

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

**FARMEDHERE, LLC., an Illinois  
Limited Liability Company,**

**Plaintiff,**

**v.**

**JUST GREENS, LLC, d/b/a AERO  
FARM SYSTEMS, LLC, a Delaware  
Limited Liability Company,**

**Defendant.**

**Case No.**

**COMPLAINT**

Plaintiff, FarmedHere, LLC (“Plaintiff” or “FarmedHere”), an Illinois Limited Liability Company, by and through its attorneys, Brown, Udell, Pomerantz & Delrahim, Ltd., for its Complaint against Defendant, Just Greens, LLC, d/b/a Aero Farm Systems, LLC, a Delaware Limited Liability Company (hereinafter referred to as “AeroFarms”), alleges and states as follows:

**INTRODUCTION**

1. FarmedHere is a company that, after two and half years, has twenty-eight employees and has never strayed from its mission – to grow and sell organic leafy greens and herbs using aeroponic and aquaponic vertical indoor farming methods. Beginning in December of 2011, FarmedHere acquired a ten thousand square foot indoor growing facility in Flanagan, Illinois from Aquaranch. This plant is equipped to utilize an aquaponic process whereby organic certified plants are grown on floats in water which has been used for raising fish (tilapia) and is then recycled.

2. In 2012, FarmedHere acquired an abandoned warehouse in Bedford Park, Illinois, and in March of 2013, it opened the facility as an aeroponics farm on over approximately ninety thousand (90,000) square feet of space. The methods of farming utilized in the Bedford Park facility were developed under the guidance and advice of aeroponics pioneer Richard Stoner.

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Stoner was growing plants aeroponically with his company, Agrihouse, in the 1980s using his own patented process.

3. Within its first year, FarmedHere obtained Whole Foods Market as a major customer; it now sells to every Whole Foods stores in the Chicago area. Today, FarmedHere is the only company in the United States to sell aeroponic produce to branded supermarket chains. Its customers include Whole Foods Market, Mariano's, Peapod, Standard Market Chicago, Produce World Market, Pete's Fresh Market, Fresh Farms International Market, Sunset Foods, Shop & Save Market, Plum Market and Garden Fresh Market.

4. In 2012, FarmedHere became the first indoor aquaponic farmer in the nation to receive certification under the USDA's National Organic Program for all its products submitted for certification, which include baby arugula and kale, fresh basil, mint, and petite salad greens.

5. AeroFarms is a company that, after nine years, has just five employees, and, by its own admission, is on its third business model. This business model is to operate aeroponic farms, but since moving to this model in 2012 it has not built a single farm. Its operations consist instead of a growing facility in a basement in Marathon, New York, a farm in a private school in Newark, New Jersey that is part of a program for hands-on learning and harvesting in the school commissary, and demonstration machines leased to authorities in Jeddah and Abu Dhabi for research and development purposes.

6. David Rosenberg is AeroFarms' Chief Executive Officer. Once FarmedHere began selling aeroponic produce to supermarkets in Chicago, Rosenberg began soliciting investors and potential customers by telling them that AeroFarms had farms in Chicago and was selling produce grown in these farms to Chicago supermarkets.

7. In 2012, AeroFarms' founder, Ed Harwood, also began making public statements that AeroFarms was building a 90,000 square foot aeroponic farm in Chicago – a clear reference to FarmedHere's Bedford Park facility – that AeroFarms was selling to FarmedHere's customers, that FarmedHere was using and promoting AeroFarms' technology and that, in various other ways, AeroFarms owned or was in some way affiliated with FarmedHere. AeroFarms has continued to make such misrepresentations to the public despite FarmedHere's repeated notices to AeroFarms that this conduct was illegal, was damaging to FarmedHere's business and reputation, and that AeroFarms should therefore discontinue it immediately.

