6 the seeds sold by defendant HEMP were not fully feminized, thereby drastically diminishing a
7 marketable hemp crop. Prior to this time, plaintiff GX FARMS had no reason to suspect that
8 they had received anything other than seeds feminized at a 99.6% rate as promised and
9 warrantied from defendant HEMP.

10 37. Defendant HEMP’s product has damaged plaintiff GX FARMS’s harvest. As a
11 result, plaintiff GX FARMS has incurred production costs, including fertilizer, irrigation, and
12 labor applied to what turned out to be nonproductive seeds. In addition, plaintiff GX FARMS
13 has lost the sums that it would have obtained from the sale of its hemp harvest at market. Plaintiff
14 GX FARMS had anticipated a crop production yield of between \$20,000 and \$100,000 per acre
15 of its 220 to 240-acre plot of defendant HEMP’s “Cherry Blossom” hemp seeds. The ultimate
16 crop yield was zero from defendant HEMP’s seeds.

17 38. Plaintiff GX FARMS has attempted to mitigate their damages at every turn,
18 however, Plaintiff GX FARMS has been unable to recover a sum equivalent to that which would
19 have been received had the defendant HEMP’s seeds not been defective.

20 39. On information and belief, defendants, and each of them, knew or had reason to
21 know that the seed it sold to plaintiff GX FARMS was contaminated, defective and/or mislabeled
22 prior to the sale date. On information and belief, defendants, and each of them, knew or should
23 have known, the fact that the seeds sold to plaintiff GX FARMS were contaminated, defective
24 and/or mislabeled, in that the seeds were not at a 99% germination rate and a 99.6% feminization
25 rate, as promised and warrantied prior to sale.

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**FIRST CAUSE OF ACTION
(Breach of Contract)**

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3 40. Plaintiff GX FARMS refers to and incorporates by this reference paragraphs 1
4 through 39, inclusive, as though fully set forth here.

5 41. Plaintiff GX FARMS and defendant HEMP entered into an oral agreement for the
6 purchase of 520,000 Cherry Blossom hemp seeds promised to have a 99% germination rate and
7 99.6% feminization rate, at a cost of \$364,000 being paid to defendant HEMP and a \$25,000
8 broker fee going to defendant JAY. Later an invoice was drawn up.

9 42. Plaintiff GX FARMS performed by tendering the agreed-on purchase price.

10 43. Defendant HEMP breached the parties' agreement by failing to provide 520,000
11 seeds, falling 85,000 seeds short.

12 44. Defendant HEMP breached the parties' agreement by failing to provide seeds with
13 a germination rate of 99%.

14 45. Defendant HEMP breached the parties' agreement by failing to provide seeds with
15 a feminization rate of 99.6%.

16 46. The seeds provided by defendant HEMP were unsuitable for plaintiff GX
17 FARMS's known purpose of farming 520,000 commercial quality Cherry Blossom hemp seeds.

18 47. The seeds provided by defendant HEMP were unsuitable for plaintiff GX
19 FARMS's known purpose of farming commercial quality Cherry Blossom hemp seeds with a
20 germination rate of 99%.

21 48. The seeds provided by defendant HEMP were unsuitable for plaintiff GX
22 FARMS's known purpose of farming commercial quality Cherry Blossom hemp seeds with a
23 feminization rate of 99.6%.

24 49. As a result of defendant HEMP's breach, Plaintiff GX FARMS has been damaged
25 in a sum in excess of \$75,000 and to be proven at time of trial.

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**SECOND CAUSE OF ACTION
(Breach of Express Warranty)**

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3 50. Plaintiff GX FARMS refers to and incorporates by this reference paragraphs 1
4 through 49 inclusive, as though fully set forth here.

5 51. Plaintiff GX FARMS asked for 520,000 “Cherry Blossom” hemp seeds and
6 defendant HEMP agreed to sell 520,000 “Cherry Blossom” hemp seeds to plaintiff GX FARMS.
7 Defendant HEMP expressly warranted that the seeds were 520,000 in quantity and sold plaintiff
8 GX FARMS a case of seeds marked and labeled as containing 520,000 of “Cherry Blossom”
9 seeds per plaintiff GX FARMS’ order. Defendant HEMP further warranted a quantity of
10 520,000 seeds based upon of their claimed of the weight of the shipment.

