

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SIOUX FALLS DIVISION

SOUTH DAKOTA BOARD OF REGENTS as
governing board for South Dakota State
University and its South Dakota Agricultural
Experiment Station

Plaintiff,

v.

GREEN THUMB COMMODITIES, LLC, AT
STRONG COMMODITIES, LLC, d/b/a GREEN
THUMB COMMODITIES, and JOHN DOES 1-
25,

Defendants.

CASE NO. 4:23-cv-4205

COMPLAINT

Plaintiff South Dakota Board of Regents (the “Board of Regents”) as governing board for South Dakota State University (“SDSU”) and its South Dakota Agricultural Experiment Station (“SDAES”) brings this action for damages and permanent injunctive relief against Defendants Green Thumb Commodities, LLC, AT Strong Commodities, LLC d/b/a Green Thumb Commodities (“Defendants”) for their unauthorized exporting from the United States, sale, conditioning, stocking, shipping and transfer of title, and dispensing without proper notice, of Plaintiff’s proprietary oat varieties, as well as instigating and actively inducing violations of one or more prohibited acts by others, all in violation of Plaintiff’s rights under the Plant Variety Protection Act, 7 U.S.C. § 2321 *et seq.* (“PVPA”). Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as Plaintiff’s claims arise under the laws of the United States, and 28 U.S.C. § 1338, which

provides that district courts have original jurisdiction over any civil action arising under any Act of Congress relating to plant variety protection.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as a substantial part of the events giving rise to the claims occurred in this district, and most of the Defendants reside in this district.

THE PARTIES

3. The Board of Regents was created to implement the requirements of Section 3, Article XIV of the South Dakota Constitution, that publicly funded postsecondary institutions be governed by a board of regents. SDCL § 13-49-1. Constituted as a corporation, or body corporate, the Board of Regents enjoys the “power to sue and be sued, to hold, lease, and manage, for the purposes for which they were established, any property belonging to the educational institutions under its control, collectively or severally, of which it shall in any manner become possessed.” SDCL § 13-49-11.

4. The Board of Regents controls SDSU and SDAES. SDCL §§ 13-58-1 and 13-58-11, respectively. The Board of Regents encourages institutions under its control to pursue research, to protect intellectual properties arising from such research, and to enter into such agreements as may be necessary and proper to license or otherwise to provide for the commercial application of research results. To such ends, it delegated to institutional officers the authority to secure intellectual property protection in the name of the institution that conducted the research. Board of Regents Policies 1:6, Section 3.6, and 4:34, Section 7.

5. Founded in 1881 as a land-grant university, SDSU has been committed to the academic and professional advancement of all citizens in the state. As part of this effort, SDSU has a goal to promote, encourage, and aid research in the agricultural arena and to provide the

means, methods, and agencies by which inventions and discoveries at SDSU may be patented, commercialized, or otherwise disposed of for the benefit of the people of South Dakota and society as a whole. SDCL § 13-58-1.

6. Created in 1887 to implement the Hatch Act as part of South Dakota's land-grant institution SDSU, SDAES has a mission to conduct research to enhance quality of life in South Dakota through the beneficial use and development of human, economic, and natural resources. As part of this effort, SDAES assists oat producers, seedsmen, and researchers to strengthen the oat industry by creating an oat variety delivery system that promotes stewardship of varieties and traits, provides new funds for oat research, and ensures availability of improved oat varieties to benefit farmers and consumers. SDAES has its principal place of operations in Brookings, South Dakota at SDSU. SDCL § 13-58-11.

7. Defendant Green Thumb Commodities, LLC is a limited liability company organized pursuant to the laws of South Dakota. The registered agent is Tarri Rott, 433 SE 12th Street Suite 101, PO Box 9, Madison, South Dakota 57042. According to the 2023 Annual Report on file with the South Dakota Secretary of State, the entity is member-managed by Tarri Rott. On information, all members are aware of the conduct alleged in this lawsuit for infringement of Plaintiff's federally protected varieties by a number of violations. By virtue of such knowledge and direction, each member shares individually in the infringement liability. Each of these officers and directors are likely John Does, but out of an abundance of caution, Plaintiff has not named them without additional discovery in this first complaint.