8. Also in the fall of 2012, AeroFarms began sending FarmedHere cease and desist letters based on alleged violations of a non-disclosure agreement, despite the fact that FarmedHere has never entered into any such agreement with AeroFarms. This non-disclosure agreement was with another company and was dated over six months before FarmedHere was formed. The signatory to that non-disclosure agreement, Paul Hardej, has no ownership interest in FarmedHere and did not become an employee of FarmedHere until sixteen months after he signed the agreement. Regardless, AeroFarms has continued to pursue FarmedHere, most recently on Christmas Eve, 2013, by serving FarmedHere with a notice of arbitration in New York for breach of the non-disclosure agreement and for patent infringement.

9. As shown below, FarmedHere has never infringed any valid, enforceable patent rights of AeroFarms.

### THE PARTIES

10. FarmedHere, LLC is an Illinois limited liability company with its principal place of business located at 6700 S. Sayre Ave., Bedford Park, IL 60638.

11. On information and belief, Just Greens, LLC, d/b/a Aero Farm Systems, LLC (“AeroFarms”), is a Delaware limited liability company, with its principal place of business located at 1114 Hanshaw Road, Ithaca, New York 14850.

### JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 28 U.S.C.A. § 1331 and 28 U.S.C.A. § 1338, on the grounds that Plaintiff’s claims arise under the laws of the United States relating to patents and trademarks, and under the Declaratory Judgment Act, 28 U.S.C.A. § 2201 and 2202.

13. Jurisdiction also exists pursuant to 28 U.S.C.A. § 1332(a)(1) as there is complete diversity of citizenship between the parties and the amount in controversy exclusive of interest and costs exceeds \$ 75,000.

14. Venue is proper in the United States District Court for the Northern District of Illinois, under 28 U.S.C.A. § 1391(b)(1) because the only defendant resides this district.

### GENERAL ALLEGATIONS

15. FarmedHere was formed as a start-up enterprise in August of 2011 by Jolanta Hardej, its Chief Executive Officer, and Steve Denenberg, its Chief Financial Officer. Paul Hardej was retained as a consultant. Paul Hardej had been experimenting with aeroponic farming methods and shared his ideas with his ex-wife, Jolanta, and Steve, a former business associate.

16. The initial goal of FarmedHere was to sell produce and fish in the Chicagoland area using the aquaponics and aeroponics methods in vertical farm “skyscrapers,” based on a

concept that Columbia University Professor Dickson Despommier originated over two decades ago. Consistent with Professor Despommier's ideas for vertical farming, the founders planned to use environmentally friendly aeroponic farming methods. These methods were described in detail in numerous articles, texts and Internet posts, none of which claimed to be patent-protected or otherwise subject to intellectual property licensing requirements, including but not limited to concept of growing plants in an enclosed structure, vertically, using hydroponic methods of growing in controlled environment agriculture as outlined in Mr. Despommier's book, *Vertical Farming, Feeding the World in the 21<sup>st</sup> Century* (2010).

17. Paul Hardej first learned of aeroponic farming when he attended grade school in Poland and grew plants on cloth stretched over a glass, without soil, as do most European children of his generation. After obtaining a degree in architecture, Hardej moved to the United States and began a career in real estate development. He was reminded of aeroponic methods when he was given an aeroponic growing set which consisted of seeds, nutrients, pumps and grow lights as a Christmas gift in approximately 2004.

18. In 2008, Hardej lost his real estate development business in the dramatic downturn of the market, and began exploring other businesses. His interest turned again to aeroponic farming when he attended a speech Professor Despommier gave on vertical farming at a seminar in Chicago during the Spring 2010. Hardej has a degree in architecture, and owned his own real estate development business and general construction on business until experiencing crushing losses in the financial crash of 2008.

19. After attending Despommier's lecture, Hardej began experimenting with technologies for vertical farming, using off the shelf technology including, but not limited to, aquaponics and aeroponics, the method recommended by Professor Despommier. Hardej

conducted these experiments at a building located at 7240 S. Wentworth, Chicago, IL 60621, which was owned by Paul Suder, a friend in the real estate business. The building was in foreclosure and Suder allowed Hardej to use it rent-free in exchange for payment of utilities and space, pending his loss of possession in the foreclosure proceedings.

