

KILPATRICK TOWNSEND & STOCKTON LLP
Jon Michaelson (SBN 83815)
jmichaelson@kilpatricktownsend.com
Benjamin M. Kleinman (SBN 261846)
bkleinman@kilpatricktownsend.com
1302 El Camino Real, Suite 175
Menlo Park, CA 94025
Telephone: 650.326.2400
Facsimile: 650.326.2422

MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP
David R. McNamara (SBN 133302)
dave.mcnamara@mccormickbarstow.com
Shane G. Smith (SBN 272630)
shane.smith@mccormickbarstow.com
7647 North Fresno Street
Fresno, CA 93720
Telephone: 559.433.1300
Facsimile: 559.433.2300

Attorneys for Plaintiff
DEERPOINT GROUP, INC.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

DEERPOINT GROUP, INC., an Illinois
corporation,

Plaintiff,

v.

GAR BENNETT LLC, a Delaware limited
liability company,

Defendant.

Case No.

COMPLAINT FOR:

**[1] PATENT INFRINGEMENT (35 U.S.C.
§§ 1 *ET SEQ.*)**

**[2] TRADE SECRET
MISAPPROPRIATION (18 U.S.C. §§ 1836
ET SEQ.)**

**[3] TRADE SECRET
MISAPPROPRIATION (CAL. CIV. CODE
§§ 3426 *ET SEQ.*)**

DEMAND FOR TRIAL BY JURY

1 Plaintiff Deerpoint Group, Inc. (“Deerpoint” or “Company”) brings this complaint against
2 Defendant GAR Bennett LLC (“GAR”) and alleges as follows:

3 **NATURE OF THE ACTION**

4 1. By this action, Deerpoint seeks damages and injunctive relief arising out of
5 Defendant GAR’s infringement of patents and misappropriation of trade secrets—all relating to
6 Deerpoint’s irrigation equipment and its products for agricultural irrigation. Deerpoint’s unique and
7 highly effective equipment, as well as its pioneering fertilizer and foliar blends, are the result of
8 successful, leading-edge science and substantial expenditures over several decades. Defendant’s
9 infringement and misappropriation threaten the value of those investments, allow it to compete
10 unfairly, and must be stopped.

11 **PARTIES**

12 2. Plaintiff Deerpoint is a corporation organized and existing under the laws of the State
13 of Illinois having its principal place of business in Madera, California.

14 3. Upon information and belief, Defendant GAR is a Delaware Limited Liability
15 Company having its principal place of business in Reedley, California.

16 **JURISDICTION AND VENUE**

17 4. This is a civil action to vindicate Deerpoint’s rights arising under the patent laws of
18 the United States (35 U.S.C. sections 1 *et seq.*), under the trade secret protection laws of the United
19 States (18 U.S.C. sections 1836 *et seq.*), and under the trade secret protection laws of the State of
20 California (California Civil Code sections 3426 *et seq.*).

21 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
22 sections 1331, 1338, and 1367, and under 35 U.S.C. sections 271 *et seq.*

23 6. This Court has concurrent jurisdiction over Deerpoint’s claim under the California
24 Uniform Trade Secret Act pursuant to 28 U.S.C. section 1367.

25 7. This Court has personal jurisdiction over Defendant GAR at least by virtue of the
26 fact that GAR conducts business or resides in the State of California, has availed itself of the rights
27 and benefits of California state law, and has engaged in substantial and continuous contacts within
28 the State of California.

8. Venue is proper in this District and before this Court pursuant to 28 U.S.C. sections 1391 and 1400(b) because the events giving rise to the claims occurred primarily in this District, Defendant GAR has committed acts of infringement and misappropriation in this District, and Defendant GAR has a regular and established place of business in this District. This case is properly assigned to the Sacramento Division because Defendant GAR's infringement has taken place and continues in San Joaquin County.

GENERAL ALLEGATIONS

A. Plaintiff Deerpoint

9. Formed in 1993 by experienced scientists Dr. John Miller and Ms. Deborah Miller, Deerpoint is an industry leader in chemical water treatment solutions for agricultural irrigation. Deerpoint was one of the first companies to adopt a highly targeted approach to fertilization through micro (e.g., "drip") irrigation systems and in that process pioneered formulas and mechanisms for delivering nutrient-rich water to crops without experiencing the common problem of irrigation lines becoming clogged by salts. Deerpoint's precision feeding units—called "White Boxes"—are deployed at customer sites in California to inject proprietary nutrient and micro-nutrient blends into growers' irrigation systems in carefully controlled fashion for the purposes of maximizing crop performance and minimizing inputs, resulting in a better return on investment for the grower.

10. Growers in the agricultural industry add fertilizers to plant environments, such as soil, to meet nutritional requirements and thereby enhance crop growth and resulting yields. The term "fertilizer" generally refers to compositions of matter used to deliver nutrients to a crop. Conventional fertilizers typically contain materials that are extraneous to soil conditions and to the plant's nutrient uptake, but which for practical or other reasons often are necessary for nutrient delivery. In some instances, though, these extraneous constituents can be harmful to plants or soil. The process of applying fertilizer nutrients to crops is referred to as "fertilization."

11. Similarly, the application of nutrients by spraying liquid fertilizer directly onto plant leaves is called "foliar feeding" and materials used in doing so are called "foliar products."

12. The term "fertigation" refers to a method whereby fertilizers or foliar products are added to the water being used to irrigate crops, and reflects a combination of irrigation and

fertilization. Fertigation reduces equipment, fuel, transportation, and labor costs in comparison to mechanical delivery of fertilizers to crops such as by spreading, banding, or “side dressing.” It also allows growers to avoid or minimize introduction of potentially harmful extraneous constituents to their fields. Fertigation utilizing micro-irrigation lines is that much more efficient and cost effective because treated water can be applied most directly and evenly to plant roots.

13. While highly desirable, fertigation can be difficult to accomplish using micro-irrigation systems because conventional products leave inorganic salt deposits within lines and emitters that, over time, clog or “plug” the system. Plugging results in uneven distribution of water and nutrients to the crop being irrigated and, in some cases, shuts down the entire irrigation system.

14. Over the years, Deerpoint devoted thousands of hours of scientific and engineering effort, as well as millions of dollars in R&D funding, to create important practical solutions to the challenge of fertigation utilizing micro-irrigation systems. This includes development of over 130 proprietary blends of fertilizer and foliar products that will not clog or plug micro-irrigation lines during fertigation and that do not contain harmful extraneous constituents. This also includes development and continuous improvement of Deerpoint’s White Boxes.

15. A White Box is essentially an on-site fertilizer manufacturing and distribution hub that enables Deerpoint technicians to inject proprietary blends—carefully selected on a custom basis depending on the nature of a grower’s crops as well as applicable soil, water, and weather conditions—into irrigation lines in a manner that would not be possible to achieve using standard fertilizer manufacturing and distribution methods. The White Box also affords full control over the nature, sequence, timing, and volume of fertigation, and it generates for the grower an accurate comprehensive record of those and related activities having direct impact on the health and performance of its crops.

16. Dr. and Ms. Miller of Deerpoint currently hold more than 40 issued U.S. patents covering inventions related to the Company’s White Boxes, to certain of its fertilizer and foliar blends, to compositions and methods for preventing plugging of micro-irrigation lines, and to other aspects of water treatment technology. To the extent not subject to patent protection, Deerpoint has

1 maintained essential proprietary information about its equipment, product formulas, manufacturing
2 methods, and related aspects of its operations as trade secrets.

