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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA ORGANIC FERTILIZERS,  
INC., a California corporation,

Plaintiff,

v.

TRUE ORGANIC PRODUCTS, INC., a  
California corporation, and DOES 1–10,  
inclusive,

Defendants.

Case No.

**COMPLAINT FOR (1) FALSE  
ADVERTISING UNDER THE LANHAM  
ACT, 15 U.S.C. § 1125; (2) VIOLATIONS  
OF CALIFORNIA BUSINESS AND  
PROFESSIONS CODE § 17200 *ET SEQ.*;  
AND (3) VIOLATIONS OF CALIFORNIA  
BUSINESS AND PROFESSIONS CODE  
§ 17500 *ET SEQ.***

**Jury Trial Demanded**

Plaintiff CALIFORNIA ORGANIC FERTILIZERS, INC., by and through its counsel of record,  
files this complaint against TRUE ORGANIC PRODUCTS, INC., and alleges as follows:

**JURISDICTION AND VENUE**

1. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331  
and 1367, as well as 15 U.S.C. § 1121, as it arises under the Lanham Act, codified at 15 U.S.C. § 1125.

2. This court has personal jurisdiction over Defendant True Organic Products, Inc.  
(hereinafter “Defendant” or “True”), a California corporation, as it is a resident of this state.

3. While Defendant’s principal place of business is in Monterey, California, Plaintiff is  
informed and thereon believes that the majority of Defendant’s manufacturing operations are conducted

1 in Helm, California, which is in Fresno County, located within the Eastern District of California.  
2 Accordingly, venue is proper in this court pursuant to 28 U.S.C. § 1391(b), as a substantial part of the  
3 events or omissions giving rise to the claim occurred in this judicial district.

4 **PARTIES**

5 4. At all times relevant herein, Plaintiff California Organic Fertilizers, Inc. (hereafter  
6 “Plaintiff” or “COFI”) was and is a corporation organized and existing under the laws of the State of  
7 California. COFI’s principal place of business is Hanford, California.

8 5. Plaintiff is informed and believes and thereon alleges that Defendant True Organic  
9 Products, Inc. (hereafter “Defendant” or “True”) is a California corporation organized and existing under  
10 the laws of the State of California, and that True’s principal place of business is Monterey, California.

11 6. The true names and capacities of Defendants DOES 1 through 10, inclusive, are unknown  
12 to Plaintiff who therefore sues said Defendants by such fictitious names pursuant to Section 474 of the  
13 California Code of Civil Procedure. Plaintiff will seek leave of this Court to amend this Complaint  
14 when the true names and capacities of these defendants have been ascertained.

15 **FACTUAL ALLEGATIONS**

16 7. Organic farming is a significant industry in California, which has grown markedly in  
17 recent years. Because of the growth of this industry, the demand for fertilizers (also called “input  
18 materials”) that are suitable for use in organic farming has also grown.

19 8. Both COFI and True sell organic fertilizers, and various fertilizer products manufactured  
20 by these two companies compete with each other in the organic fertilizer market. True controls, if not  
21 the majority, then a significant plurality of the market for organic fertilizers. In part through its  
22 dominance of the organic fertilizer market, True has been able to place principals and/or employees on  
23 boards and committees of a number of industry governance organizations, including the Organic Trade  
24 Alliance (“OTA”), the California Organic Products Advisory Committee (“COPAC”), the Food Safety  
25 & Technology Council of the United Fresh Produce Association, and the CDFA Fertilizer Inspection  
26 Advisory Board.

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1           9.     In the United States, organic products are federally regulated by the National Organic  
2 Program (“NOP”), which is administered by the Agricultural Marketing Service (“AMS”), a division of  
3 the U.S. Department of Agriculture (“USDA”).

4           10.    California state fertilizer regulations require any fertilizer intended for use in organic  
5 food and crop production to be registered with the California Department of Food and Agriculture and  
6 to comply with federal NOP regulations.

7           11.    In order for an agricultural product to be sold or labeled as “100 percent organic,”  
8 “organic,” or “made with organic [specified ingredients or food groups],” all production operations that  
9 produce or handle the product must be certified under the NOP.

10          12.    Similarly, any agricultural product that is sold or labeled as “100 percent organic,”  
11 “organic,” or “made with organic [specified ingredients or food groups]” must be produced in  
12 accordance with the regulations promulgated under the NOP.