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20. In September of 2010, while on his way to take a vacation in New England with his children, Paul Hardej paid a visit to Edward Harwood at the AeroFarms' facility in Ithaca, New York. AeroFarms had equipment for growing plants aeroponically indoors, but it had failed to move beyond a concept model growing unit, had not sold any growing machines, and had failed established any of its own growing facilities with its machines to grow and sell produce.

21. At the AeroFarms site, Harwood insisted that before he allowed Hardej to take a tour, Hardej sign a Non-Disclosure Agreement. Harwood agreed to allow Hardej to sign the NDA under a now-defunct company formerly used for Hardej's real estate business, Laurel Park, LLC ("Laurel Park"). A true and correct copy of the Non-Disclosure Agreement, dated September 3, 2010, is attached hereto as Exhibit A.

22. In 2011, Paul Hardej was appointed to former Mayor Daley's Taskforce on Vertical Farming due to his experience in municipal zoning codes, building codes and a vast network of aquaponic growers, hydroponic growers, and local urban farmers he was able to quickly develop on his own.

23. Harwood offered Hardej a test unit to verify the functionality and performance of AeroFarms' machine. Harwood told Hardej he would have to sign an equipment lease. Accordingly, on September 9, 2010, Paul Hardej signed, on behalf of Laurel Park, a three-month equipment lease with AeroFarms for an aeroponic growing system. The lease included delivery and installation of the unit by Harwood to Chicago. The machine components were comprised of

a system frame assembly, an HP pump, eight LED light fixtures, eighty-eight 48" LEDs, eight flat trays, twelve flat cloths, and four fans. The accessories for the machines included one seed sprayer, two seed shakers, one flats scraper, one gram scale, one operator's manual, one scrapping table, one pH/EC meter, four seed covers, and one filter change pan. The monthly lease payment was \$1,000.00. A true and correct copy of the Equipment Lease Agreement, dated September 9, 2010, between Aero Farm and Laurel Park is attached hereto as Exhibit B.

24. On information and belief, AeroFarms was founded in 2004, by its Chief Executive Officer and Director, Ed Harwood. Harwood had twenty years of experience in corporate product management in the dairy industry prior to forming AeroFarms. AeroFarms was later sold, and Just Greens, LLC ("Just Greens"), an entity formed in 2009, currently does business using the AeroFarms name. AeroFarms advertises that it manufactures and distributes equipment for growing produce using an aeroponic method.

25. AeroFarms did not receive a patent for any of its technologies until September 17, 2013, U.S. Patent No. 8,533,992 (the '992 Patent), for a "Method and Apparatus for Aeroponic Farming." AeroFarms business consists of leasing and selling equipment for aeroponic farming.

*AeroFarms' Equipment Distribution Agreement with Hardej*

26. In early 2011, Harwood proposed that Hardej attempt to use his contacts in the Chicagoland area to sell AeroFarms machines. Hardej agreed, but when Harwood sent Hardej a lengthy distribution agreement containing extremely high sales quotas, Hardej explained to Harwood that he did not have a company set up to take on this business, nor much capital available to form a new venture, so that the only company that could sign a distribution agreement was a company he had "on the shelf" that had not yet been registered with the Secretary of State. Prior to executing a distribution agreement, Hardej informed Harwood that he

would be using the name of a corporation he had not yet formed, Citiponic, LLC (“Citiponic”) for the agreement. Harwood agreed to go forward and on February 5, 2011, Paul Hardej signed a Distribution Agreement on behalf of this yet-to-be-formed corporation, CityPonic. A true and correct copy of the Distribution Agreement, dated February 5, 2011, is attached hereto as Exhibit C.