3 **B. Defendant GAR Bennett**

4 17. Defendant GAR is the result of a January 2020 merger of two previously
5 independent companies, Gar Tootelian Inc. and Bennett Water Systems. Gar Tootelian focused on
6 supplying conventional fertilizers and crop nutrients, testing services, and consulting advice to
7 growers; Bennett Water Systems focused on design, construction, and improvement of conventional
8 water systems for farms. Neither predecessor company offered either (1) highly sophisticated
9 fertigation equipment or (2) proprietary fertilizer or foliar products intended for application by way
10 of micro-irrigation systems, and neither company offered a comprehensive program to growers that
11 combined those elements. As a result, neither predecessor company, nor GAR when it was formed,
12 could or did compete directly with Deerpoint.

13 18. Deerpoint is informed and believes, and on that basis alleges, that starting in and
14 around 2021, Defendant GAR decided to attempt to enter the twenty-first century by offering more
15 sophisticated fertigation equipment and new fertilizer blends intended for use in micro-irrigation
16 systems. However, GAR has undertaken these efforts by infringing Deerpoint patents and by
17 misappropriating Deerpoint trade secrets. As one reflection of this effort, GAR has hired no fewer
18 than twelve (12) former Deerpoint employees, and one or more of those employees—in violation of
19 agreements with and ongoing duties to Deerpoint—have disclosed to GAR confidential, proprietary,
20 and trade secret information owned by Deerpoint.

21 **C. The Accused GAR Bennett Fertigation System**

22 19. There is no readily available integrated public record memorializing all of Defendant
23 GAR's recent efforts to compete with the Deerpoint White Box fertigation system and related crop
24 enhancement programs. However, the GAR employee now leading that effort, Sean Mahoney, was
25 the sole owner and managing member of now-bankrupt Agrigenix LLC ("Agrigenix") from 2017
26 into 2021. Agrigenix and Mr. Mahoney are defendants in a separate lawsuit asserting, *inter alia*,
27 that they misappropriated trade secrets related to Deerpoint's proprietary fertilizer and foliar
28 products, the Deerpoint White Box, and Deerpoint's crop enhancement offerings to growers. The

1 court in that case (E.D. Cal. Case No. 1:18-cv-00536-JLT-BAM) has found that Agrigenix and Mr.
2 Mahoney intentionally spoliated evidence that would establish the full nature and extent of their
3 misappropriation.

4 20. Starting in approximately 2018, Agrigenix and Mr. Mahoney built a knock-off of
5 Deerpoint's White Box fertigation system. They called their version the "Grow Green Machine."
6 Agrigenix and Mr. Mahoney attempted to hide the existence of this equipment from Deerpoint, but
7 it was eventually identified in mid-2020 by happenstance, and then examined by virtue of third-
8 party discovery in Deerpoint's suit against Agrigenix and Mr. Mahoney.

9 21. The Mahoney/Agrigenix Grow Green Machine, which is the subject of still-pending
10 trade secret misappropriation allegations, used certain electronic components obtained from third
11 party WiseConn Engineering, Inc. ("WiseConn"), including from the WiseConn "DropControl"
12 product line.

13 22. The Grow Green Machine included a control unit, as many as four pumps, and
14 communications devices as well as provisions for remote control and monitoring. Other components
15 included pH (acidity/alkalinity), EC (electric conductivity), and flow meter sensors, a recirculation
16 pump, hoses, injectors, and relays. The pumps enabled at least four different components or raw
17 materials (e.g., fertilizers, acids, nutrients, micronutrients, or combinations thereof) to be combined
18 with irrigation water. Each pump was independently connected to a separate external tank of raw
19 materials via a separate hose. The Grow Green Machine could simultaneously introduce multiple
20 different raw materials from those tanks into the water according to pre-arranged or customized
21 nitrogen, phosphorus, and potassium (collectively "NPK") feeds into a grower's irrigation system.

22 23. Agrigenix and Mr. Mahoney built at least four Grow Green Machines, one or two of
23 which were installed at a site known as Pescadero Ranch, in Stanislaus County at 37 deg, 38' 43.9"
24 N and 121 deg, 14' 23.0" W.

25 24. In or around April 2021, several months after Agrigenix ceased operation, GAR
26 employed Mr. Mahoney and at a later date placed him in charge of GAR's Agronomics & Farm
27 Technology unit. In or around August 2021, Mr. Mahoney arranged the sale by Agrigenix and
28 purchase by GAR of at least one Grow Green Machine unit or components thereof.

1 25. After Mr. Mahoney took charge of GAR's Agronomics & Farm Technology unit,
2 GAR began developing new fertigation equipment, which on information and belief is referred to
3 within GAR as the "HYE-V" system and contains at least some components derived from the
4 Agrigenix Grow Green Machine (such as control and communication/telemetry elements). GAR
5 also started offering to growers, for the first time, (1) non-conventional fertilizer/foliar products
6 developed specially for use with micro-irrigation systems, and (2) a program combining
7 sophisticated fertigation equipment and those products.

8 26. Upon information and belief, as part of this new program, GAR customers license or
9 rent an accused GAR fertigation system to blend or charge constituent components in controlled
10 amounts and to integrate those components into the irrigation systems, including micro-irrigation
11 systems, maintained by those customers. GAR did not offer any such program before hiring Mr.
12 Mahoney.

13 27. GAR describes and markets its accused fertigation system and program as
14 competitors to and replacements for Deerpoint's White Box fertigation system and associated
15 program. Functionally and in operation, the accused GAR fertigation system is substantially similar
16 if not identical to the Deerpoint White Box.

17 28. The image below, taken February 19, 2023, in Tracy, California, shows the accused
18 GAR fertigation system. Key elements of the equipment are contained in the rightmost dark-colored
19 structure, with multiple yellow hoses protruding from the bottom of that enclosure.



29. In March 2023, Deerpoint obtained additional images of an accused GAR fertigation system. The system was installed at a site located in San Joaquin County. Previously, there had been a Deerpoint White Box fertigation system at that same location, and the property manager had ordered the following from Deerpoint for use with that Deerpoint equipment: UAN32 (a common item available from many outlets) as a source of nitrogen; Deerpoint fertilizer 0-21-0 as a source of phosphorus; and Deerpoint fertilizer 0-0-28.3 as a source of potassium. Deerpoint's 0-21-0 product is a proprietary blend, and 0-0-28.3 is a proprietary Deerpoint rendition of its Potassium-Plus blend.









30. Additionally with respect to this same site in San Joaquin County (called Lamb Ranch), Deerpoint had initially marked places on the irrigation line where ports (to receive output

1 from the Deerpoint White Box) should be placed. After Deerpoint was directed to remove its White
2 Box and the GAR equipment was installed, ports for output from the GAR equipment into the
3 irrigation line were placed at the exact same locations previously specified by Deerpoint.

4 31. Upon information and belief, the same elements recited in paragraph 29, above, are
5 being run through the GAR fertigation system depicted above. A “0-21-0” label attached to a tank
6 connected to the system appears in the above pictures, and the timing and volume of deliveries of
7 the elements to the site following removal of the Deerpoint White Box is consistent with those
8 being used with the GAR fertigation system. Deerpoint is further informed and believes that the
9 GAR fertigation system also combines the same constituents drawn from the same tanks in the same
10 proportions as had been planned for the replaced Deerpoint White Box.

11 32. Certain publicly available written information provides additional evidence of the
12 structure and operation of the accused GAR fertigation system. For example, at
13 <https://www.garbennett.com/newsletters/vision-for-automation/> (as visited in March 2023), GAR
14 states, *inter alia*, that “Fertigation automation is a component of our existing fertigation equipment
15 (pumps in a box), which does not constitute a sale, rather it is capitalized, owned and operated by
16 GAR Bennett (GB) and the throughput of fertilizer inputs are what generates the invoice.” An
17 excerpted copy of this website, as visited on March 24, 2023, is attached as Exhibit 1.