8. AT Strong Commodities, LLC is a limited liability company organized pursuant to the laws of South Dakota. The registered agent is Tarri Rott, 21718 445th Avenue, Oldham, South Dakota 57051. According to the 2023 Annual Report on file with the South Dakota Secretary of

State, the entity is member-managed by Tarri Rott. On information, all members are aware of the conduct alleged in this lawsuit for infringement of Plaintiff's federally protected varieties by a number of violations. By virtue of such knowledge and direction, each member shares individually in the infringement liability. Each of these officers and directors are likely John Does, but out of an abundance of caution, Plaintiff has not named them without additional discovery in this first complaint. The entity filed a fictitious name registration doing business as Green Thumb Commodities.

9. On information, Defendant AT Strong Commodities, LLC is operationally the same ongoing business concern as Defendant Green Thumb Commodities, LLC.

10. Collectively, the foregoing named defendants are referred to as "Green Thumb Defendants."

11. Defendants John Doe 1-25 are persons or entities otherwise acting in concert with the Green Thumb Defendants in the illegal operations and diversion, including directors, members, and owners of the Green Thumb Defendants.

STATEMENT OF CLAIM
PLANT VARIETY PROTECTION REGISTRATION

12. This action arises under the Plant Variety Protection Act, 7 U.S.C. § 2321 *et seq.*, which provides patent-like protection to breeders of certain varieties, and their assignees, who may acquire the right to prevent others from selling the variety or offering the variety for sale for a period of twenty (20) years. 7 U.S.C. § 2483.

13. On May 29, 2013, SDAES made application to the Plant Variety Protection Office pursuant to 7 U.S.C. § 2421 for protection of another novel variety of oat it had developed known as the "Goliath" oat variety. In South Dakota, the Goliath oat variety is one of the top performing varieties.

14. On February 26, 2016, a PVP Certificate for the Goliath variety was issued to SDAES pursuant to 7 U.S.C. § 2482 in the name of the United States of America under the seal of the Plant Variety Protection Office and was recorded in the Plant Variety Protection Office. Certificate No. 201300369 is not scheduled to lapse until February 26, 2036. The PVP Certificate for Goliath is attached as **Exhibit 1**.

15. SDAES and the seed dealers authorized by SDAES to sell the Goliath oat variety provide notice on the seeds' packaging or is provided simultaneously with bulk sales that the Goliath oat variety is protected by the Plant Variety Protection Act. In addition, SDAES also placed PVPA notices on its marketing and promotional materials for the Goliath oat variety, 7 U.S.C. § 2567. The Goliath oat variety seed is processed and sold by SDAES as a class of certified seed, meaning that before every sale, the seed must be certified by an approved government or private agency as to variety, germination, and purity.

16. On December 29, 2015, SDAES made application to the Plant Variety Protection Office pursuant to 7 U.S.C. § 2421 for protection of another novel variety of oat it had developed known as the "Hayden" oat variety. In South Dakota, the Hayden oat variety is one of the top performing varieties.

17. On November 28, 2016, a PVP Certificate for the Hayden variety was issued to SDAES pursuant to 7 U.S.C. § 2482 in the name of the United States of America under the seal of the Plant Variety Protection Office and was recorded in the Plant Variety Protection Office. Certificate No. 201600054 is not scheduled to lapse until November 28, 2036. The PVP Certificate for Hayden is attached as **Exhibit 2**.

18. SDAES and the seed dealers authorized by SDAES to sell the Hayden oat variety provide notice on the seeds' packaging or is provided simultaneously with bulk sales that the

Hayden oat variety is protected by the Plant Variety Protection Act. In addition, SDAES also placed PVPA notices on its marketing and promotional materials for the Hayden oat variety, 7 U.S.C. § 2567. The Hayden oat variety seed is processed and sold by SDAES as a class of certified seed, meaning that before every sale, the seed must be certified by an approved government or private agency as to variety, germination, and purity.

19. On March 1, 2013, SDAES made application to the Plant Variety Protection Office pursuant to 7 U.S.C. § 2421 of the PVPA for protection of another novel variety of oat it had developed known as the “Horsepower” oat variety, which is also a top performer.

20. On March 30, 2015, a PVP Certificate for the Horsepower variety was issued to SDAES pursuant to 28 U.S.C. § 2482 in the name of the United States of America under the seal of the Plant Variety Protection Office and was recorded in the Plant Variety Protection Office. Certificate No. 201300160 is not scheduled to lapse until March 30, 2035. The PVP Certificate for Horsepower is attached as **Exhibit 3**.