27. Paul Hardej expended significant time and effort trying to sell the AeroFarms equipment to the prospects Harwood sent to him, to his own contacts, and to prospects Hardej developed on behalf of AeroFarms, meeting with over twenty prospects, including startups, experienced growers, educational and nonprofit organizations. These potential customers included the Illinois Institute of Technology, Chicago State University, the Chicago Public Schools, the Chicago Botanic Gardens and the Catherine Cook School. He promoted the AeroFarms AGL-21 machine in print media and on radio, and to a broad audience at Family Farmed Expo 2011, the largest local food expo in Chicago. But by June of 2011, as reflected in the monthly sales reports he sent to Harwood, he could tell he would not be successful because every company Hardej met objected that the equipment was far too expensive and was not operationally feasible.

28. On May 31, 2012, Harwood terminated the Distribution Agreement based on Hardej’s cessation of his efforts to sell the AeroFarms machine. Harwood send a carbon copy of the letter to David Rosenberg, the new owner of AeroFarms. A true and correct copy of the termination letter is attached hereto as Exhibit D.

#### *Equipment Lease II*

29. Before entering into the Distribution Agreement, Harwood took back the AeroFarms unit from Hardej and leased it to another customer. Hardej objected, explaining that



he needed a demonstration unit to sell the equipment for AeroFarms under the Distribution Agreement. Harwood responded that he had no money to build one, but said he had an old prototype, vintage 2004, that he would lease to Hardej. Hardej agreed, and on February 5, 2011, signed a six-month equipment lease with AeroFarms. A true and correct copy of the Equipment Lease Agreement, dated February 5, 2011, is attached hereto as Exhibit E.

30. Upon receiving the old prototype he had leased, Hardej found that the machine was broken, leaking, was missing parts, and was made of cheap aluminum. Despite his repeated requests, Harwood failed to repair the unit, and Hardej was forced to buy the parts himself and spent his own time fixing the machine. The appearance and operation of this demonstration model was another obstacle to his ability to sell the AeroFarms equipment under the Distribution Agreement.

31. Paul Hardej and Paul Suder experimented with growing a variety of produce using the AeroFarms machine at a four thousand square foot facility at 7240 S. Wentworth, Chicago, Illinois. No produce was ever grown for resale on the AeroFarms equipment. The equipment leased from AeroFarms was returned in June of 2011.

#### *The Business of FarmedHere*

32. From its formation in August of 2011 until July of 2012, the majority of FarmedHere's initial produce sales were of produce grown according to a different method – the aquaponic method – on machines manufactured by Aquaranch consultant, Myles Harston and Hardej. FarmedHere's aquaponic farm is located in a facility in downstate, Flanagan, Illinois.

33. The remaining produce was grown on a machine built by FarmedHere using off-the-shelf materials and on technology that was available in numerous published sources and on the Internet, including videos explaining aeroponic methods for growing plants on cloth by

spraying nutrient-rich mist on the roots. *E.g.*, AgriHouse Air Foods - aeroponic organic food production, <http://www.youtube.com/watch?v=Y4UWGtb4Fmw> (Last visited January 17, 2014). To avoid the excessive cost of the AeroFarms' machine, FarmedHere made their unit frame from wood rather than AeroFarm's stainless steel, exchanged fluorescent lights for AeroFarm's LED bulbs, used easily obtained polar fleece in place of AeroFarm's micro fleece cloth, and included many other differences in the design of its machine, thereby dramatically reducing FarmedHere's per square foot equipment cost.

34. FarmedHere also engaged in negotiations with AeroFarms for an exclusive license to use the technology embodied in its machines for vertical farming in the Chicago metro area. At the time, however, AeroFarms had no patents, and would not provide FarmedHere with the requested assurances that it could or would prevent potential competitors of FarmedHere from using the same AeroFarms method. In addition, AeroFarms refused to grant FarmedHere's request for an exclusive license within 250 miles of Chicago, Illinois. As a result, FarmedHere ultimately withdrew from these negotiations.