18 33. At [https://www.garbennett.com/newsletters/continued-fertigation-based-](https://www.garbennett.com/newsletters/continued-fertigation-based-management-programs-can-maximize-nutrient-use-efficiency-and-improve-crop-quality/)
19 [management-programs-can-maximize-nutrient-use-efficiency-and-improve-crop-quality/](https://www.garbennett.com/newsletters/continued-fertigation-based-management-programs-can-maximize-nutrient-use-efficiency-and-improve-crop-quality/) (as visited
20 in March 2023), GAR describes the needs for fertigation-based management programs and
21 describes some of the nutrients that might be supplied via such a system and the compounds
22 through which they are provided. An excerpted copy of this website, as visited on March 24, 2023,
23 is attached as Exhibit 2.

24 34. Upon information and belief, the WiseConn DropControl components that GAR uses
25 in its accused fertigation system include one or both of what WiseConn calls its RF-X1 and RF-C1
26 controller nodes. These, along with DropControl software used by the GAR fertigation system, are
27 documented for example at the following sites and in materials available for download from those
28 sites. Excerpted copies of these websites, as visited on March 24, 2023, are attached as Exhibits 3-6.

- 1 • <https://www.wiseconn.com/dropcontrol-platform/>
- 2 • <https://www.wiseconn.com/hardware/rf-x1/>
- 3 • <https://www.wiseconn.com/hardware/rf-c1/>
- 4 • <https://www.wiseconn.com/software/>

5 Information about these components and the DropControl system is also available at
6 <https://youtu.be/S9xvZ3bl3j4>, a copy of which Deerpoint has on file.

7 **D. Asserted and Likely Relevant Patents**

8 35. Dr. and Ms. Miller are the owners of all right, title, and interest in and to a family of
9 patents claiming priority to provisional application number 61/056,151 of May 27, 2008, including
10 at least U.S. Patents Numbers 8,568,506; 8,628,598; 8,690,982; 8,690,983; 8,690,984; 8,721,758;
11 8,721,759; 8,979,969; 8,986,417; 8,986,418; and 9,148,993.

12 36. Dr. and Ms. Miller are the owners of all right, title, and interest in and to a family of
13 patents claiming priority to application number 14/564,594 of December 9, 2014, including at least
14 U.S. Patents Numbers 9,161,489; 9,474,215; 9,856,179; and 10,233,128.

15 37. Dr. and Ms. Miller are the original owners of all right, title, and interest in and to a
16 family of patents claiming priority to application number 15/892,882 of February 9, 2018, including
17 at least U.S. Patents Numbers 10,271,474 and 10,645,868.

18 38. In this complaint, Deerpoint sets forth allegations of infringement for certain of the
19 above-listed patents to which it has been granted appropriate licenses, and advances claims for relief
20 for the same. These allegations and assertions are non-limiting, and Deerpoint reserves the right to
21 modify the claims and assertions on the basis of further information it obtains about GAR
22 equipment, methods, and products as a result of discovery in this action and to assert, based on that
23 further information, that GAR has been and is infringing additional patents.

24 **FIRST CLAIM FOR RELIEF**

25 **(Patent Infringement of U.S. Patent No. 10,271,474)**

26 39. Deerpoint incorporates here by reference as though set forth in full all allegations
27 contained in paragraphs 1 through 34, inclusive, of this Complaint.
28

1 40. Dr. and Ms. Miller are the original owners of all right, title, and interest in U.S.
2 Patent No. 10,271,474 (“the ‘474 patent”). A true and correct copy of the ‘474 patent is attached to
3 this Complaint as Exhibit 7. The ‘474 patent has been licensed exclusively to Deerpoint. Deerpoint
4 has full and exclusive right to file suit to enforce the patent, including the right to obtain injunctive
5 relief and to recover damages for infringement. The ‘474 patent is valid and enforceable under
6 United States patent law.

7 41. The ‘474 patent includes 3 independent claims (1, 13, and 19) and several claims that
8 depend therefrom. GAR has had knowledge of the ‘474 patent, and its infringement of the patent, at
9 least as of September 30, 2021, as evidenced by a letter of that date informing GAR of the patent
10 and attaching a copy of it for reference. That letter is attached to this Complaint as Exhibit 8.
11 Additionally, at least through communications from Deerpoint and Deerpoint’s counsel, GAR was
12 aware of Deerpoint’s litigation against Mr. Mahoney and Agrigenix both at the time it hired Mr.
13 Mahoney and during the time it has infringed the ‘474 patent. For example, on May 24, 2021, GAR
14 was informed of that litigation in a letter attached to this Complaint as Exhibit 9. GAR was also
15 aware of the patent by virtue of Mr. Mahoney’s personal knowledge and experience (including but
16 not limited to actual knowledge he possessed of Deerpoint’s issued and applied-for patents).
17 Alternatively, GAR has had knowledge of the ‘474 patent, and its infringement of the patent, at
18 least as of the filing of this Complaint.

19 42. Upon information and belief, GAR directly infringes, either literally or under the
20 doctrine of equivalents, at least claim 1 of the ‘474 patent in California and elsewhere in the United
21 States by making, using, selling, or offering to sell the accused fertigation system described above.

22 43. Upon information and belief, GAR directly infringes, either literally or under the
23 doctrine of equivalents, at least claims 13 and 19 of the ‘474 patent in California, and elsewhere in
24 the United States, by performing each step of each of those claims.

25 44. Additionally, upon information and belief, GAR indirectly infringes pursuant to 35
26 U.S.C. sections 271(b) and (c), either literally or under the doctrine of equivalents, at least claims 1,
27 13, and 19 of the ‘474 patent. For example, users of the GAR fertigation system, including GAR’s
28

1 customers, distributors, suppliers, and end-users, commit acts of direct infringement when they use
2 the accused fertigation system.

3 45. GAR has knowledge of these acts of direct infringement of at least claims 1, 13, and
4 19 of the '474 patent and nevertheless actively induces users, with specific intent, to infringe by, for
5 example, enabling them to use the GAR fertigation system in an infringing manner. GAR further
6 contributes to these acts of direct infringement because the GAR fertigation system performs a
7 material part of the claimed inventions of the '474 patent and is not a staple article or commodity of
8 commerce suitable for substantial non-infringing use, and GAR knows that the accused fertigation
9 system is especially made and adapted for use in an infringing manner.

10 46. Claim 1 of the '474 patent is directed to an apparatus. The accused fertigation system
11 is an apparatus.

12 47. Claim 1 requires the apparatus comprise a container. On
13 <https://www.garbennett.com/newsletters/vision-for-automation/> (Exhibit 1), GAR Bennett states:
14 "Fertigation automation is a component of our existing fertigation equipment (pumps in a box) . . ."
15 The referenced "box" is a container. The container is also visible in photographs reproduced above.

16 48. Claim 1 requires the apparatus comprise a plurality of pumps in the container. The
17 referenced "pumps" in the excerpt above are a plurality of pumps, and "pumps in a box" describes a
18 plurality of pumps in the container. Pumps in a container are visible in photographs reproduced
19 above.