13          13.    An organic farmer must comply with numerous different regulations in order to be  
14 certified for organic production under the NOP. In particular, a farmer must “manage plant and animal  
15 materials to maintain or improve soil organic matter content in a manner that does not contribute to  
16 contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or  
17 *residues of prohibited substances.*”

18          14.    Additionally, in order to be sold as organic, an agricultural product cannot be grown in a  
19 field that has had a “prohibited substance” applied to it within the three years preceding the harvest of  
20 the crop.

21          15.    Prohibited substances generally include all synthetic substances and ingredients, minus  
22 certain specified exceptions. Conversely, all nonsynthetic substances are typically permitted for use in  
23 organic products, except as specified by the regulations.

24          16.    Under the NOP, a substance is considered synthetic if it is formulated or manufactured  
25 by a chemical process or by a process that chemically changes a substance extracted from naturally  
26 occurring plant, animal, or mineral sources, unless it is created by a naturally occurring biological  
27 process.

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1           17.     Additionally, the NOP states that no product that is to be sold as organic may be produced  
2 or handled with the use of “excluded methods.” The term “excluded methods” under the NOP refers to  
3 genetic modification “by means that are not possible under natural conditions or processes.” Materials  
4 produced by this type of genetic modification (hereinafter “GMO materials”) include materials produced  
5 by cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology  
6 (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes  
7 when achieved by recombinant DNA technology). Materials produced through the use of traditional  
8 breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture are not  
9 considered to be produced by excluded methods.

10           18.     Because an agricultural product may not be sold as organic if it is not produced in  
11 accordance with the NOP (i.e., if it is produced with GMO materials, synthetic materials not included  
12 on the accepted list, or nonsynthetic materials included on the excluded list), organic farming operations  
13 and USDA-accredited certifying agents depend on organic fertilizer companies to accurately label their  
14 products.

15           19.     True’s website states that “[a]ll of its fertilizers are carefully formulated for use in organic  
16 farming and meet the requirements of the National Organic Program.” Statements similar to this are  
17 present on most, if not all, of the packaging and labeling materials that True uses on its products, and  
18 True has represented its products to be suitable for use in organic farming in numerous different  
19 iterations.

20           20.     As discussed below, COFI is informed and thereon believes that a number of fertilizer  
21 products manufactured and sold by True violate the NOP and are not suitable for use in organic farming.  
22 Specifically, True sells fertilizer products: (1) derived from GMO sugar beets; (2) containing  
23 impermissible antibiotics; (3) derived from chicken manure which has been treated with synthetic  
24 substances; (4) derived from uncomposted chicken manure; and/or (5) derived from fish that has been  
25 chemically processed. COFI is informed and thereon believes that some or all of the products derived  
26 in these manners are not suitable for use in organic farming. Because of this, the numerous statements  
27 on True’s website and product labels that indicate these products are suitable for use in organic products  
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are literally false, either directly or by necessary implication. Alternatively, even if these statements can be described as literally true, they are likely to mislead customers.

*True's Products are Derived from a By-Product of GMO Sugar Beets Created Through a Synthetic Chemical Process*

21. A number of True's products, including True 402, True 413, True 315, and True 512, contain an ingredient listed in various product descriptions as "reduced sugar molasses" or "beet extract." COFI is informed and thereon believes that this ingredient refers to a by-product of the process of refining sugar from sugar beets. This by-product is also referred to as "CSB" or "concentrated separator by-product." This by-product is also sometimes called "raffinate," which is a general term used in chemistry to refer to a liquid product resulting from extraction of a liquid with a solvent.

22. True's owner, Jacob Evans, has even sought a patent for a fertilizer product manufactured from CSB and fish by-products.

23. Virtually all of the sugar beets grown in the United States are genetically modified. These genetic modifications provide various benefits to sugar beet farmers, including the ability to grow more beets on less land, use less water, and the ability to easily use glyphosate (the active ingredient in Round-Up) as an herbicide in sugar beet fields.