35. To design the machines for its ninety thousand (90,000) square foot facility in Bedford Park, FarmedHere retained the consulting services of Richard Stoner, the inventor who had his own company practicing his patented aeroponics process since the 1980's. Stoner advised FarmedHere that aeroponic growing was no longer patentable, but that he could teach them the best techniques and methods for aeroponic farming. Stoner's aeroponic farming methods are now on display at the Bedford Park facility, which FarmedHere opened in March of 2013.

## **COUNT I**

### **VIOLATION OF THE LANHAM ACT, 15 U.S.C.A. § 1051-1127**

36. Plaintiff repeats and realleges the allegations made in paragraphs 1 - 35 as if fully set forth herein.

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37. Aero Farms and FarmedHere are competitors in the market for produce grown using aeroponic methods.

38. FarmedHere has never used any aeroponics equipment manufactured or distributed by AeroFarms or Just Greens. Yet AeroFarms has engaged in an intentional and fraudulent campaign of misleading the public, to the financial detriment of FarmedHere, by representing to the public that the FarmedHere facilities are in fact AeroFarms facilities, and even worse, that the FarmedHere produce is in fact AeroFarms produce.

39. AeroFarms began this fraudulent scheme at least as early as September 26, 2012, in a video presentation made in a Vertical Farming workshop Harwood made at the University of Maryland (the "Vertical Farming Presentation") and then posted on the Internet as well as YouTube, stating, that, "We currently have about five farms and a sixth one under construction. We have . . . a 90 thousand square-foot facility under construction in Chicago. And it is interesting Chicago seems to be the hotbed of what is going on." At this point in the video, 3:15, the presentation slide lists "Chicago, Illinois" as the location of one of AeroFarms' facilities. Harwood reiterates this false representation during the question and answer portion of his presentation, at approximately 16:00 in the video, when he claims that his company's current business model is to own and operate farms using its aeroponic technology. AeroFarms had no facilities in Chicago, Illinois on September 26, 2012 and it has no such facilities today.

CIFV2012 8; Ed Harwood, Aerofarms, YouTube,

[http://www.youtube.com/watch?v=aol57Rga2WU&feature=share&list=SPVqaARCrz-m9n57wfUI\\_5zKsKwa3xci\\_X&index=8](http://www.youtube.com/watch?v=aol57Rga2WU&feature=share&list=SPVqaARCrz-m9n57wfUI_5zKsKwa3xci_X&index=8) (last visited January 17, 2014). The video and the presentations slides are publicly available at the [www.challengesinverticalfarming.org](http://www.challengesinverticalfarming.org) website.

40. FarmedHere has the only 90,000 square foot aeroponics farm in Chicago, Illinois.

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AeroFarms therefore misrepresented the FarmedHere aeroponics farm as its own.

41. During his Vertical Farming Presentation, Harwood also states, at approximately 10:54 of the video, that, “We have great proof of technology by having people actually implementing it.” CIFV2012 8: Ed Harwood, Aerofarms, YouTube, [http://www.youtube.com/watch?v=aol57Rga2WU&feature=share&list=SPVqaARCrz-m9n57wfUI\\_5zKsKwa3xci\\_X&index=8](http://www.youtube.com/watch?v=aol57Rga2WU&feature=share&list=SPVqaARCrz-m9n57wfUI_5zKsKwa3xci_X&index=8) (last visited January 17, 2014). While he makes this remark, the presentation slide projected on the screen (attached hereto as Exhibit F), shows FarmedHere’s distinctive, “FARMEDHERE SUSTAINABLE INDOOR FARMING” logo, thereby implying falsely that FarmedHere is one of the entities “actually implementing” AeroFarms’ technology.