11 52. Plaintiff GX FARMS asked for the “Cherry Blossom” hemp seeds it was
12 purchasing to be of a very high commercial quality germination rate and defendant HEMP agreed
13 to sell 520,000 “Cherry Blossom” hemp seeds to plaintiff GX FARMS that had a 99%
14 germination rate. Defendant HEMP expressly warranted that the seeds it was selling had a 99%
15 germination rate and sold plaintiff GX FARMS a case of seeds purported to have a 99%
16 germination rate on plaintiff GX FARMS's request for 520,000 seeds of a very high commercial
17 quality germination rate. Defendant HEMP further warranted the quantity of 520,000 seeds had
18 an 89% germination rate by affixing a label to the container or packaging so specifying.

19 53. Plaintiff GX FARMS asked for the “Cherry Blossom” hemp seeds it was
20 purchasing to be of a very high commercial quality feminization rate (meaning near fully
21 feminized). Defendant HEMP agreed to sell 520,000 Cherry Blossom hemp seeds to plaintiff
22 GX FARMS that had a 99.6% feminization rate. Defendant HEMP expressly warranted that the
23 seeds it was selling had a 99.6% feminization rate and sold plaintiff GX FARMS a case of seeds
24 purported to have a 99.6% feminization rate. Defendant HEMP further warranted that the
25 quantity of 520,000 seeds had a 99.47% feminization rate by affixing a label to the container or
26 packaging so specified.

1 54. Defendant HEMP's warranties formed the basis of plaintiff GX FARMS's bargain
2 with defendant HEMP. Had defendant HEMP, or its agents, informed plaintiff GX FARMS that
3 the seeds were not of a quantity of 520,000 as bargained for, plaintiff GX FARMS would not
4 have executed the purchase.

5 55. Defendant HEMP's warranties formed the basis of plaintiff GX FARMS's bargain
6 with defendant HEMP. Had defendant HEMP, or its agents, informed plaintiff GX FARMS that
7 the seeds were not of a 99% germination rate. as bargained for, and were thereby defective,
8 plaintiff GX FARMS would not have executed the purchase.

9 56. Defendant HEMP's warranties formed the basis of plaintiff GX FARMS's bargain
10 with defendant HEMP. Had defendant HEMP, or its agents, informed plaintiff GX FARMS that
11 the seeds were not of a 99.6% feminization rate as bargained for, and were thereby defective,
12 plaintiff GX FARMS would not have executed the purchase.

13 57. Plaintiff GX FARMS, in making the purchase of seeds, relied on Defendant
14 HEMP's, and/or its agents, representations that the seeds were of a quantity of 520,000.

15 58. Plaintiff GX FARMS, in making the purchase of seeds, relied on Defendant
16 HEMP's, and/or its agents, representations that the seeds were of a 99% germination rate.

17 59. Plaintiff GX FARMS, in making the purchase of seeds, relied on Defendant
18 HEMP's, and/or its agents, representations that the seeds were of a 99.6% feminization rate.

19 60. The express warranty that the seeds were of a quantity of 520,000 was breached
20 when defendant HEMP supplied plaintiff GX FARMS with seeds that were 85,000 seeds short
21 of the 520,000 seeds bargained for.

22 61. The express warranty that the seeds were of a quality of a 99% germination rate
23 was breached when defendant HEMP supplied plaintiff GX FARMS with seeds that were
24 defective and were not of a 99% germination rate.

25 62. The express warranty that the seeds were of a quality of a 99.6% feminization rate
26 was breached when defendant HEMP supplied plaintiff GX FARMS with seeds that were
27 defective and were not of a 99.6% feminization rate.

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1 63. Because the seeds failed to comply with defendant HEMP’s warranty that the
2 seeds were of a quantity of 520,000, plaintiff GX FARMS was financially injured in an amount
3 in excess of \$75,000 and to be proven at the time of trial.

4 64. Because the seeds failed to comply with defendant HEMP’s warranty that the
5 seeds were of a quality of 99% germination rate, plaintiff GX FARMS was financially injured in
6 an amount in excess of \$75,000 and to be proven at the time of trial.