20 49. Claim 1 requires that "each of the plurality of pumps is configured to provide a
21 unique fertilizer, nutrient or micronutrient to irrigation water." Upon information, belief, and
22 rational inference (based, e.g., on observation of hoses running from storage tanks into the box and
23 on connections running from the pumps), each pump is configured to provide a unique fertilizer,
24 nutrient, or micronutrient to irrigation water. Furthering this belief is the fact that one reason to have
25 multiple pumps in such a system is to avoid cross contamination between unique components, and
26 adding components such as fertilizers, nutrients, or micronutrients is the *raison d'être* of a fertigation
27 system such as the accused GAR fertigation system. Another reason to include multiple pumps, as
28 GAR does, is to allow delivery of a consistent combination of the added elements. If these elements

1 were to be charged into the irrigation water sequentially through a single pump, the result would not
2 consistently contain the correct combination of elements. Moreover, as set forth above, GAR
3 promotes its accused fertigation system as a replacement and competitor to Deerpoint's White Box.
4 To even nominally compete with the Deerpoint White Box, GAR's fertigation system must
5 combine multiple fertilizers, nutrients, or micronutrients with irrigation water. As explained, it is
6 therefore logical that the multiple pumps in GAR's fertigation system are used for that purpose.

7 50. Claim 1 requires "a controller operably connected to each of the plurality of pumps,
8 wherein the controller is configured to (i) receive from a remote computer an irrigation schedule
9 and an instruction to send performance information, (ii) transmit to the remote computer the
10 performance information, and (iii) control settings of each of the plurality of pumps to provide a
11 predetermined amount of each unique fertilizer, nutrient or micronutrient to the irrigation water
12 over a predetermined period of time." As set forth above, one or more previous users of Deerpoint's
13 White Box fertigation system have replaced that equipment with accused GAR fertigation systems.
14 Upon information and belief, those customers are using (or would use) the accused apparatus in
15 substantially the same way and for substantially the same purposes as the Deerpoint White Box they
16 previously employed. Deerpoint's White Box fertigation systems include controllers that are
17 connected and configured as claimed, and on that basis Deerpoint believes that the accused GAR
18 fertigation systems also include such controllers. This is further evidenced and supported by the
19 descriptions of the WiseConn DropControl system and the WiseConn components used in the
20 accused GAR fertigation systems, which include controllers with the claimed configuration.
21 WiseConn documentation even describes using controllers configured as claimed. For example,
22 WiseConn's website, at <https://www.wiseconn.com/dropcontrol-platform/> (Exhibit 3, now at
23 <https://wiseconn.com/dropcontrol/>), shows an RF-C1 "fertigation controlling node" and explains,
24 *inter alia*, that it can be used to "schedule irrigations and fertigations," connect to a mobile and
25 desktop app, integrate with field monitoring, transmit performance information, and connect to and
26 control actuators, pumps, and valves. Also, as explained above, the Mahoney/AgriGenix Grow
27 Green Machine fertigation systems included (WiseConn DropControl) controllers connected and
28 configured as claimed, and at least one such system was obtained by GAR shortly after it hired Mr.

1 Mahoney. To the extent this limitation is not literally present, the accused GAR fertigation system
2 accomplishes substantially the same function in substantially the same way to achieve substantially
3 the same result.

4 51. Claim 1 requires “an irrigation line into which the plurality of pumps provide the
5 fertilizer(s), nutrient(s) or micronutrient(s) into the irrigation water.” Based on the facts,
6 information, and understandings set forth above, Deerpoint reasonably infers and believes that the
7 pumps in the accused GAR fertigation system provide the recited elements into irrigation water on
8 an irrigation line, because doing so is part of the standard use of a piece of fertigation equipment
9 such as the accused apparatus. Some of the hoses visible in photographs of the accused GAR
10 fertigation system included above in fact run from the GAR box into an irrigation line. And those
11 hoses are ported into the irrigation line at the same places as specified for the Deerpoint White Box.

12 52. Claim 1 requires “the container is sealed, locked, or configured to provide a
13 substantially waterproof housing for the plurality of pumps and the controller.” The components
14 within the accused GAR fertigation system (e.g., pumps, controller, and electrical connections) are
15 expensive and would take time to replace if damaged or stolen. Also, the container itself is often in
16 a location that is exposed to water, either from natural precipitation or irrigation, and direct
17 exposure to water can harm various of the components. Such a container is visible in the images of
18 the accused GAR fertigation system included above. For at least these reasons, the container of the
19 accused GAR fertigation system is sealed, locked, or configured to provide a substantially
20 waterproof housing as claimed. Deerpoint has also observed two Agrigenix fertigation systems (the
21 Grow Green Machine at Pescadero Ranch) in sealed or locked containers.

22 53. For another example, claim 13 is directed to a “method of fertilizing and/or irrigating
23 a field.” As set forth above, that is precisely what the accused GAR fertigation system
24 accomplishes. It is also the only and intended use of the GAR fertigation system.

25 54. Claim 13 of the ’474 patent recites the step of “delivering a predetermined amount of
26 each of a plurality of fertilizers, nutrients or micronutrients to irrigation water for the field over a
27 predetermined period of time using a plurality of pumps in a container, wherein each of the plurality
28 of pumps is configured to provide a unique fertilizer, nutrient, micronutrient or combination thereof

1 to the irrigation water in an irrigation line.” On information and belief, and based on the facts and
2 reasonable inferences set forth above, GAR performs this step using the accused GAR fertigation
3 system. By way of further example, the controllers within the fertigation system are controlled (e.g.,
4 via the remotely accessible software) to turn on specific pumps for specific durations, thereby
5 delivering into the irrigation line a predetermined amount of the contents of the vat connected to the
6 pump. *See also, e.g.,* <https://wiseconn.com/dropcontrol/hardware/rf-x1/> (Exhibit 4),
7 <https://wiseconn.com/dropcontrol/hardware/rf-c1/> (Exhibit 5), the specification sheet for the
8 WiseConn RF-C1 (noting the WiseConn RF-C1 features “Control and monitoring of pump
9 stations,” “Control of fertilizer injection and pH,” and “Monitoring and control of Variable
10 Frequency Drives”) (Exhibit 10), and the specification sheet for the WiseConn RF-X1 (Exhibit 11,
11 noting the WiseConn RF-X1 features “Cloud-based scheduling,” “Wireless valve control and
12 monitoring,” “Field sensor monitoring,” “Pump / well monitoring and control,” and “Fertigation
13 control”). As also set forth above, and as supported by the same evidence, each pump is associated
14 with a vat or container containing a unique fertilizer, nutrient, micronutrient, or combination
15 thereof. Output from the apparatus is introduced into the irrigation line at the same locations as
16 specified for the Deerpoint White Box.

17 55. Claim 13 recites “receiving in a controller in the container an irrigation schedule and
18 an instruction to send performance information from a remote computer, wherein the container is
19 sealed, locked, or configured to provide a substantially waterproof housing for the plurality of
20 pumps and the controller.” On information and belief, based on the facts and reasonable inferences
21 set forth above, GAR performs this step. For example, and consistent with the DropControl
22 documentation and the use of the accused GAR fertigation system as a replacement for the
23 Deerpoint White Box, the controller in the GAR fertigation system receives an irrigation schedule.
24 Among other things, this enables it to perform the activities of the pumps associated with the
25 fertilizers, nutrients, micronutrients, or combinations thereof with the activity of the rest of the
26 irrigation system. Also consistent with the DropControl documentation and the use of the GAR
27 fertigation system as a replacement for the Deerpoint White Box, the controller in the GAR
28 fertigation system receives an instruction to send performance information to a remote computer

(one or more servers run by or for DropControl for the benefit of GAR and its customers) from which that information may be accessed by GAR and its customers via the DropControl software. See, for example, the documentation and images at <https://wiseconn.com/dropcontrol/software/> (Exhibit 6) and <https://wiseconn.com/dropcontrol/hardware/rf-x1/> (Exhibit 4) and the specification sheet for the WiseConn RF-X1 (Exhibit 11, noting the WiseConn RF-X1 features “Cloud-based scheduling). Also, and again as set forth above, the container for the accused GAR fertigation system is sealed, locked, or configured to provide a substantially waterproof housing for the plurality of pumps and the controller within it. To the extent this step is not literally performed, GAR accomplishes substantially the same function in substantially the same way to achieve substantially the same result.