42. When he pulls up his next slide of his Vertical Farming Presentation, entitled, “Marketplace Acceptance,” Harwood says, “We have marketplace acceptance by having our product sold in all of these different grocers, most especially in Chicago.” The “Marketplace Acceptance” slide (attached hereto as Exhibit G), depicts the logos of many Chicago-area food retailers, including Whole Foods Markets, Mariano’s Fresh Market, Market Place on Oakton, Green Grocer Chicago, Fresh Farms International Market, Garden Fresh Market, Hyde Park Produce Market, and the Dill Pickle Food Co-op. Each of these grocers purchase their aeroponic and aquaponic grown produce from FarmedHere, a fact that is advertised on FarmedHere’s website.

43. AeroFarms does not own any growing facilities in or near the Chicago area, and this produce is sold as locally grown. Plaintiff therefore alleges, on information and belief, that AeroFarms does not sell produce to any of the companies listed on Harwood's "Marketplace Acceptance" slide. Through its officer, Harwood, AeroFarms has therefore falsely represented FarmedHere's marketplace success and product acceptance as its own.

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44. In its "2012 TiE50 Company Profile" (the "2012 Profile"), as one of finalists in the TiE50 Awards Program, AeroFarms stated, "We grow and sell leafy greens in warehouses, in cities, all over the world at any time of the year." This program is publicly available on the TiE50 Awards Program web site, and a copy is attached hereto as Exhibit H. To support this assertion, AeroFarms says that:

In 2010 and 2011, AeroFarms sold four farm systems to different farmers (under strong NDA agreements). Located in the following markets, these partners are big advocates of our technology: . . . Chicago, IL – a commercial farm operating under Farmed Here brand name is growing leafy greens and herbs for major grocery stores and markets, including 4 Whole Foods stores.

(*Id.*)

45. AeroFarms has never sold any farm systems or other growing equipment to FarmedHere, and AeroFarms has never obtained an "NDA" or non-disclosure agreement from FarmedHere, whether in connection with the sale of farm systems or otherwise. Finally, FarmedHere is not a "big advocate" of AeroFarm's "technology."

46. AeroFarm made almost identical false statements concerning FarmedHere in a May 16, 2012 article written by AeroFarms principals Marc Oshima, Ed Harwood and David Rosenberg, and posted on the Management Innovation eXchange website, [www.managementinnovationexchange.com](http://www.managementinnovationexchange.com). A copy of this article is attached hereto as Exhibit I.

47. AeroFarms' campaign of misinformation has succeeded in misleading such news outlets as the Wall Street Journal. In the October 15, 2012 issue, the Wall Street Journal

published an article on vertical farming (attached hereto as Exhibit J), which contained a photograph provided by AeroFarms of its growing system with the caption, “GROW ANYWHERE This AeroFarms system is being used in buildings in Seattle, Chicago and elsewhere.” Alongside the photograph, the text reads, “Farms in warehouses and other buildings in Seattle, Chicago, upstate New York and New Jersey, among other places, use an aeroponics system from AeroFarms of Ithaca, N.Y.” (Exhibit J.)

48. The “AeroFarms system” depicted in the AeroFarms photograph published in the Wall Street Journal article has not, however, been used in a FarmedHere farm to grow produce. Nor has FarmedHere ever used, in its farms, “an aeroponics system from AeroFarms.” Moreover, on information and belief, AeroFarms has never leased or sold any of its equipment to any other grower in Chicago.

49. On at least three occasions, AeroFarms has used its Twitter account, @aerofarms, to disseminate this false and misleading information. For example, on October 16, 2012, AeroFarms tweeted a link to the October 15, 2012 Wall Street Journal article which falsely states that AeroFarms equipment is being used in FarmedHere’s facilities. AeroFarms, Twitter (October 16, 2012, 1:53 a.m.), <https://twitter.com/AeroFarms/status/258128451490443264> (last visited January 17, 2014). Likewise, on May 12, 2012, and again on June 22, 2012, AeroFarms tweeted a link to their profile on Management Exchange.com, mentioned above. AeroFarms, Twitter (May 12, 2012, 11:16 a.m.), <https://twitter.com/AeroFarms/status/201375355502723072> (last visited January 17, 2014); *Id.*, (June 22, 2012, 4:46 p.m.), <https://twitter.com/AeroFarms/status/216316376342728704> (last visited January 17, 2014). The June 22, 2012 tweet even states “Check us out” with a copy of the link to the May 12, 2012 story. *Id.*

50. Even AeroFarms' LinkedIn page falsely represents FarmedHere's farm as its own. AeroFarms has no farms in Chicago, FarmedHere is the only aeroponic farm in Chicago, yet AeroFarms claims to have an aeroponic farm in Chicago.