7 65. Because the seeds failed to comply with defendant HEMP’s warranty that the
8 seeds were of a quality of 99.6% feminization rate, plaintiff GX FARMS was financially injured
9 in an amount in excess of \$75,000 and to be proven at the time of trial.

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11 **THIRD CAUSE OF ACTION**
12 **(Breach of Implied Warranty of Merchantability)**

13 66. Plaintiff GX FARMS refers to and incorporates by this reference paragraphs 1
14 through 65, inclusive, as though fully set forth here.

15 67. Defendant HEMP purported to sell plaintiff GX FARMS 520,000 “Cherry
16 Blossom” hemp seeds with a germination rate of 99%.

17 68. Defendant HEMP purported to sell plaintiff GX FARMS 520,000 “Cherry
18 Blossom” hemp seeds with a feminization rate of 99.6%.

19 69. Defendant HEMP is a merchant dealing in field crops and various types of seed,
20 including hemp seed.

21 70. Defendant HEMP impliedly warranted that the seed it delivered would be
22 merchantable and fit for the purpose of growing high-quality “Cherry Blossom” hemp for
23 commercial sale. In fact, the seeds provided by defendant HEMP were not merchantable and fit
24 for the purpose of growing high-quality “Cherry Blossom” hemp for commercial sale because
25 they were not of a 99% germination rate, but of a much lower, non-commercially viable,
26 germination rate.

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1 71. Defendant HEMP impliedly warranted that the seed it delivered would be
2 merchantable and fit for the purpose of growing high-quality “Cherry Blossom” hemp for
3 commercial sale. In fact, the seeds provided by defendant HEMP were not merchantable and fit
4 for the purpose of growing high-quality “Cherry Blossom” hemp for commercial sale because
5 they were not of a 99.6% feminization rate, but of a much lower, non-commercially viable,
6 feminization rate.

7 72. As soon as it became clear that the “Cherry Blossom” hemp seeds were defective
8 because they were not of a 99% germination rate, plaintiff GX FARMS immediately notified
9 defendants JAY and LEE of the nonconformity.

10 73. As soon as it became clear that the “Cherry Blossom” hemp seeds were defective
11 because they were not of a 99.6% feminization rate, plaintiff GX FARMS immediately notified
12 defendants JAY and LEE of the nonconformity.

13 74. The implied warranty of merchantability was breached when defendant HEMP
14 supplied plaintiff GX FARMS with seeds that did not conform to the minimum standards of
15 merchantability for “Cherry Blossom” hemp seeds in terms of the germination rate and which
16 subsequently failed to produce a marketable “Cherry Blossom” hemp crop.

17 75. The implied warranty of merchantability was breached when defendant HEMP
18 supplied plaintiff GX FARMS with seeds that did not conform to the minimum standards of
19 merchantability for “Cherry Blossom” hemp seeds in terms of the feminization rate and which
20 subsequently failed to produce a marketable “Cherry Blossom” hemp crop.

21 76. As a direct and proximate cause of defendant HEMP’s breach of the implied
22 warranty of merchantability as to the “Cherry Blossom” hemp seed germination rate, plaintiff
23 GX FARMS has been damaged in an amount exceeding \$75,000 and to be proven at the time of
24 trial.

25 77. As a direct and proximate cause of defendant HEMP’s breach of the implied
26 warranty of merchantability as to the “Cherry Blossom” hemp seed feminization rate, plaintiff
27 GX FARMS has been damaged in an amount exceeding \$75,000 and to be proven at the time of
28 trial.

FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for Particular Purpose)

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3 78. Plaintiff GX FARMS refers to and incorporates by this reference paragraphs 1
4 through 77, inclusive, as though set forth here.

5 79. Plaintiff GX FARMS purchased seed from Defendant HEMP. The pre-purchase
6 promise indicated a 99% germination rate and the label on the seed container indicated an 89%
7 germination rate.

8 80. Plaintiff GX FARMS purchased seed from Defendant HEMP. The pre-purchase
9 promise indicated a 99.6% feminization rate and the label on the seed container indicated a
10 99.47% germination rate.

11 81. Plaintiff GX FARMS's purpose in purchasing the seeds from Defendant HEMP
12 was to cultivate and harvest high-quality "Cherry Blossom" hemp for commercial sale, such
13 purchase requiring seeds with a very high germination rate and seeds which were fully feminized.