24. COFI believes that CSB is the likely source of the ingredient in True's products that contain "reduced sugar molasses" in part because testing confirmed that samples of True 402 and True 413 contain detectable levels of GMO material, as shown below:

Analysis	Level Found As Received	Units	Reporting Limit	Method	Analyst- Date	Verified- Date
Sample ID: TRUE 402 LO4283HAHP01      Lab Number: 2880257 (con't)						
Bulk density (loose)	1.21	g/cm <sup>3</sup>	0.01	WT/VOL *	may8-2018/12/26	mjs5-2018/12/31
p35S GMO promoter	POSITIVE	%	0.001	MWL developed/Qiagen DNeasy Plant Handbook	bch0-2019/01/03	srp3-2019/01/03
Analysis	Level Found As Received	Units	Reporting Limit	Method	Analyst- Date	Verified- Date
Sample ID: TRUE 413 LO3211HAHP02      Lab Number: 2880258 (con't)						
Bulk density (loose)	1.23	g/cm <sup>3</sup>	0.01	WT/VOL *	may8-2018/12/26	mjs5-2018/12/31
p35S GMO promoter	POSITIVE	%	0.001	MWL developed/Qiagen DNeasy Plant Handbook	bch0-2019/01/03	srp3-2019/01/03

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25. COFI is informed and thereon believes that the GMO marker found in True 402 and True 413—p35S GMO promoter—is commonly found in agricultural materials that have been genetically modified to be herbicide resistant (i.e., “Round-Up Ready”). This is consistent with COFI’s understanding that True uses by-products from genetically modified sugar beets in its fertilizer products.

26. Additionally, COFI is informed and thereon believes and alleges that one of the steps in the refinement of sugar beets into crystallized sugar involves the use of an ion exchange resin. In particular, the sugar beets are crushed, pulverized, or sliced, and combined with water, before being passed through these ion exchange resins. A chemical process occurs while the sugar beet material is being passed through the ion exchange resin, which removes certain parts of the sugar beet material, helping refine the product into the crystallized sugar commonly sold in stores. The materials not removed by the ion exchange resins are eventually rendered into the by-products known as CSB, raffinate, or in True’s labeling, “reduced sugar molasses” or “beet extract.”

27. Ion exchange resins are considered a “synthetic material” under the NOP, and no ion exchange resins are currently included on the NOP’s list of permitted synthetic substances.

28. In addition to the ion exchange resins, synthetic bactericides, such as ammonium bisulfite, are added to sugar beets during processing to control bacterial growth. The addition of such synthetic bactericides renders the resulting processed materials, such as CSB and other beet molasses materials, unsuitable for organic farming.

29. True’s products that are manufactured using CSB—whether called CSB, “reduced sugar molasses,” “beet extract,” or raffinate—are not suitable for use in organic farming, both because CSB is produced using “excluded methods” and because CSB is manufactured by a process that chemically changes a substance extracted from naturally occurring plant sources.

*True’s Products Contain Impermissible Antibiotics*

30. Through testing, COFI confirmed that an antibiotic from the fluoroquinolone family—enrofloxacin—is present in several of True’s products.

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31. This antibiotic was found in True's 7.5-5-7.5 product, which is a solid pelletized fertilizer purportedly derived from meat and bone meal, feather meal, sulfate of potash, and poultry manure:

C191204-01	TRU 7.5-5-7.5 DO4316HAH1 DATE: 01/22/19 TIME: 11:10				
	CHLORAMPHENICOL (ELISA)	ELISA	NDLT 0.30	ppb	02/04/19
	<u>Summary Test FLUOROQUINOLONES</u>				
	CIPROFLOXACIN	LC/MS/MS	NDLT 0.10	ppb	01/28/19
	ENROFLOXACIN	LC/MS/MS	18.34	ppb	01/28/19
	SARAFLOXACIN	LC/MS/MS	NDLT 0.10	ppb	01/28/19
	DIFLOXACIN	LC/MS/MS	NDLT 0.10	ppb	01/28/19

32. This antibiotic was also found in True's 13-0-0 product, which is a solid pelletized fertilizer purportedly derived from feather meal and meat and bone meal:

C191206-01	TRUE 13-0-0 DO4340HAH01 DATE: 01/22/19 TIME: 11:00				
	CHLORAMPHENICOL (ELISA)	ELISA	NDLT 0.30	ppb	02/04/19
	<u>Summary Test FLUOROQUINOLONES</u>				
	CIPROFLOXACIN	LC/MS/MS	NDLT 0.10	ppb	01/28/19
	ENROFLOXACIN	LC/MS/MS	8.20	ppb	01/28/19
	SARAFLOXACIN	LC/MS/MS	NDLT 0.10	ppb	01/28/19
	DIFLOXACIN	LC/MS/MS	NDLT 0.10	ppb	01/28/19