51. As recently as February 13, 2013, AeroFarms CEO David Rosenberg participated in a panel discussion for Future Farm Americas and again falsely claimed that AeroFarms has its equipment installed in Chicago, implying that AeroFarms equipment is being used at FarmedHere's facilities. A recording of Rosenberg's comments can be found at 16:07 of the video posted on YouTube, at <http://www.youtube.com/watch?v=Oie-5yh0C4Q> (last visited January 17, 2014).

52. On March 21, 2013, Rosenberg was interviewed for a Wall Street Journal presentation to investors entitled, *ECO:nomics: Urban Farms May Grow Your Next Salad*. When asked to describe AeroFarms, he replied, "We are farmers." At approximately 2:51 of the video of the presentation, he says, "We build farms in warehouses in cities." Wall Street Journal, *ECO:nomics: Urban Farms May Grow Your Next Salad*, <http://live.wsj.com/video/economics-urban-farms-may-grow-your-next-salad/4B1AB864-3341-4E55-BF70-5847BD3A63A7.html#!4B1AB864-3341-4E55-BF70-5847BD3A63A7> (last visited January 17, 2014). He continues with the statements, at approximately 3:47 of the video, "A product coming out of our farms is selling in supermarkets. Our technology is in a farm in Seattle, Chicago, New York, New Jersey, Jeddah, and Dhabi." *Id.*

53. AeroFarms has not built any farms in Chicago, in warehouses or otherwise, and it is not selling any products grown from its own farms in any supermarkets in Chicago. As of the date of Rosenberg's interview, AeroFarms had no supermarket sales in the United States. AeroFarms' only "farms" in the United States were its original research farm in a basement in

Marathon, New York where it began, and a single educational machine operating in a school cafeteria in New Jersey. Even the “farms” in Jeddah and Abu Dhabi are simply demonstration machines leased to various entities for research and development purposes.

54. Other investors from whom FarmedHere has attempted to raise capital, including NGEN and Middleland Capital, have informed FarmedHere’s agents that they have been solicited for investment capital by David Rosenberg of AeroFarms. As part of his pitch, Rosenberg has represented that AeroFarms already has farms in Chicago and is selling to supermarkets in the Chicago area.

55. On October 31, 2013, David Rosenberg filed a Form D Notice of Exempt Offering of Securities on behalf of Just Greens, LLC, raising \$7.4 million through the sale of shares to six investors. On information and belief, Rosenberg and other officers and directors of AeroFarms raised this investment capital by making false statements that the aeroponics facilities of FarmedHere in Chicago were AeroFarms’ facilities, that FarmedHere was using AeroFarm’s equipment, and that the sales FarmedHere was making to supermarket chains in Chicago were AeroFarms’ sales.

56. Because AeroFarms has taken credit for what FarmedHere has achieved, AeroFarms has been able to capture investment capital based on FarmedHere’s accomplishments. Conversely, FarmedHere has lost the opportunity to capture the full benefit of the investment capital it could have achieved were AeroFarms not widely disseminating the false impression that all FarmedHere is simply a franchise or subsidiary of AeroFarms, whose successes with aeroponic and aquaponic farming in Chicago are attributable to AeroFarms and its equipment.

WHEREFORE, Plaintiff seeks an order from the Court awarding (i) actual damages in an amount to be determined at trial, but not less than \$8,000,000.00, plus interest, attorney’s fees



and costs; (ii) a permanent injunction restraining Defendant from continuing to distribute its false advertising, from advertising Plaintiff's farms, facilities, products or customers as its own, and from advertising that Plaintiff is using Defendant's equipment, products or technology; and (iii) any other relief this Court deems just and appropriate.