56. Claim 13 recites the step of “controlling settings of each of the plurality of pumps using the controller in the container, wherein the settings of each of the plurality of pumps are configured to provide the predetermined amount of the corresponding unique fertilizer, nutrient, micronutrient or combination thereof to the irrigation water over the predetermined period of time.” On information and belief, based on the facts and reasonable inferences set forth above, GAR performs this step. For example, after receipt of the information and instructions recited in the earlier steps, the controller in the accused GAR fertigation system controls the settings of each of the pumps accordingly. This is consistent with, among other facts set forth above, DropControl documentation and the marketing and use of the accused GAR fertigation system as a replacement for the Deerpoint White Box fertigation system. To the extent this step is not literally performed, GAR accomplishes substantially the same function in substantially the same way to achieve substantially the same result.

57. Claim 13 recites the step of “transmitting to the remote computer the performance information.” On information and belief, based on the facts and reasonable inferences set forth above, GAR performs this step. For example, and again based at least on the DropControl documentation and the use of the accused GAR fertigation system as a replacement for the Deerpoint White Box fertigation system, actual flow rates are transmitted back to the DropControl remote servers. See, for example, the below image from <https://wiseconn.com/dropcontrol/software/>

(Exhibit 6), showing the software displaying the current flow rate and the references on that page to “advanced irrigation scheduling and monitoring” and “irrigation and fertigation programming.”



Also, the pictures of the accused GAR fertigation system included above show communications elements such as antennas that appear to be connected by wire to something inside the container.

58. As another example, claim 19 of the '474 patent is directed to a “method of making an apparatus for fertilizing and/or irrigating a field.” GAR makes (or directs others to make on its behalf) the accused GAR fertigation system, which is an apparatus for fertilizing and/or irrigating a field.

59. Claim 19 recites the step of “placing a plurality of pumps in a container, wherein each of the plurality of pumps is configured to provide a unique fertilizer, nutrient or micronutrient to irrigation water in an irrigation line.” GAR, or someone acting on its behalf, causes the pumps to

1 be placed into the container and configured in the manner set forth above. See, for example, the
2 paragraphs above with respect to claims 1 and 13, as well as the other recitations in this Complaint.

3 60. Claim 19 recites the step of “placing or mounting a controller in the container and
4 operably connecting the controller to each of the plurality of pumps, wherein the controller is
5 configured to (i) receive from a remote computer an irrigation schedule and an instruction to send
6 performance information, (ii) transmit to the remote computer the performance information, and
7 (iii) control settings of each of the plurality pumps to provide a predetermined amount of each
8 unique fertilizer, nutrient or micronutrient to the irrigation water over a predetermined period of
9 time.” GAR, or someone acting on its behalf, causes the controller to be configured and placed or
10 mounted as claimed. See, for example, the paragraphs above with respect to claims 1 and 13, as
11 well as the other recitations in this Complaint. To the extent this step is not literally performed,
12 GAR accomplishes substantially the same function in substantially the same way to achieve
13 substantially the same result.

14 61. Claim 19 recites “wherein the container is sealed, locked, or configured to provide a
15 substantially waterproof housing for the plurality of pumps and the controller.” Again, as set forth
16 above, the container for the accused GAR fertigation system is sealed, locked, or configured to
17 provide a substantially waterproof housing for the plurality of pumps and the controller within it.

18 62. Deerpoint has been damaged as a result of GAR’s infringing conduct with respect to
19 the patent. GAR is thus liable to Deerpoint for damages in an amount that adequately compensates
20 Deerpoint for such infringement, *i.e.*, in an amount that by law cannot be less than would constitute
21 a reasonable royalty for the use of the patented technology, together with interest and costs as fixed
22 by this Court under 35 U.S.C. section 284.

23 63. Furthermore, GAR knowingly and willfully infringes the ’474 patent through its
24 continued making, using, or offering of the accused GAR fertigation systems. Its conduct rises to a
25 level of wanton, malicious, and bad-faith behavior, such that Deerpoint is entitled to enhanced
26 damages. For example, as evidenced by communications between Deerpoint and its counsel and
27 GAR, Deerpoint made every effort for over a year to warn and cooperate with GAR to ensure that it
28 was not infringing Deerpoint’s patents, including the ’474 patent. See Exhibits 8 (September 30,

2021, sending the '474 Patent), 12 (April 27, 2022), 13 (May 11, 2022), 14 (June 16, 2022), and 15 (July 7, 2022, resending the '474 Patent). Therefore, Deerpoint is entitled to enhanced damages of up to treble the monetary damages it recovers pursuant to this claim.

64. GAR's infringement has also irreparably harmed Deerpoint (and continues to do so) such that monetary damages cannot fully and fairly compensation Deerpoint for those damages. Deerpoint is therefore entitled to injunctive relief with respect to GAR's infringement of the '474 patent.

WHEREFORE, Plaintiff Deerpoint Prays for Relief as set forth Below.

SECOND CLAIM FOR RELIEF

(Patent Infringement of U.S. Patent No. 10,645,868)

65. Deerpoint incorporates here by reference as though set forth in full all allegations contained in paragraphs 1 through 34, inclusive, of this Complaint.

66. Dr. and Ms. Miller are the original owners of all right, title, and interest in U.S. Patent No. 10,645,868 ("the '868 patent"). A true and correct copy of the '868 patent is attached to this Complaint as Exhibit 16. The '868 patent has been licensed exclusively to Deerpoint. Deerpoint has full and exclusive right to file suit to enforce the '868 patent, including the right to obtain injunctive relief and to recover damages for infringement. The '868 patent is valid and enforceable under United States patent law.

67. The '868 patent includes 3 independent claims (1, 13, and 19) and several claims that depend therefrom. GAR has had knowledge of the '868 patent, and its infringement of the patent, at least as of September 30, 2021, as evidenced by a letter of that date informing GAR of the patent and attaching a copy of it for reference. That letter is attached to this Complaint as Exhibit 8. Additionally, at least through communications from Deerpoint and Deerpoint's counsel, GAR was aware of Deerpoint's litigation against Mr. Mahoney and Agrigenix both at the time it hired Mr. Mahoney and during the time it has infringed the '868 patent. For example, on May 24, 2021, GAR was informed of that litigation in a letter attached to this Complaint as Exhibit 9. GAR was also aware of the patent by virtue of Mr. Mahoney's personal knowledge and experience (including but not limited to actual knowledge he possessed of Deerpoint's issued and applied-for patents).

1 Alternatively, GAR has had knowledge of the '868 patent, and its infringement of the patent, at
2 least as of the filing of this Complaint.

3 68. Upon information and belief, GAR directly infringes, either literally or under the
4 doctrine of equivalents, at least claim 1 of the '868 patent in California and elsewhere in the United
5 States by making, using, selling, or offering to sell the accused fertigation system described above.

6 69. Upon information and belief, GAR directly infringes, either literally or under the
7 doctrine of equivalents, at least claims 13 and 19 of the '868 patent in California, and elsewhere in
8 the United States, by performing each step of each of those claims.

9 70. Additionally, on information and belief, GAR indirectly infringes pursuant to 35
10 U.S.C. sections 271(b) and (c), either literally or under the doctrine of equivalents, at least claims 1,
11 13, and 19 of the '868 patent. For example, users of the GAR fertigation system, including GAR's
12 customers, distributors, suppliers, and end-users, commit acts of direct infringement when they use
13 the accused fertigation system.