33. This antibiotic was also found in True's 4-4-2 product, which is a solid pelleted fertilizer purportedly derived from poultry manure, feather meal, and meat and bone meal:

C189970-01	TRUE 442 UNKNOWN 11/13/18				
	CHLORAMPHENICOL (ELISA)	ELISA	NDLT 0.30	ppb	01/10/19
	<u>Summary Test CARBAMATE SCREEN</u>				
	ALDICARB (TEMIK)	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	ALDICARB SULFONE	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	ALDICARB SULFOXIDE	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	CARBARYL (SEVIN)	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	CARBOFURAN (FURADAN)	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	METHIOCARB (MESUROL)	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	METHOMYL(LANNATE)	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	OXAMYL	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	PROPOXUR (BAYGON)	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	3-HYDROXY CARBOFURAN	CDFA 1991, LUKE	NDLT 0.02	ppm	12/24/18
	<u>Summary Test FLUOROQUINOLONES</u>				
	CIPROFLOXACIN	LC/MS/MS	NDLT 1.00	ppb	01/03/19
	ENROFLOXACIN	LC/MS/MS	6.98	ppb	01/03/19
	SARAFLOXACIN	LC/MS/MS	NDLT 1.00	ppb	01/03/19
	DIFLOXACIN	LC/MS/MS	NDLT 1.00	ppb	01/03/19

34. The presence of this antibiotic in numerous products is particularly concerning. While one of these products contains poultry manure, and uncomposted poultry manure may contain antibiotic residues, fluoroquinolones such as enrofloxacin have been banned from use in poultry farming in the United States since 2005. A key basis for this restriction was the concern that use of such fluoroquinolones gives rise to the growth of drug-resistant bacteria harmful to humans.

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35. Indeed, all extra-label or off-label use of fluoroquinolones is banned in the United States. Fluoroquinolones are permitted for use in cattle via intramuscular injection in certain circumstances, but drugs from this family—such as enrofloxacin—may not be used prophylactically as a feed additive.

36. When antibiotics such as enrofloxacin are present in the soil, they can be taken up by plants that grow in that soil. Therefore, crops grown in soil containing antibiotics may contain detectable levels of those antibiotics. It is particularly concerning that True's fertilizers contain these antibiotics, since the fertilizers are primarily sold for food crop production. Moreover, organic products are widely marketed and understood by consumers to be free of antibiotic residues.

37. Because of the narrow range of permissible uses of this drug in American farming operations, it is unlikely that these detectable levels are the result of antibiotic residues naturally found in the materials from which these fertilizer products are derived.

38. For application on most crops, fertilizer companies manufacturing fertilizers derived from animal materials must include in their production processes steps that are verified to kill food safety pathogens. Manufacturers must then test each lot of fertilizer for pathogens, and provide a lab certificate of analysis and other food safety documentation to their customers, showing that the fertilizer contains no detectable levels of salmonella, listeria, *e. coli*, and fecal coliform bacteria. Enrofloxacin is a broad spectrum antibiotic that is effective against each of these types of bacteria. As such, True may obtain a pathogen reduction benefit from the existence of enrofloxacin in its products.

39. Since it is unlikely enrofloxacin residues are simply present in the materials from which True's fertilizer products are derived, it is difficult to explain how enrofloxacin is finding its way into multiple fertilizer products manufactured by True.

40. Regardless of how this antibiotic finds its way into True's products, due to its presence, these products are in violation of the NOP and thus not suitable for use in organic farming.

*True's Products are Derived from Chicken Manure Treated with Synthetic Materials*

41. COFI believes and thereon alleges that a substantial portion of the chicken manure True uses comes from conventional poultry farming operations, rather than organic poultry farming operations.

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42. Many poultry farms in California apply a product called PLT–Poultry Litter Treatment, manufactured by Jones Hamilton Ag, to the poultry litter or manure to “fix” the nitrogen in the manure, which prevents it from converting to ammonia and dissipating into the air. Lower levels of ammonia in poultry houses lead to larger and more productive poultry. Moreover, lowering ammonia levels helps reduce air pollution.

43. Aluminum sulfate and sodium bisulfate are the substances used to “fix” the nitrogen in poultry farming operations. Some air quality regulators in California specifically indicate large poultry farming operations may use aluminum sulfate and sodium bisulfate as one of the mitigation measures to “fix” the ammonium contained in the poultry manure and reduce air emissions from the facility.