21. SDAES and the seed dealers authorized by SDAES to sell the Horsepower oat variety provide notice on the seeds’ packaging or is provided simultaneously with bulk sales that the Horsepower oat variety is protected by the Plant Variety Protection Act. In addition, SDAES also placed PVPA notices on its marketing and promotional materials for the Horsepower oat variety, 7 U.S.C. § 2567. The Horsepower oat variety seed is processed and sold by SDAES as a class of certified seed, meaning that before every sale, the seed must be certified by an approved government or private agency as to variety, germination, and purity.

22. Plaintiff additionally has PVP rights to many other varieties including Natty and Shelby 427, among others. All such certificates of protection are valid and subsisting. SDAES and the seed dealers authorized by SDAES to sell any protected oat variety provide notice on the seeds’

packaging of the Plant Variety Protection Act protection. In addition, SDAES also placed PVPA notices on its marketing and promotional materials for all its protected oat varieties, 7 U.S.C. § 2567. All protected oat variety seed is processed and sold by SDAES as a class of certified seed, meaning that before every sale, the seed must be certified by an approved government or private agency as to variety, germination, and purity.

23. The PVP Certificates for Plaintiff's oat varieties, including the Goliath, Hayden, Horsepower, Natty, Shelby 427, and Stallion varieties, all specified that the seed of the respective varieties could only be sold in the United States as a class of certified seed, meaning that before sale the seed had to be certified by an approved governmental or private agency as to variety and purity. This added step is known as a Title V election under the Federal Seed Act, 7 U.S.C. § 1611. *See also* 7 U.S.C. § 2483(a)(2)(A).

24. The PVP Certificates for each of Plaintiff's oat varieties at issue in this lawsuit were and remain in full force and effect during the time period of alleged infringement of each respective variety. Additional varieties may be revealed in discovery when identifying the John Doe upstream providers, downstream purchasers, and contributors to the illegal operation and diversion of grain for planting.

25. Title 7, Section 2541 of the United States Code provides that it is an infringement of the owner's rights in a protected variety, *inter alia*, to sell the variety without authorization of the owner or to dispense the variety to another in a form that can be propagated without notice that it is a protected variety. Section 2541 also provides that it is an infringement to use the variety for propagation without authority; to stock, condition, ship, or consign the protected variety without authority; or to instigate or actively induce any act that constitutes an infringement.

26. Section 2541 likewise provides that it is an infringement to export the variety outside the United States without authority.

27. At no time did Plaintiff give to any Defendant authorization to sell its protected oat varieties in a non-certified manner.

28. At no time did Plaintiff give to any Defendant authorization to export any variety.

29. The PVPA provides in 7 U.S.C. § 2561 that an owner shall have a remedy by civil action for infringement of plant variety protection and that if the variety is sold under the name of the variety shown in the certificate, there is a prima facie presumption that the seed in the bag or lot is the protected variety. Under 7 U.S.C. § 2562, a PVP Certificate is presumed to be valid.

30. Title 7, United States Code Section 2563 provides that a court may grant an injunction to prevent violations of rights under the PVPA. Section 2564 provides that upon a finding of infringement, the court shall award damages adequate to compensate for the infringement, but in no event less than a reasonable royalty together with interest and costs. Section 2564 also provides that the court may increase the damages up to three times the amount determined, and, in exceptional cases, the court may award reasonable attorney's fees to the prevailing party under § 2565.

31. Title 7, United States Code Section 2543 provides a crop exemption for growers and other persons that permits a bona fide sale of a protected variety into usual grain channels (i.e., for feed purposes), but § 2543 does not exempt from PVPA protection the sale or export of grain of a protected variety for use as seed for reproductive purposes without the authorization of the owner.

32. Title 7, United States Code Section 2543 further provides that if a purchaser diverts a protected variety from usual grain channels to use for reproductive purposes, that purchaser is

deemed to have notice under § 2567 that its actions constitute an infringement of the PVPA for purposes of a damages action by the owner of the protected variety.

GREEN THUMB DEFENDANTS’ OPERATIONS

33. At all times relevant herein, each Defendant had actual notice and knowledge that Plaintiff’s oat varieties were federally protected by the PVPA.