14 71. GAR has knowledge of these acts of direct infringement of at least claims 1, 13, and
15 19 of the '868 patent and nevertheless actively induces users, with specific intent, to infringe by, for
16 example, enabling them to use the GAR fertigation system in an infringing manner. GAR further
17 contributes to these acts of direct infringement because the GAR fertigation system performs a
18 material part of the claimed inventions of the '868 patent and is not a staple article or commodity of
19 commerce suitable for substantial non-infringing use, and GAR knows that the accused fertigation
20 system is especially made and adapted for use in an infringing manner.

21 72. For example, claim 1 of the '868 patent is directed to an apparatus. The accused
22 fertigation system is an apparatus.

23 73. Claim 1 requires the apparatus comprise a container. On
24 <https://www.garbennett.com/newsletters/vision-for-automation/> (Exhibit 1), GAR Bennett states:
25 "Fertigation automation is a component of our existing fertigation equipment (pumps in a box) . . ."
26 The referenced "box" is a container. The container is also visible in photographs reproduced above.

27 74. Claim 1 requires the apparatus comprise a plurality of pumps in the container. The
28 referenced "pumps" in the excerpt above are a plurality of pumps, and "pumps in a box" describes a

1 plurality of pumps in the container. Pumps in a container are visible in photographs reproduced
2 above.

3 75. Claim 1 requires that “each of the plurality of pumps is configured to provide at least
4 one of a unique fertilizer, nutrient, micronutrient or any combination thereof to irrigation water.” On
5 information, belief, and rational inference (based, e.g., on observation of hoses running from storage
6 tanks into the box and on connections running from the pumps), each pump is configured to provide
7 at least one of a unique fertilizer, nutrient, micronutrient, or combination thereof to irrigation water.
8 Furthering this belief is the fact that one reason to have multiple pumps in such a system is to avoid
9 cross contamination between unique components, and adding components such as fertilizers,
10 nutrients, or micronutrients is the *raison d'être* of a fertigation system such as the accused GAR
11 fertigation system. Another reason to include multiple pumps, as GAR does, is to allow delivery of
12 a consistent combination of the added elements. If these elements were to be charged into the
13 irrigation water sequentially through a single pump, the result would not consistently contain the
14 correct combination of elements. Moreover, as set forth above, GAR promotes its accused
15 fertigation system as a replacement and competitor to Deerpoint’s White Box. To even nominally
16 compete with the Deerpoint White Box, GAR’s fertigation system must combine multiple
17 fertilizers, nutrients, or micronutrients with irrigation water. As explained, it is only logical that the
18 multiple pumps in GAR’s fertigation system are used for that purpose.

19 76. Claim 1 requires “a controller operably connected to each of the plurality of pumps,
20 wherein the controller is configured to (i) receive from a remote computer an irrigation schedule
21 and an instruction to send performance information, (ii) transmit to the remote computer the
22 performance information, and (iii) control settings of each of the plurality of pumps to provide a
23 predetermined amount of each of the at least one unique fertilizer, nutrient or micronutrient to the
24 irrigation water over a predetermined period of time.” As set forth above, one or more previous
25 users of Deerpoint’s White Box fertigation system have replaced that equipment with accused GAR
26 fertigation systems. On information and belief, those customers are using (or would use) the
27 accused apparatus in substantially the same way and for substantially the same purposes as the
28 Deerpoint White Box they previously employed. Deerpoint’s White Box fertigation systems include

1 controllers that are connected and configured as claimed, and on that basis Deerpoint believes that
2 the accused GAR fertigation systems also include such controllers. This is further evidenced and
3 supported by the descriptions of the WiseConn DropControl system and the WiseConn components
4 used in the accused GAR fertigation systems, which include controllers with the claimed
5 configuration. WiseConn documentation even describes using controllers configured as claimed.
6 For example, WiseConn's website, at <https://www.wiseconn.com/dropcontrol-platform/> (Exhibit 3,
7 now at <https://wiseconn.com/dropcontrol/>), shows an RF-C1 "fertigation controlling node" and
8 explains, *inter alia*, that it can be used to "schedule irrigations and fertigations," can connect to a
9 mobile and desktop app, can integrate with field monitoring, can transmit performance information,
10 and can connect to and control actuators, pumps, and valves. Also, as explained above, the
11 Mahoney/Agrigenix Grown Green Machine fertigation systems included (WiseConn DropControl)
12 controllers connected and configured as claimed, and at least one such system was obtained by
13 GAR shortly after it hired Mr. Mahoney. To the extent this limitation is not literally present, the
14 accused GAR fertigation system accomplishes substantially the same function in substantially the
15 same way to achieve substantially the same result.

16 77. Claim 1 requires "an irrigation line into which the plurality of pumps provide the
17 fertilizer(s), nutrient(s) or micronutrient(s) into the irrigation water." Based on the facts,
18 information, and understandings set forth above, Deerpoint reasonably infers and believes that the
19 pumps in the accused GAR fertigation system provide the recited elements into irrigation water on
20 an irrigation line, because doing so is part of the standard use of a piece of fertigation equipment
21 such as the accused apparatus. Some of the hoses visible in photographs of the accused GAR
22 fertigation system included above in fact run from the GAR box into an irrigation line. And those
23 hoses are ported into the irrigation line at the same places as specified for the Deerpoint White Box.

24 78. For another example, claim 13 of the '868 patent is directed to a "method of
25 fertilizing, irrigating, or fertilizing and irrigating a field." As set forth above, that is precisely what
26 the accused GAR fertigation system accomplishes. It is also the only and intended use of the GAR
27 fertigation system.

79. Claim 13 of the '868 patent recites the step of “delivering a predetermined amount of each of a plurality of fertilizers, nutrients or micronutrients, or any combination thereof to irrigation water for the field over a predetermined period of time using a plurality of pumps in a container, wherein each of the plurality of pumps is configured to provide a unique fertilizer, nutrient, micronutrient or combination thereof to the irrigation water in an irrigation line.” On information and belief, and based on the facts and reasonable inferences set forth above, GAR performs this step using the accused GAR fertigation system. By way of further example, the controllers within the fertigation system are controlled (e.g., via the remotely accessible software) to turn on specific pumps for specific durations, thereby delivering into the irrigation line a predetermined amount of the contents of the vat connected to the pump. *See also, e.g.,* <https://wiseconn.com/dropcontrol/hardware/rf-x1/> (Exhibit 4), <https://wiseconn.com/dropcontrol/hardware/rf-c1/> (Exhibit 5), the specification sheet for the WiseConn RF-C1 (noting the WiseConn RF-C1 features “Control and monitoring of pump stations,” “Control of fertilizer injection and pH,” and “Monitoring and control of Variable Frequency Drives”) (Exhibit 10), and the specification sheet for the WiseConn RF-X1 (Exhibit 11, noting the WiseConn RF-X1 features “Cloud-based scheduling,” “Wireless valve control and monitoring,” “Field sensor monitoring,” “Pump / well monitoring and control,” and “Fertigation control”). As also set forth above, and as supported by the same evidence, each pump is associated with a vat or container containing a unique fertilizer, nutrient, micronutrient, or combination thereof. Output from the apparatus is introduced into the irrigation line at the same locations as specified for the Deerpoint White Box.