14 82. Plaintiff GX FARMS relied on Defendant HEMP and/or its agents' skill and
15 judgment as a seed seller to select and furnish "Cherry Blossom" hemp seeds suitable for plaintiff
16 GX FARMS's purposes.

17 83. At all relevant times, Defendant HEMP, and/or its agents, had reason to know of
18 the particular purpose for which the subject seeds would be used by plaintiff GX FARMS. In
19 particular, Defendant HEMP, and/or its agents, were aware that plaintiff GX FARMS would use
20 the seeds for growing "Cherry Blossom" hemp for commercial sale. Defendant HEMP, and or
21 its agents, were further aware that plaintiff was relying on the skill and higher judgment of
22 defendant HEMP and/or its agents, to select and supply suitable seeds for this particular purpose
23 (meaning a high germination rate and fully feminized).

24 84. Plaintiff GX FARMS attempted to use the seeds for the particular purpose of
25 growing commercial quality "Cherry Blossom" hemp. The seeds were unfit for this purpose in
26 that the seeds did not produce commercial saleable "Cherry Blossom" hemp as the seeds provided
27 by defendant HEMP to plaintiff GX FARMS were not fully feminized as commercially required
28 and they lacked a commercially viable germination rate.

1 85. As soon as it became clear that the “Cherry Blossom” hemp seeds sold by
2 defendant HEMP to plaintiff GX FARMS were defective as possessing a non-commercially
3 viable germination rate plaintiff GX FARMS notified defendant HEMP of the nonconformity.
4 Plaintiff GX FARMS notified defendant HEMP that the “Cherry Blossom” hemp being
5 cultivated from defendant HEMP’s seeds had a germination rate of only 55%, not the 99% **as**
6 promised.

7 86. As soon as it became clear that the “Cherry Blossom” hemp seeds sold by
8 defendant HEMP to plaintiff GX FARMS were defective as possessing a non-commercially
9 viable feminization rate, plaintiff GX FARMS notified defendant HEMP of the nonconformity.
10 Plaintiff GX FARMS notified defendant HEMP that the “Cherry Blossom” hemp being
11 cultivated from defendant HEMP’s seeds had a feminization rate of only 30% to 50%.

12 87. As a direct and proximate result of the unfitness of defendant HEMP’s seed for
13 the purpose of growing commercial quality hemp in terms of its non-commercially viable
14 germination rate, plaintiff GX FARMS has sustained damages in excess of \$75,000 and in an
15 amount to be proven at the time of trial.

16 88. As a direct and proximate result of the unfitness of defendant HEMP’s seed for
17 the purpose of growing commercial quality hemp in terms of its non-commercially viable
18 feminization rate, plaintiff GX FARMS has sustained damages in excess of \$75,000 and in an
19 amount to be proven at the time of trial.
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21 **FIFTH CAUSE OF ACTION**
22 **(Products Liability)**

23 89. Plaintiff GX FARMS refers to and incorporates by this reference paragraphs 1
24 through 88, inclusive, as though fully set forth here.

25 90. Defendant HEMP put a product on the market and sold it to plaintiff GX FARMS
26 in defective condition. Specifically, the seeds at issue in this litigation were defective because
27 they did not produce commercially saleable “Cherry Blossom” hemp, in that the germination rate
28 of the seed sold was only 55%, a rate below a commercially viable standard.

1 91. Defendant HEMP put a product on the market and sold it to plaintiff GX FARMS
2 in defective condition. Specifically, the seeds at issue in this litigation were defective because
3 they did not produce commercially saleable “Cherry Blossom” hemp, in that the feminization
4 rate of the seed sold was only 30% to 50%, a rate below a commercially viable standard.

5 92. Defendant HEMP had knowledge that its product would be used without
6 inspection for defect. The container of seed sold by defendant HEMP was labeled as being from
7 HEMP GROUP, LLC and promises made prior to sale indicated a germination rate of 99%.
8 Plaintiff GX FARMS had no way of ascertaining the true nature or variety of the seeds or their
9 germination rate at the time of purchase.