44. Indeed, the major ingredient in PLT–Poultry Litter Treatment is sodium bisulfate.

45. Both aluminum sulfate and sodium bisulfate have been classified as synthetic by the National Organic Standards Board (“NOSB”), which is organized under 7 U.S.C. § 6518 to assist the Secretary of Agriculture, and neither can be used in agricultural products that are sold as organic.

46. COFI is informed and believes that the chicken manure used in many of True’s products has been treated with a synthetic additive, most likely sodium bisulfate. Because the manure from which its products are derived contains a synthetic additive, True’s chicken-manure based products are not suitable for use in organic farming.

*True’s Products are Derived from Uncomposted Chicken Manure*

47. As noted above, many of True’s products are derived from chicken manure. For the reasons described below, COFI is informed and thereon believes and alleges that the chicken manure True uses in its fertilizer products is not composted.

48. Uncomposted chicken manure has a greater nitrogen content than composted chicken manure, thereby making it more valuable for use as a fertilizer. Moreover, chicken manure is sold at a very low cost in comparison to other protein materials that are typically used as organic fertilizers. By using uncomposted chicken manure in its fertilizer, True can sell its fertilizers at a lower cost per unit of nitrogen compared to competing protein-based products, such as those sold by COFI.

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1           49. Prior labels for True's products indicated that they were derived from "composted"  
2 chicken litter. However, current labels and advertising no longer indicate that the chicken manure or  
3 chicken litter used in True's products is "composted." True's website specifically identifies "heat  
4 treatment" as its method of pathogen control.

5           50. Composting animal manure to be used in fertilizer is extremely important. First, the  
6 composting process effectively kills many bacteria, such as salmonella and *e. coli*, which are regularly  
7 found in animal manure. Thus, failing to compost manure that is used on food crops increases the risk  
8 of those food crops being contaminated with harmful bacteria, such as salmonella and *e. coli*.

9           51. Unsurprisingly, the NOP regulates the use of uncomposted manure in organic farming.  
10 The AMS has issued regulations on the use of raw animal manure as a fertilizer through formal notice-  
11 and-comment rulemaking. Those regulations require either (1) that any raw animal manure be  
12 composted prior to use; (2) that raw animal manure not be applied to land used for crops intended for  
13 human consumption; or (3) that a waiting period be imposed, so that raw animal manure is not applied  
14 to the land within either 90 or 120 days of harvest of the crop.

15           52. True's advertising consistently says that its products are suitable for use in organic  
16 farming. None of its advertising indicates that its products derived from animal manure are *only* suitable  
17 for use in organic farming if the crops are subjected to a waiting period prior to harvest. However,  
18 because True's animal manure-based products use uncomposted manure, the waiting time restriction  
19 applies. Thus, the necessary implication of True's advertising—i.e., that no waiting period restriction  
20 is required when its products are used—is false. Alternatively, to the extent these statements can be  
21 construed as literally true, they are likely to mislead True and COFI's customers, because they do not  
22 reveal that their products are suitable for use only after a waiting period.

23           53. To the extent True relies on heat treatment methods described in NOP 5006 in labeling  
24 its uncomposted manure products, True's reliance is misplaced. Guidance documents such as this lack  
25 the force and effect of law.

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True's Products are Derived from Fish that has been Chemically Processed and Thus is a Synthetic Substance

54. A number of True's fertilizer products are derived from various fish by-products. Import records indicate that one of the suppliers for the materials used in True's fish products is an India-based company known as Bawa Fishmeal & Oil Co., from which True imports a product known as "Fish Soluble Paste."

55. COFI is informed and thereon believes that the process by which Fish Soluble Paste is formulated by Bawa Fishmeal & Oil Co. involves the addition of sulphuric acid as a form of protein hydrolysis during its production. COFI is informed and believes that additional fish suppliers based in India from which True imports products are using similar acid hydrolysis methods.

56. Under the NOP, acids may be used in liquid fish fertilizers only to adjust the pH of the product. Synthetic acids may not be used to extract protein from a fish product.

57. Given the foregoing, COFI is informed and believes that some of True's fish-based fertilizers are made through acid protein hydrolysis via the addition of sulphuric acid, and therefore are not permissible for use in organic farming.