80. Claim 13 recites “receiving in a controller in the container an irrigation schedule and an instruction to send performance information from a remote computer.” On information and belief, based on the facts and reasonable inferences set forth above, GAR performs this step. For example, and consistent with the DropControl documentation and the use of the accused GAR fertigation system as a replacement for the Deerpoint White Box, the controller in the GAR fertigation system receives an irrigation schedule. Among other things, this enables it to conform the activities of the pumps associated with the fertilizers, nutrients, micronutrients, or combinations

1 thereof with the activity of the rest of the irrigation system. Also consistent with the DropControl
2 documentation and the use of the GAR fertigation system as a replacement for the Deerpoint White
3 Box, the controller in the GAR fertigation system receives an instruction to send performance
4 information to a remote computer (one or more servers run by or for DropControl for the benefit of
5 GAR and its customers) from which that information may be accessed by GAR and its customers
6 via the DropControl software. See, for example, the documentation and images at
7 <https://wiseconn.com/dropcontrol/software/> (Exhibit 6) and
8 <https://wiseconn.com/dropcontrol/hardware/rf-x1/> (Exhibit 4) and the specification sheet for the
9 WiseConn RF-X1 (Exhibit 11, noting the WiseConn RF-X1 features “Cloud-based scheduling). To
10 the extent this step is not literally performed, GAR accomplishes substantially the same function in
11 substantially the same way to achieve substantially the same result.

12 81. Claim 13 recites the step of “controlling settings of each of the plurality of pumps
13 using the controller in the container, wherein the settings of each of the plurality of pumps are
14 configured to provide the predetermined amount of the corresponding unique fertilizer, nutrient,
15 micronutrient or combination thereof to the irrigation water over the predetermined period of time.”
16 On information and belief, based on the facts and reasonable inferences set forth above, GAR
17 performs this step. For example, after receipt of the information and instructions recited in the
18 earlier steps, the controller in the accused GAR fertigation system controls the settings of each of
19 the pumps accordingly. This is consistent with, among other facts set forth above, DropControl
20 documentation and the marketing and use of the accused GAR fertigation system as a replacement
21 for the Deerpoint White Box fertigation system. To the extent this step is not literally performed,
22 GAR accomplishes substantially the same function in substantially the same way to achieve
23 substantially the same result.

24 82. Claim 13 recites the step of “transmitting to the remote computer the performance
25 information.” On information and belief, based on the facts and reasonable inferences set forth
26 above, GAR performs this step. For example, and again based at least on the DropControl
27 documentation and the use of the accused GAR fertigation system as a replacement for the
28 Deerpoint White Box fertigation system, actual flow rates are transmitted back to the DropControl

remote servers. See, for example, the below image from <https://wiseconn.com/dropcontrol/software/> (Exhibit 6), showing the software displaying the current flow rate and the references on that page to “advanced irrigation scheduling and monitoring” and “irrigation and fertigation programming.”



Also, the pictures of the accused GAR fertigation system included above show communications elements such as antennas that appear to be connected by wire to something inside the container.

83. As another example, claim 19 of the '868 patent is directed to a “method of making an apparatus for fertilizing, irrigating, or fertilizing and irrigating a field.” GAR makes (or directs others to make on its behalf) the accused GAR fertigation system, which is an apparatus for fertilizing, irrigating, or fertilizing and irrigating a field.

84. Claim 19 recites the step of “placing a plurality of pumps in a container, wherein each of the plurality of pumps is configured to provide at least one of a unique fertilizer, nutrient, micronutrient, or any combination thereof to irrigation water in an irrigation line.” GAR, or someone acting on its behalf, causes the pumps to be placed into the container and configured in the

1 manner set forth above. See, for example, the paragraphs above with respect to claims 1 and 13, as
2 well as the other recitations in this Complaint.

3 85. Claim 19 recites the step of “placing or mounting a controller in the container and
4 operably connecting the controller to each of the plurality of pumps, wherein the controller is
5 configured to (i) receive from a remote computer an irrigation schedule and an instruction to send
6 performance information, (ii) transmit to the remote computer the performance information, and
7 (iii) control settings of each of the plurality pumps to provide a predetermined amount of each
8 unique fertilizer, nutrient, micronutrient, or combination to the irrigation water over a
9 predetermined period of time.” GAR, or someone acting on its behalf, causes the controller to be
10 configured and placed or mounted as claimed. See, for example, the paragraphs above with respect
11 to claims 1 and 13, as well as the other recitations in this Complaint. To the extent this step is not
12 literally performed, GAR accomplishes substantially the same function in substantially the same
13 way to achieve substantially the same result.

14 86. Deerpoint also contends that GAR indirectly infringes, pursuant to 35 U.S.C.
15 sections 271(b) and (c), the asserted claims of the ’868 patent by actively inducing the use of
16 GAR’s accused fertigation systems, and by specifically intending to induce infringement by
17 providing the systems to its clients and by aiding and abetting their use. GAR knew or should have
18 known that through its acts it was and is inducing infringement of the patent at least as of the time
19 of the service of the Complaint. Since at least that time, GAR is and has been committing the act of
20 contributory infringement by intending to provide the accused fertigation system to its clients
21 knowing that they are a material part of the invention, knowing that their use was made and adapted
22 for infringement of the patent, and further knowing that the system is not a staple article or
23 commodity of commerce suitable for substantially non-infringing use. GAR is a direct and indirect
24 infringer, and its clients using the accused fertigation systems are direct and indirect infringers. The
25 marketing efforts discussed above, including documentation and unwritten communication, support
26 the accusation of indirect infringement.

27 87. Deerpoint has been damaged as a result of GAR’s infringing conduct with respect to
28 the ’868 patent. GAR is thus liable to Deerpoint for damages in an amount that adequately

1 compensates Deerpoint for such infringement, *i.e.*, in an amount that by law cannot be less than
2 would constitute a reasonable royalty for the use of the patented technology, together with interest
3 and costs as fixed by this Court under 35 U.S.C. Section 284.

4 88. Furthermore, GAR knowingly and willfully infringes the '868 patent through its
5 continued making, using, or offering of the accused GAR fertigation systems. Its conduct rises to a
6 level of wanton, malicious, and bad-faith behavior, such that Deerpoint is entitled to enhanced
7 damages. For example, as evidenced by communications between Deerpoint and its counsel and
8 GAR, Deerpoint made every effort for over a year to warn and cooperate with GAR to ensure that it
9 was not infringing Deerpoint's patents, including the '868 patent. See Exhibits 8 (September 30,
10 2021, sending the '868 Patent), 12 (April 27, 2022), 13 (May 11, 2022), 14 (June 16, 2022), and 15
11 (July 7, 2022, resending the '868 Patent). Therefore, Deerpoint is entitled to enhanced damages of
12 up to treble the monetary damages it recovers pursuant to this claim.

13 89. GAR's infringement has also irreparably harmed Deerpoint (and continues to do so)
14 such that monetary damages cannot fully and fairly compensation Deerpoint for those damages.
15 Deerpoint is therefore entitled to injunctive relief with respect to GAR's infringement of the '868
16 patent.

17 WHEREFORE, Plaintiff Deerpoint Prays for Relief as set forth Below.

18 **THIRD CLAIM FOR RELIEF**

19 **(Misappropriation of Trade Secrets under the Defend Trade Secrets Act)**

20 90. Deerpoint incorporates here by reference as though set forth in full all allegations
21 contained in paragraphs 1 through 34, inclusive, of this Complaint.

22 91. At all relevant times, Deerpoint owned certain confidential, proprietary, and trade
23 secret information. This information, developed or acquired by Deerpoint over the years at
24 considerable effort and expense, includes (a) formulas for Deerpoint's more than 130 fertilizer and
25 foliar products to the extent not disclosed by any patent issued to the Millers, (b) methods utilized
26 by Deerpoint to manufacture its fertilizer and foliar products, and (c) details with respect to
27 structure, components, and operation of Deerpoint's White Boxes that are not disclosed by any
28 patent that reads on White Box equipment. All such information is referred to as the "Deerpoint

1 Trade Secrets.” The Deerpoint Trade Secrets relate to products and services used, sold, shipped, and
2 ordered in, or intended to be used, sold, shipped, or ordered in interstate commerce.