10 93. Defendant HEMP had knowledge that its product would be used without
11 inspection for defect. The container of seed sold by defendant HEMP was labeled as being from
12 HEMP GROUP, LLC and promises made prior to sale indicated a feminization rate of 99.6%.
13 Plaintiff GX FARMS had no way of ascertaining the true nature or variety of the seeds or their
14 feminization rate at the time of purchase.

15 94. The product sold by Defendant HEMP was a substantial factor in bringing about
16 plaintiff GX FARMS's damages. Plaintiff GX FARMS's “Cherry Blossom” hemp harvest was
17 damaged as a direct result of the defective seed sold by defendant HEMP. Plaintiff GX FARMS's
18 “Cherry Blossom” hemp harvest did not result in the expected number and quality of hemp plants
19 for harvest and sale due to the non-commercially viable germination rate of defendant HEMP’s
20 seed, effectively resulting in a complete loss of the harvest. In addition, plaintiff GX FARMS
21 spent money on fertilizer, irrigation, labor and other normal expenditures necessary to grow a
22 commercially viable “Cherry Blossom” hemp crop to harvest, all of which are damages incurred
23 because the seeds sold by defendant HEMP were defective as not being of a commercially viable
24 germination rate.

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1 95. The product sold by defendant HEMP was a substantial factor in bringing about
2 plaintiff GX FARMS's damages. Plaintiff GX FARMS's "Cherry Blossom" hemp harvest was
3 damaged as a direct result of the defective seed sold by defendant HEMP. Plaintiff GX FARMS's
4 "Cherry Blossom" hemp harvest did not result in the expected number and quality of hemp plants
5 for harvest and sale due to the non-commercially viable feminization rate of defendant HEMP's
6 seed, effectively resulting in a complete loss of the harvest. In addition, plaintiff GX FARMS
7 spent money on fertilizer, irrigation, labor and other normal expenditures necessary to grow a
8 commercially viable "Cherry Blossom" hemp crop to harvest, all of which are damages incurred
9 because the seeds sold by defendant HEMP were defective as not being of a commercially viable
10 feminization rate.

11 96. The defective seeds supplied by defendant HEMP were a proximate cause of
12 plaintiff GX FARMS's injury. Had Defendant HEMP supplied the proper variety of seeds with
13 the germination rate expressed in its pre-purchase promises or on the container to plaintiff GX
14 FARMS's, plaintiff GX FARMS "Cherry Blossom" hemp crop harvest would not have been
15 damaged.

16 97. The defective seeds supplied by defendant HEMP were a proximate cause of
17 plaintiff GX FARMS's injury. Had defendant HEMP supplied the proper variety of seeds with
18 the feminization rate expressed in its pre-purchase promises or on the container to plaintiff GX
19 FARMS's, plaintiff GX FARMS "Cherry Blossom" hemp crop harvest would not have been
20 damaged.

21 98. Defendant HEMP's conduct contributed to plaintiff GX FARMS's injury and it
22 would be just to hold defendant HEMP liable under the circumstances. Because defendant
23 HEMP supplied defective "Cherry Blossom" hemp seeds that were not of a commercially viable
24 germination rate, plaintiff GX FARMS suffered resulting damages in excess of \$75,000,
25 estimated now to be between \$3,500,000 and \$17,000,000.

1 99. Defendant HEMP's conduct contributed to plaintiff GX FARMS's injury and it
2 would be just to hold defendant HEMP liable under the circumstances. Because defendant
3 HEMP supplied defective "Cherry Blossom" hemp seeds that were not of a commercially viable
4 feminization rate, plaintiff GX FARMS suffered resulting damages in excess of \$75,000,
5 estimated now to be between \$3,500,000 and \$17,000,000.

6
7 **SIXTH CAUSE OF ACTION**
8 **(Negligence)**

9 100. Plaintiff GX FARMS refers to and incorporates by this reference paragraphs 1
10 through 99, inclusive, as though fully set forth here.

11 101. As a seed seller, defendant HEMP was under a duty to ensure that the seeds it
12 provides to its customers conform to the quantity, the sex, and the germination rate represented
13 in its promises to purchasers, or on the labels affixed to its products. Failure to comply with this
14 duty is negligence per se.

15 102. Based on defendant HEMP's expertise as a seed company, it knew or should have
16 known that the seeds it sold to plaintiff GX FARMS were not of a quantity of 520,000 seeds.