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**COUNT II**

**VIOLATION OF THE ILLINOIS UNIFORM  
DECEPTIVE TRADE PRACTICES ACT, 815 ILCS 510/2(a)(1)**

57. Plaintiff repeats and realleges the allegations made in paragraphs 1 - 56 as if fully set forth herein.

58. AeroFarms has caused a likelihood of confusion and misunderstanding as to the source of the produce grown and sold by FarmedHere by willfully and knowingly making repeated statements to the public that the farms of FarmedHere in Chicago are AeroFarms' facilities, that the equipment used by FarmedHere to grow this produce is AeroFarms' equipment and the customers who buy the FarmedHere produce are AeroFarms' customers.

59. FarmedHere has been damaged and will be continued to be damaged by all of these false and misleading statements because they confuse the public, consumers and potential investors as to the source of FarmedHere's products and its equipment and because they cause irretrievable loss of good will, irreparable injury to FarmedHere's reputation, and monetary damages would therefore be inadequate.

60. FarmedHere has also been damaged by the willful, false and fraudulent statements that the supermarkets who purchase FarmedHere produce are actually purchasing AeroFarms produce are thereby approving the quality of the AeroFarms produce.

WHEREFORE, Plaintiff seeks a permanent injunction restraining Defendant from continuing to distribute its false advertising, from advertising Plaintiff's farms, facilities,

products or customers as its own, and from advertising that Plaintiff is using Defendant's equipment, products or technology, (ii) attorney's fees and costs, and (iii) any other relief this Court deems just and appropriate.

### **COUNT III**

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#### **DECLARATORY JUDGMENT OF INVALIDITY**

61. Plaintiff repeats and realleges the allegations made in paragraphs 1 - 56 as if fully set forth herein.

62. On December 24, 2013, AeroFarms filed a notice of arbitration (the "Arbitration Notice") against FarmedHere, Paul Hardej and Citiponic (the "Respondents"), pursuant to CPLR § 7503(b), with JAMS in New York, New York. AeroFarms relied upon an arbitration clause in the Distribution Agreement between AeroFarms and Cityponic.

63. FarmedHere received service of the Arbitration Notice on December 30, 2013.

64. In its Statement of Claim submitted for arbitration, AeroFarms asserted a claim against the Respondents for infringement of the '992 Patent.

65. There is an actual, substantial and continuing justiciable case or controversy between AeroFarms and FarmedHere regarding the validity of the '992 Patent.

66. The claims of the '992 Patent are invalid for failure to comply with one or more of the conditions of patentability set forth in Title 35 of the United States Code.

67. FarmedHere is entitled to a judicial declaration that the claims of the '922 Patent are invalid.

#### COUNT IV

##### **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

68. Plaintiff repeats and realleges the allegations made in paragraphs 1 - 56 as if fully set forth herein.

69. There is an actual, substantial and continuing justiciable case or controversy between AeroFarms and FarmedHere regarding non-infringement of the '992 Patent.

70. FarmedHere's aeroponic farming method that is the subject of AeroFarm's patent infringement claim does not infringe on any valid and/or enforceable claim of the '992 Patent.

71. FarmedHere is entitled to a judicial declaration that the use of FarmedHere's method of aeroponic farming that is the subject of AeroFarm's patent infringement claim does not infringe on any valid and/or enforceable claim of the '992 Patent.

72. WHEREFORE, Plaintiff respectfully requests that the Court enter a declaratory judgment as follows: (i) declaring that FarmedHere's method of aeroponic farming that is the subject of AeroFarm's patent infringement claim does not infringe on any valid and/or enforceable claim of the '992 Patent; and (ii) declaring that the claims of the '992 Patent are invalid.

Respectfully submitted,

By: 

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