34. The Green Thumb Defendants understand PVPA protections are ubiquitous for oat seed—a major spring-sown, small grain crop. In a 2015 study, all sixteen (16) available oat varieties were federally protected by the PVPA. See table, below:

Table 1
State of origin, PVP^a and disease ratings^b for oat varieties included in both experiments at ISU Northern and Northeastern Research and Demonstration Farms in Kanawha and Nashua, respectively, in 2015.

Variety	State of origin ^a	PVPb	Maturity	---Disease name and disease ratings ^b by variety---			
				Crown rust	Stem rust	BYDV ^d	Smut
Badger	WI	PVP	Early	MR	MS	MR	R
BetaGene	WI	PVP	Mid-Late	MR	MR	R	R
Deon	MN	PVP	Late	MR	MS	MR	R
Excel	IN	PVP	Early	MS	S	R	MR
GM423	GM	PVP	Late	MS	MS	MR	--
Goliath	SD	PVP	Late	MS	R	MR	MR
Hayden	SD	PVP	Mid-Late	MS	MS	MR	R
Horsepower	SD	PVP	Medium	MS	MS	MS	MR
Jerry	ND	PVP	Medium	MS	MS	MS	MS
Leggett	AAFC	PVP	Early	MR	MR	S	R
Natty	SD	PVP	Medium	MR	MS	MR	R
Rockford	ND	PVP	Late	MS	MS	MR	MR
Saber	IL	PVP	Early	MS	S	R	MS
Shelby 427	SD	PVP	Medium	MS	MS	MR	MR
Souris	ND	PVP	Medium	S	MS	MS	MR
Tack	IL	PVP	Early	R	S	R	S

^a Origin: AAFC-Agriculture and Agri-Food Canada; GM-General Mills; IL-University of Illinois, IN-Purdue University; MN-University of Minnesota; ND-North Dakota State University; SD-South Dakota State University; WI-University of Wisconsin.
^b PVP = Plant Variety Protection. The PVP Act provides a certificate to the developer of a variety granting exclusive rights for reproducing and marketing the seed.
^c Disease Ratings: S = susceptible; MS = moderately susceptible; MR = moderately resistant; R = resistant.
^d Disease: BYDV = Barley Yellow Dwarf Virus.

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35. Green Thumb Defendants had actual, specific, and repeated notice that the oat varieties it was selling were federally protected and could not be sold in an uncertified manner or exported.

DEFENDANTS' WILLFUL VIOLATIONS OF PVPA

36. Green Thumb Defendants have direct and personal knowledge of the Plant Variety Protection Act and the protections and limitations surrounding use of Plaintiff's, and others' federally protected varieties.

37. In the 2022 harvest season, and likely before such date, Green Thumb Defendants bought the harvest of federally protected oat seed and intentionally, knowingly, and with no mistake thereafter re-sold and offered for sale and exported Plaintiff's protected oat varieties to producers for planting, on multiple occasions, including exports to China using Wendy Jia doing business as Lovefield Agricultural, LLC. Such sales were not authorized by Plaintiff.

38. In the 2023 harvest season, and likely before such date, Green Thumb Defendants bought the harvest of federally protected oat seed and intentionally, knowingly, and with no mistake thereafter re-sold and offered for sale and exported Plaintiff's protected oat varieties to producers for planting, on multiple occasions, including exports to China using Wendy Jia doing business as Lovefield Agricultural, LLC. Such sales were not authorized by Plaintiff.

39. Green Thumb Defendants, having multiple officers, members, and employees who themselves are experienced in commercial seed operations utilizing oats that are protected by the Plant Variety Protection Act, were factually aware of the strict protocols and requirements necessary before Title V, PVPA-protected oats may be legally sold for seeding purposes or exported.

40. At all times relevant to the complaints herein, Plaintiff only authorized sales of its protected varieties with written notice containing statutorily designated language signifying that the seed was protected under the PVPA, that unauthorized propagation or multiplication of the seed was prohibited, and that the use of the seed by the purchaser was authorized only for purposes

of growing a commercial crop of grain. Plaintiff required such notice on all bags of its protected oat varieties sold and on notices accompanying all bulk sales of such oat seed. In addition, Plaintiff consistently and prominently marked the varieties with statutory PVPA notices on its marketing and promotional materials for such varieties. Defendants failed to conform to these requirements.