Statements on True's Label and Website that Its Products are Suitable for Use in Organic Farming are Literally False

58. True's website contain the statement that "[a]ll of its fertilizers are carefully formulated for use in organic farming and meet the requirements of the National Organic Program." Its labels and marketing materials contain numerous representations that are designed to indicate to customers that its products are suitable for use in organic farming, including noting that its products are "derived from approved organic ingredients" and are "formulated specially for organic crops." These various statements inform True and COFI's customers, who are commercial organic farmers and the distributors who supply them, that these products are appropriate for use in organic farming. These statements, and the various iterations of them, are literally false, either directly or by necessary implication. Alternatively, even to the extent that these statements could be considered true, they are likely to mislead a customer for organic fertilizer products.

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59. Many of True's products are not suitable for use in organic farming because they are derived from GMO sugar beet materials. This fact is material to True's and COFI's customers, who use organic fertilizer products in commercial organic farming operations. The knowing use of a product containing GMO material in an organic farming operation could jeopardize the farm's organic certification.

60. Further, sugar beets are processed using prohibited synthetic biocides, as well as synthetic processing tools such as ion exchange resins. These facts are material to True's and COFI's customers, who use organic fertilizer products in commercial farming operations. The knowing use of a prohibited material could jeopardize the farm's organic certification.

61. Several of True's products are not suitable for use in organic farming because they contain detectable levels of an antibiotic, enrofloxacin. This antibiotic is strictly regulated and not frequently used in commercial farming in the United States, and is effective against the multiple bacteria True must certify are absent from its products for food safety purposes. COFI is uncertain of the possible source of this antibiotic in True's products, but regardless of the source of the antibiotic, such antibiotics are synthetic materials not allowed for use in organic farming. This fact is material to True and COFI's customers, who use organic fertilizer products in commercial organic farming operations. Knowing use of a product containing antibiotics in an organic farming operation could jeopardize the farm's organic certification.

62. Many of True's products also may not be suitable for use in organic farming because they are made with uncomposted chicken manure that has been treated with various synthetic chemicals in order to "fix" the nitrogen it contains. This is material to True and COFI's customers, who use organic fertilizer products in organic farming operations. Uncomposted manure may not be used in organic farming without a waiting time restriction. Additionally, using an input material that has been treated with synthetic chemicals is inappropriate under the NOP, and the knowing use of these products could jeopardize a farm's organic certification.

63. Finally, many of True's products also may not be suitable for use in organic farming because they are made from fish products that use an acid to extract proteins from the fish. This fact is material to True and COFI's customers, who use organic fertilizer products in commercial organic

1 farming operations. An input material that is made using acid-based protein hydrolysis is not permitted  
 2 for use in organic farming operations, and the knowing use of such a product could jeopardize a farm's  
 3 organic certification.

4 64. Given the above, the statements on True's labeling and marketing materials that indicate  
 5 "its fertilizers are carefully formulated for use in organic farming and meet the requirements of the  
 6 National Organic Program" are literally false.

7 65. COFI believes and thereon alleges that customers for which COFI and True compete  
 8 would find the statements indicated above to be misleading and deceptive, even if literally true.

9 66. These false statements permit True to unfairly compete with COFI, in violation of both  
 10 state and federal law. This unfair competition causes persistent and repeated harm to COFI in the form  
 11 of lost sales, lost goodwill, and other damages.

12 **FIRST CAUSE OF ACTION – VIOLATIONS OF THE LANHAM ACT, 15 U.S.C. § 1125**

13 67. COFI re-asserts and re-alleges Paragraphs 1 to 66, as though fully set forth herein.

14 68. True's website states that "[a]ll of its fertilizers are carefully formulated for use in organic  
 15 farming and meet the requirements of the National Organic Program." Various iterations of this  
 16 statement are repeated in True's marketing materials and on its labels, indicating to customers that  
 17 True's products are suitable for use in organic farming. These statements are commercial speech, and  
 18 are made in connection with an advertisement or promotion intended to encourage customers to  
 19 purchase its products. These statements are not puffery or opinion.

20 69. These statements are literally false, either directly or by necessary implication, because  
 21 many of True's products are not suitable for use in organic farming for the reasons outlined above.  
 22 Alternatively, to the extent that these statements are literally true, they are likely to mislead or deceive  
 23 customers for organic fertilizers.

24 70. These statements are material to customers in the market for organic fertilizer products,  
 25 because agricultural products may not be sold as organic if they are produced with materials that are the  
 26 product of excluded methods, contain synthetic materials that are not permitted, or contain nonsynthetic  
 27 materials that are excluded from use under the NOP.