17 103. Based on defendant HEMP's expertise as a seed company, it knew or should have
18 known that the seeds it sold to plaintiff GX FARMS were not of a germination rate of 99%.

19 104. Based on defendant HEMP's expertise as a seed company, it knew or should have
20 known that the seeds it sold to plaintiff GX FARMS were not of a feminization rate of 99.6%.

21 105. Based on defendant HEMP's expertise as a seed seller, it knew or should have
22 known that the variety of seed it sold plaintiff GX FARMS would cause damage to plaintiff GX
23 FARMS in the form of increased operating expenses and production losses of the seeds were not
24 of a quantity of 520,000.

25 106. Based on defendant HEMP's expertise as a seed seller, it knew or should have
26 known that the variety of seed it sold plaintiff GX FARMS would cause damage to plaintiff GX
27 FARMS in the form of increased operating expenses and production losses of the seeds were not
28 of a quality of a 99% germination rate.

1 107. Based on defendant HEMP's expertise as a seed seller, it knew or should have
2 known that the variety of seed it sold plaintiff GX FARMS would cause damage to plaintiff GX
3 FARMS in the form of increased operating expenses and production losses of the seeds were not
4 of a quality of a 99.6% feminization rate.

5 108. Defendant HEMP breached its duty to plaintiff GX FARMS by selling plaintiff
6 GX FARMS a quantity of seeds that was not 520,000 as bargained for but 85,000 fewer seeds
7 than GX FARMS actually purchased.

8 109. Defendant HEMP breached its duty to plaintiff GX FARMS by selling plaintiff
9 GX FARMS a quality of seeds that lacked an expressed germination rate of 99% when it supplied
10 plaintiff GX FARMS with seeds that had only a 55% germination rate.

11 110. Defendant HEMP breached its duty to plaintiff GX FARMS by selling plaintiff
12 GX FARMS a quality of seeds that lacked an expressed feminization rate of 99.6% when it
13 supplied plaintiff GX FARMS with seeds that had only a 30% to 50% feminization rate.

14 111. Defendant HEMP's negligence in failing to provide the quantity of seeds
15 promised was a direct and proximate cause of plaintiff GX FARMS's damages, which are in
16 excess of \$75,000. The precise amount of damages will be proven at trial.

17 112. Defendant HEMP's negligence in failing to provide the quality of seeds promised
18 via a germination rate of 99% was a direct and proximate cause of plaintiff GX FARMS's
19 damages, which are in excess of \$75,000. The precise amount of damages will be proven at trial.

20 113. Defendant HEMP's negligence in failing to provide the quality of seeds promised
21 via a feminization rate of 99.6% was a direct and proximate cause of plaintiff GX FARMS's
22 damages, which are in excess of \$75,000. The precise amount of damages will be proven at trial.

23
24 **SEVENTH CAUSE OF ACTION**
(Negligent Misrepresentation)

25 114. Plaintiff refers to and incorporates by this reference paragraphs 1 through 113,
26 inclusive, as though fully set forth here.
27
28

1 115. Defendant HEMP represented to plaintiff GX FARMS that the seeds it was selling
2 to plaintiff GX FARMS were of a quantity of 520,000.

3 116. Defendant HEMP represented to plaintiff GX FARMS that the seeds it was selling
4 to plaintiff GX FARMS were of a quality of 99% germination rate.

5 117. Defendant HEMP represented to plaintiff GX FARMS that the seeds it was selling
6 to plaintiff GX FARMS were of a quality of 99.6% feminization rate.

7 118. Defendant HEMP's representation that the seeds were of a quantity of 520,000
8 was untrue. The seeds defendant HEMP sold to plaintiff GX FARMS were in fact 85,000 seeds
9 short of the 520,000 promised.

10 119. Defendant HEMP's representation that the seeds were of a quality of a 99%
11 germination rate was untrue. The seeds defendant HEMP sold to plaintiff GX FARMS were in
12 fact of only a 55% germination rate.

13 120. Defendant HEMP's representation that the seeds were of a quality of a 99.6%
14 feminization rate was untrue. The seeds defendant HEMP sold to plaintiff GX FARMS were in
15 fact of only a 30% to 50% feminization rate.