41. This is not an isolated incident. Green Thumb Defendants resells for propagation purposes such uncertified and unauthorized seed further downstream to producers when it is time to plant oat seed in South Dakota, other nearby states, and internationally.

JOHN DOES - DOWNSTREAM CUSTOMERS OF ILLEGAL SEED

42. Without authorization, Green Thumb Defendants sold and exported Plaintiff's protected seed varieties to many different customers. All such unauthorized transactions constitute violations of Plaintiff's rights under the PVPA by both parties to the transaction, and the downstream buyers are continuing the infringement due to the self-replicating nature of seed. Such use should be enjoined, at the very minimum. Depending on the use by the downstream buyer, there may be additional infringements by the propagation of such illegal seed.

COUNT I
DAMAGES FOR INFRINGEMENT PER 7 U.S.C. § § 2541(a)

43. Plaintiff incorporates by reference the allegations set forth in the foregoing paragraphs.

44. Without authorization from Plaintiff, Defendants stocked Plaintiff's protected varieties for purposes in violation of the PVPA.

45. Without authorization from Plaintiff, Defendants conditioned Plaintiff's protected varieties for propagation purposes in violation of the PVPA.

46. Without authorization from Plaintiff, Defendants sold Plaintiff's protected varieties for the purpose of propagation in violation of the PVPA.

47. Without authorization from Plaintiff, Defendants dispensed Plaintiff's protected varieties, in a form which can be propagated, without restriction to other growers, in violation of the PVPA.

48. Without authorization from Plaintiff, Defendants instigated and actively induced infringement under the PVPA by engaging in the illegal seed business described above, in violation of the PVPA.

49. Without authorization from Plaintiff, Green Thumb Defendants actively diverted grain back into seeding channels and are deemed to have notice that such conduct violates the PVPA.

50. Without authorization from Plaintiff, Green Thumb Defendants actively exported Plaintiff's varieties in violation of the PVPA.

51. Without authorization from Plaintiff, Green Thumb Defendants willfully and deliberately infringed the PVPA by the foregoing acts.

52. Defendants' actions constitute an infringement of Plaintiff's rights under 7 U.S.C. § 2541 for which all Defendants are accountable in damages.

53. As a result of Defendants' actions, Plaintiff has suffered harm for which it is entitled to damages, including without limitation:

- a) Compensation for Defendants' unauthorized sale, use, condition, shipping, and exporting of Plaintiff's protected varieties in an amount not less than a reasonable royalty, per 7 U.S.C. § 2564(a);
- b) Damage to Plaintiff's reputation or the reputations of Plaintiff's protected varieties by the unauthorized sale of said varieties which were not produced in accordance with Plaintiff's practices and standards; and
- c) Expenses incurred or reasonably expected to be incurred as a direct result of Plaintiff's actions to recover seed or grain grown from Defendants' unauthorized purchase, use, and sale of seed, and/or expenses incurred in identifying and notifying persons who purchased seed of Plaintiff's protected varieties from Defendants that such seed was not produced by or in accord with the standards of

Plaintiff and that any grain grown from such seed is protected by the PVPA, cannot be grown for any purpose other than as commercial grain crop, and cannot be held out as seed of any of Plaintiff's protected varieties.

COUNT II
INJUNCTION PURSUANT TO 7 U.S.C. § 2563

54. Plaintiff incorporates by reference the allegations set forth in the foregoing paragraphs.

55. Plaintiff is entitled to the following injunctive relief pursuant to 7 U.S.C. § 2563:

- a) Permanently enjoining any further sales or other disposition by Defendants of Plaintiff's PVPA-protected varieties for reproductive purposes;
- b) Requiring the ultimate destruction of all oats of Plaintiff's protected varieties in Defendants' possession or control to prevent future illegal harvests from being replanted;
- c) Allowing for access to Defendants' facilities and premises, including leased lands, to identify the scope of the infringing conduct at a time when the crops remain in the field, thereafter permitting the crops to grow, harvest, and then store in constructive trust while the suit proceeds;
- d) Requiring the disclosure of the names and addresses of all persons or entities who purchased oat seed from, supplied oat seed to, conditioned oat seed for, or stored oat seed for or with Defendants, to allow the parties to identify the scope of the illegal replanting and allow the parties sufficient time to give adequate notice to those persons or entities of their opportunity to be heard, with the ultimate goal to allow the crop, once identified, to be harvested and stored in constructive trust while the suit proceeds; and
- d) Requiring an accounting of all revenues and profits Defendants derived from the sale, use, conditioning, or export of Plaintiff's protected varieties.