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1 71. These statements have actually deceived and/or have the tendency to deceive a  
2 substantial number of customers in the market for organic fertilizer products.

3 72. These false statements are made in interstate commerce, as COFI is informed and  
4 believes and thereon alleges that True sells its products to customers in numerous states.

5 73. True's false statements permit it to hold and maintain a large market share in the organic  
6 fertilizer industry. The false statements made by True damage COFI, because they divert sales away  
7 from COFI's products and lessen the goodwill attributed to COFI. COFI has been damaged in an amount  
8 to be proven at trial.

9 74. Additionally, True's false statements have caused irreparable injury to COFI, and COFI  
10 will seek injunctive relief to prevent further injuries for which COFI has no adequate remedy at law.

11 **SECOND CAUSE OF ACTION – VIOLATION OF CALIFORNIA BUSINESS AND**  
12 **PROFESSIONS CODE § 17200, *ET SEQ.***

13 75. COFI re-asserts and re-alleges Paragraphs 1 to 74, as though fully set forth herein.

14 76. As stated, True has falsely advertised that its products are suitable for use in organic  
15 farming, in violation of the Lanham Act, the Organic Food Production Act of 1990, the California  
16 Organic Products Act of 2003, and other statutes.

17 77. True's conduct constitutes an unlawful, unfair or fraudulent business practice pursuant  
18 to California Business and Professions Code § 17200 *et seq.*

19 78. True's unlawful, unfair or fraudulent business practices have caused harm to COFI.  
20 These unlawful, unfair, or fraudulent business practices have proximately caused COFI to suffer injury  
21 in fact and loss of money and/or property in an amount to be proven at trial.

22 79. As a direct, proximate, and foreseeable result of True's wrongful conduct alleged here,  
23 COFI is entitled to relief, including full restitution for harm caused as a result of such business acts or  
24 practices.

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1 80. True's unlawful, unfair, or fraudulent business practices have also caused irreparable and  
2 incalculable injury to COFI, and to the business and goodwill of COFI, and, unless enjoined, could cause  
3 further irreparable and incalculable injury, whereby COFI would have no adequate remedy at law.

4 **THIRD CAUSE OF ACTION – VIOLATION OF CALIFORNIA BUSINESS AND**  
5 **PROFESSIONS CODE § 17500, *ET SEQ.***

6 81. COFI re-asserts and re-alleges Paragraphs 1 to 80, as though fully set forth herein.

7 82. As stated, True has falsely advertised that its products are suitable for use in organic  
8 farming. These false statements also violate California Business & Professions Code § 17500 *et seq.*

9 83. True intended to sell its fertilizer products in California, and disseminated advertising  
10 which stated that its products were suitable for use in organic farming.

11 84. These statements were untrue or misleading, and True knew, or in the exercise of  
12 reasonable care should have known, that these statements were untrue or misleading.

13 85. True's violations of Section 17500 *et seq.* have caused harm to COFI. This false  
14 advertising has proximately caused COFI to suffer injury in fact and loss of money and/or property in  
15 an amount to be proven at trial.

16 86. As a direct, proximate, and foreseeable result of True's wrongful conduct alleged here,  
17 COFI is entitled to relief, including full restitution for harm caused as a result of such business acts or  
18 practices.

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1 87. True's unlawful, unfair, or fraudulent business practices have also caused irreparable and  
2 incalculable injury to COFI, and to the business and goodwill of COFI, and, unless enjoined, could cause  
3 further irreparable and incalculable injury, whereby COFI would have no adequate remedy at law.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff requests a trial by jury, and prays for judgment and an order against  
6 each Defendant as follows:

- 7 1. On each of the causes of action, for damages and restitution according to proof at trial;  
8 2. On each of the causes of action, for injunctive relief as may be shown to be proper;  
9 3. On each of the causes of action, for attorneys' fees, costs, and interest, as authorized by  
10 law; and  
11 4. Any other relief that this Court deems just and proper.

12 Dated: March 1, 2019

WANGER JONES HELSLEY PC

13  
14 By: /s/ John P. Kinsey

15 John P. Kinsey,  
16 Patrick D. Toole,  
17 Christopher A. Lisieski  
18 Attorneys for Plaintiff  
19 California Organic Fertilizers, Inc.,  
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