16 121. Defendant HEMP represented to plaintiff GX FARMS that the seed it was selling
17 was of a quantity of 520,000 seeds and did so without any reasonable ground for believing this
18 statement to be true. Defendant HEMP had control of the seeds, packaged the seeds in a
19 container, and sold them to plaintiff GX FARMS. Because defendant HEMP was in control of
20 the seeds before they were sold to plaintiff GX FARMS, defendant HEMP cannot reasonably
21 assert that it was unaware the seeds it sold plaintiff GX FARMS were not of a quantity of
22 520,000.

23 122. Defendant HEMP represented to plaintiff GX FARMS that the seed it was selling
24 had a 99% germination rate and did so without any reasonable ground for believing this statement
25 to be true. Defendant HEMP had control of the seeds, packaged the seeds in a container, and sold
26 them to plaintiff GX FARMS. Because defendant HEMP was in control of the seeds before they
27 were sold to plaintiff GX FARMS, defendant HEMP cannot reasonably assert that it was unaware
28 the seeds it sold plaintiff GX FARMS were not of a quality of a 98% germination rate.

1 123. Defendant HEMP represented to plaintiff GX FARMS that the seed it was selling
2 had a 99.6% feminization rate and did so without any reasonable ground for believing this
3 statement to be true. Defendant HEMP had control of the seeds, packaged the seeds in a
4 container, and sold them to plaintiff GX FARMS. Because defendant HEMP was in control of
5 the seeds before they were sold to plaintiff GX FARMS, defendant HEMP cannot reasonably
6 assert that it was unaware the seeds it sold plaintiff GX FARMS were not of a quality of a 99.6%
7 feminization rate.

8 124. Defendant HEMP made the representation it was providing plaintiff GX farms
9 520,000 “Cherry Blossom” Hemp seeds with the intent that plaintiff GX FARMS rely on it.

10 125. Defendant HEMP made the representation it was providing plaintiff GX farms
11 “Cherry Blossom” hemp seeds with a germination rate of 99% with the intent that plaintiff GX
12 FARMS rely on it.

13 126. Defendant HEMP made the representation it was providing plaintiff GX farms
14 “Cherry Blossom” hemp seeds with a feminization rate of 99.6% with the intent that plaintiff GX
15 FARMS rely on it.

16 127. Plaintiff GX FARMS was unaware that Defendant HEMP’s representation of
17 providing 520,000 “Cherry Blossom” hemp seeds was not true and acted in justifiable reliance
18 on Defendant HEMP's representation that the seeds were of a quantity of 520,000.

19 128. Plaintiff GX FARMS was unaware that Defendant HEMP’s representation of
20 providing 520,000 “Cherry Blossom” hemp seeds with a 99% germination rate was not true and
21 acted in justifiable reliance on Defendant HEMP's representation that the seeds were of a 98%
22 germination rate.

23 129. Plaintiff GX FARMS was unaware that Defendant HEMP’s representation of
24 providing 520,000 “Cherry Blossom” hemp seeds with a 99.6% feminization rate was not true
25 and acted in justifiable reliance on Defendant HEMP's representation that the seeds were of a
26 99.6% feminization rate.

1 130. As a result of Plaintiff GX FARMS's reliance on Defendant HEMP's
2 misrepresentations, plaintiff GX FARMS was directly and proximately damaged in an amount
3 in excess of \$75,000, to be proven at time of trial.

4
5 **EIGHTH CAUSE OF ACTION**
6 **(Fraud)**

7 131. Plaintiff GX FARMS refers to and incorporates by this reference paragraphs 1
8 through 130 inclusive, as though fully set forth here.

9 132. Defendant HEMP packaged and sold "Cherry Blossom" hemp seeds to plaintiff
10 GX FARMS, representing that the seeds were of a quantity of 520,000. Defendant HEMP knew
11 that the seeds were not of a quantity of 520,000 at the time of the sale.

12 133. Defendant HEMP packaged and sold "Cherry Blossom" hemp seeds to plaintiff
13 GX FARMS, representing that the seeds had a germination rate of 99%. Defendant HEMP knew
14 that the seeds did not have a 99% germination rate at the time of the sale.

15 134. Defendant HEMP packaged and sold "Cherry Blossom" hemp seeds to plaintiff
16 GX FARMS, representing that the seeds had a feminization rate of 99.6%. Defendant HEMP
17 knew that the seeds did not have a 99.6% feminization rate at the time of the sale.