3 92. The Deerpoint Trade Secrets derive independent economic value, either actual or
4 potential, from not being generally known to, and not being readily ascertainable through proper
5 means, by the public.

6 93. Deerpoint has taken reasonable measures to maintain the confidentiality and secrecy
7 of the Deerpoint Trade Secrets. These steps include but are not limited to the following: causing all
8 of its employees to sign comprehensive secrecy/non-disclosure agreements; obtaining secrecy/non-
9 disclosure agreements with its vendors and suppliers; publishing and distributing a handbook and
10 other materials to employees that describe Deerpoint confidentiality and trade secret protection
11 policies and practices in detail; conducting periodic educational programs for employees with
12 respect to confidentiality and trade secret protection policies and practices; marking as
13 “confidential” or the like written materials belonging to the Company that contain confidential,
14 proprietary, and trade secret information; maintaining in locked storage files and the like with
15 limited access to only a few selected personnel written materials belonging to the Company that
16 contain confidential, proprietary, and trade secret information; similarly restricting to a selected
17 personnel access to files stored electronically that contain Deerpoint’s confidential, proprietary, and
18 trade secret information; and imposing and enforcing extensive regulations regarding employee use
19 of company computers.

20 94. Deerpoint is informed and believes, and on that basis alleges, that within three (3)
21 years last passed Defendant GAR has misappropriated the Deerpoint Trade Secrets by (a) acquiring
22 the same knowing or having reason to know that the information involved was acquired by
23 improper means, (b) obtaining the same knowing or having reason to know that the person(s) from
24 or through which it was obtained had used improper means to acquire it, or (c) deriving the same
25 from or through person(s) who owed a duty to Deerpoint to maintain its secrecy or limit its use.

26 95. For example, at least through communications from Deerpoint and Deerpoint’s
27 counsel, GAR was aware of Deerpoint’s litigation against Mr. Mahoney and Agrigenix from and
28 after the time it hired Mr. Mahoney *See* Exhibit 9. Those same communications also explicitly

1 informed and warned GAR of its potential misappropriation of the Deerpoint Trade Secrets through
2 Mr. Mahoney, who had remained in possession of (and thereby acquired) them by improper means
3 and owed a duty to Deerpoint to maintain those trade secrets per his agreement with Deerpoint. *Id.*
4 As a result, Defendant GAR has violated the Defend Trade Secrets Act and is using the Deerpoint
5 Trade Secrets to unfairly compete with Deerpoint.

6 96. Defendant GAR's misappropriation of the Deerpoint Trade Secrets has caused
7 damage and will continue to cause damage to Deerpoint. The amount of such damage cannot be
8 ascertained at present, but exceeds the jurisdictional minimum applicable in this Court.

9 97. Deerpoint is informed and believes, and on that basis alleges, that Defendant GAR's
10 misappropriation of the Deerpoint Trade Secrets was willful and malicious. For example, as
11 evidenced by the same communications, Deerpoint made every effort for over a year to warn and
12 cooperate with GAR to ensure that it was not misappropriating the Deerpoint Trade Secrets.
13 Deerpoint went so far as to offer to pay for an independent expert to examine and determine
14 whether the GAR fertigation system in fact used the Deerpoint Trade Secrets, which GAR ignored
15 See Exhibits 9 (May 24, 2021), 17 (July 9, 2021, extending offer to pay for examiner), 18 (July 19,
16 2021, reiterating offer to pay for examiner), 8 (September 30, 2021, again reiterating that offer), 12
17 (April 27, 2022), 13 (May 11, 2022), and 14 (June 16, 2022). Deerpoint is therefore entitled to an
18 award of exemplary damages equal to twice its actual damages attributable to the misappropriation
19 and to an award of its (Deerpoint's) reasonable attorneys' fees.

20 WHEREFORE, Plaintiff Deerpoint Prays for Relief as set forth Below.

21 **FOURTH CLAIM FOR RELIEF**

22 **(Misappropriation of Trade Secrets under the California Uniform Trade Secrets Act)**

23 98. Deerpoint incorporates here by reference as though set forth in full all allegations
24 contained in paragraphs 1 through 34, inclusive, of this Complaint.

25 99. At all relevant times, Deerpoint owned the Deerpoint Trade Secrets described in
26 paragraph 91, above, of this Complaint.

27 100. The Deerpoint Trade Secrets are not legitimately known to other persons who can
28 obtain economic value from their disclosure or use, and they derive independent economic value

1 from the fact that they are not so known and from the fact that they enable Deerpoint to maintain a
2 competitive advantage in its industry.

3 101. Deerpoint has taken reasonable measures to maintain the confidentiality and secrecy
4 of the Deerpoint Trade Secrets as described in paragraph 93, above, in this Complaint.

5 102. Deerpoint is informed and believes, and on that basis alleges, that within three (3)
6 years last passed Defendant GAR has misappropriated the Deerpoint Trade Secrets by (a) acquiring
7 the same knowing or having reason to know that the information involved was acquired by
8 improper means, (b) obtaining the same knowing or having reason to know that the person(s) from
9 or through which it was obtained had used improper means to acquire it, or (c) deriving the same
10 from or through person(s) who owed a duty to Deerpoint to maintain its secrecy or limit its use . As
11 a result, Defendant GAR has violated the California Uniform Trade Secrets Act and is using the
12 Deerpoint Trade Secrets to unfairly compete with Deerpoint.

13 103. Defendant GAR's misappropriation of the Deerpoint Trade Secrets has caused
14 damage and will continue to cause damage to Deerpoint. The amount of such damage cannot be
15 ascertained at present, but exceeds the jurisdictional minimum applicable in this Court.

16 104. Deerpoint is informed and believes, and on that basis alleges, that Defendant GAR's
17 misappropriation of the Deerpoint Trade Secrets was willful and malicious. Deerpoint is therefore
18 entitled to an award of exemplary damages equal to twice its actual damages attributable to the
19 misappropriation and to an award of its (Deerpoint's) reasonable attorneys' fees.

20 WHEREFORE, Plaintiff Deerpoint seeks Relief as follows:

21 **PRAYER**

22 Plaintiff Deerpoint prays for judgment against Defendant GAR:

- 23 1. For direct and consequential damages resulting from one or more of GAR's
24 infringement of the '474 Patent, the '868 Patent, and GAR's misappropriation of Deerpoint Trade
25 Secrets, in amounts according to proof;
- 26 2. For punitive and exemplary damages in amounts to be determined at trial;
- 27 3. For pre-judgment interest as and to the extent appropriate;
- 28 4. For attorneys' fees as and to the extent appropriate;

1 5. For preliminary and permanent injunctive relief to prevent Defendant GAR, along
2 with any person or entity acting in concert with it, from continuing to infringe the '474 Patent
3 and/or the '868 Patent;

4 6. For preliminary and permanent injunctive relief prohibiting Defendant GAR, along
5 with any person or entity acting in concert with it, from disclosing or using in any fashion any of the
6 Deerpoint Trade Secrets;

7 7. For costs of suit incurred herein; and

8 8. For such other and further relief as the Court deems just and proper.

9 **DEMAND FOR TRIAL BY JURY**

10 Plaintiff Deerpoint hereby demands a trial by jury to decide all issues so triable in this case.

11
12 DATED: September 8, 2023

Respectfully submitted,

13 KILPATRICK TOWNSEND & STOCKTON LLP

14
15 By: /s/ Jon Michaelson

JON MICHAELSON

BENJAMIN M. KLEINMAN

16
17 Attorneys for Plaintiff
18 DEERPOINT GROUP, INC.