COUNT III
TREBLE DAMAGES AND ATTORNEYS' FEES

56. Plaintiff incorporates by reference the allegations set forth in the foregoing paragraphs.

57. Defendants knew or recklessly disregarded the federal prohibitions of selling or exporting Plaintiff's varieties in violation of Plaintiff's federal intellectual property rights.

58. Defendants knowingly and intentionally caused substantial damage to Plaintiff and recklessly placed Plaintiff at substantial risk of further misuse of its seed by placing the seed in commerce without notice of its protected status and permitted export of such varieties.

59. As the result of Defendants' actions, Plaintiff has incurred substantial damages, attorney's fees, and costs, and will in the future incur additional damages, attorney's fees, and costs.

60. Defendants' actions constitute an exceptional case for which the award of attorney's fees are recoverable pursuant to 7 U.S.C. § 2565.

61. Treble damages are appropriate pursuant to 7 U.S.C. § 2564(b) of the PVPA.

62. Plaintiff does not seek a jury trial.

NOTICE TO DEFENDANTS TO PRESERVE EVIDENCE

63. Defendants are legally obligated to take reasonable steps to preserve evidence. This evidence preservation duty applies to all documents, tangible things, and electronically stored information ("ESI") potentially relevant to the issues in this cause, including but not limited to: scale tickets; invoices; certified seed tags and bulk bag notices; seed samples; stored grain; farming records; sales invoices and receipts; purchase orders and receipts; seed conditioning receipts; inventory logs and storage records; export documents; bills of lading and shipping memoranda; certified seed tags and transfer certificates; Plant Variety Protection Act notices and literature; and contracts and accounting information in paper or ESI format. ESI includes (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically, or optically stored as: digital communications (e.g., e-mail, voicemail, text messages, instant messages, social media); word processing documents (e.g., Word or WordPerfect documents and drafts); spreadsheets and tables (e.g., Excel or Lotus 123 worksheets); accounting application data

(e.g., QuickBooks, Money, Peachtree data files); image and facsimile files (e.g., .PDF, .TIFF, .JPG, .GIF images); sound recordings (e.g., .WAV and .MP3 files); video and animation (e.g., .AVI and .MOV files); and databases (e.g., Access, Oracle, SQL Server data, SAP).

RELIEF DEMANDED

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Awarding Plaintiff compensation for damages resulting from the infringement in an amount not less than a reasonable royalty, and trebled;
- b) Ordering permanent injunctive relief:
 - i. Directing Defendants to make no further sales for reproductive purposes of any oats or wheat for which Plaintiff holds PVPA protection without express authorization from Plaintiff;
 - ii. Directing Defendants to identify all storage facilities and suppliers of wheat and oat seed;
 - iii. Requiring Defendants to account for all acquisitions, uses and sales of federally protected wheat and oats, including the names and addresses of all suppliers and purchasers and the quantity so purchased or sold.
- c) Awarding pre-judgment and post-judgment interest;
- d) Awarding Plaintiff its attorneys' fees, costs, and expenses incurred in this action; and
- e) Awarding such other relief as the Court may deem just and proper.

Dated this 4th day of December 2023.

/s/ Graham Oey

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*Counsel for Plaintiff South Dakota
Board of Regents, as governing board
for South Dakota Agricultural Experiment
Station and South Dakota State University*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SOUTH DAKOTA BOARD OF REGENTS as governing board for SDSU and its SD AG Experiment Station

(b) County of Residence of First Listed Plaintiff Brookings County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Graham Oey, Assistant General Counsel University Station Brookings, SD 57007 (605) 688-5428

DEFENDANTS

GREEN THUMB COMMODITIES, LLC, AT STRONG COMMODITIES, LLC, and JOHN DOES 1-25

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 7 U.S.C. § 2541(a). - PLANT VARIETY PROTECTION ACT. Brief description of cause: PVPA claims for infringement and injunction prohibiting future sales and exports without authority

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

12/4/2023 /s/ Graham Oey

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.