18 135. This representation of 520,000 seeds by defendant HEMP was false and was
19 material to plaintiff GX FARMS's decision to purchase seeds from defendant HEMP. Plaintiff
20 GX FARMS would not have purchased seed from defendant HEMP if plaintiff GX FARMS had
21 known that it was not purchasing 520,000 "Cherry Blossom" hemp seeds.

22 136. This representation of 520,000 seeds with a germination rate of 99% by defendant
23 HEMP was false and was material to plaintiff GX FARMS's decision to purchase seeds from
24 Defendant HEMP. Plaintiff GX FARMS would not have purchased seed from defendant HEMP
25 if plaintiff GX FARMS had known that it was not purchasing 520,000 "Cherry Blossom" hemp
26 seeds with a germination rate of 99%.
27
28

1 137. This representation of 520,000 seeds with a feminization rate of 99.6% by
2 defendant HEMP was false and was material to plaintiff GX FARMS's decision to purchase seeds
3 from Defendant HEMP. Plaintiff GX FARMS would not have purchased seed from defendant
4 HEMP if plaintiff GX FARMS had known that it was not purchasing 520,000 "Cherry Blossom"
5 hemp seeds with a feminization rate of 99.6%.

6 138. Defendant HEMP concealed the fact that the seeds were not of a quantity of
7 520,000, with the intent that plaintiff GX FARMS rely on its representations in purchasing the
8 seed. Plaintiff GX FARMS did in fact rely on defendant HEMP's representations regarding the
9 seed quantity. The fact that the seeds were not of a quantity of 520,000 was not known to plaintiff
10 GX FARMS.

11 139. Defendant HEMP concealed the fact that the seeds were not of a quality of a 99%
12 germination rate with the intent that plaintiff GX FARMS rely on its representations in
13 purchasing the seed. Plaintiff GX FARMS did in fact rely on defendant HEMP's representations
14 regarding the seed having a 99% germination rate. The fact that the seeds were not of a quality
15 of a 99% germination rate was not known to plaintiff GX FARMS.

16 140. Defendant HEMP concealed the fact that the seeds were not of a quality of a 99.6
17 feminization rate with the intent that plaintiff GX FARMS rely on its representations in
18 purchasing the seed. Plaintiff GX FARMS did in fact rely on defendant HEMP's representations
19 regarding the seed having a 99.6% feminization rate. The fact that the seeds were not of a quality
20 of a 99.6% feminization rate was not known to plaintiff GX FARMS.

21 141. Defendant HEMP's misrepresentations of material fact were made with an intent
22 to induce plaintiff GX FARMS to rely on them and purchase the seeds at issue. The
23 misrepresentations by defendant HEMP were malicious and fraudulent, entitling plaintiff GX
24 FARMS to punitive damages.

25 142. Plaintiff GX FARMS relied on defendant HEMP's representations, based on its
26 expertise as a seed seller, to disclose to plaintiff GX FARMS the quantity, sex and germination
27 rate of the seed defendant HEMP was selling to plaintiff GX FARMS.
28

1 143. Plaintiff GX FARMS's reliance on defendant HEMP to properly disclose the
2 quantity, sex, and germination rates of the "Cherry Blossom" hemp seed being sold was justified.
3 Plaintiff GX FARMS was unable to determine the falsity of defendant HEMP's statements by
4 inspecting the seeds in advance of purchase.

5 144. Defendant HEMP's misrepresentations of material fact were a direct and
6 proximate cause of plaintiff GX FARMS's damages, which are in excess of \$75,000 and will be
7 proven at the time of trial.

8
9 WHEREFORE, plaintiff GX FARMS requests:

- 10 1. Past and future general damages in an amount to be proven at trial;
- 11 2. Special damages in an amount to be proven at trial;
- 12 3. Consequential damages in an amount to be proven at trial;
- 13 4. Punitive damages in an amount to be proven at trial;
- 14 5. Prejudgment interest;
- 15 6. Reasonable costs and attorney's fees; and
- 16 7. Such other relief as this court may deem just and proper.

17
18 Dated: April 29, 2020

19 /s/Steven C. Sanders
20 Attorney for plaintiff GX FARMS
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