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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10
11 SUTERRA LLC, a Delaware limited
liability company,

12 Plaintiff,

13 vs.

14 MOSAIC AG INNOVATION
15 SOLUTIONS, LLC, a Delaware limited
liability company, and DOES 1 through
16 10, inclusive,

17 Defendants.

Case No. 2:20-cv-9167

**COMPLAINT FOR:
FEDERAL TRADEMARK
INFRINGEMENT; VIOLATION OF
THE LANHAM ACT § 43(A);
UNFAIR COMPETITION UNDER
CALIFORNIA BUSINESS &
PROFESSIONS CODE § 17200 ET
SEQ.**

DEMAND FOR TRIAL BY JURY

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1 Plaintiff Suterra LLC (“Suterra”) hereby alleges as follows:

2 **PARTIES**

3 1. Suterra is the manufacturer of products bearing the infringed
4 SUTERRA trademarks at issue in this case as well as the owner of the intellectual
5 property rights for the SUTERRA trademarks.

6 2. Suterra sells agricultural products focusing on environmentally
7 sustainable pest control in over 30 states including in California.

8 3. Suterra is informed and believes and thereon alleges that Defendant
9 MOSAIC AG INNOVATION SOLUTIONS, LLC (“Mosaic” or “Defendant”) is
10 also involved in the manufacture and sale of agricultural products, including
11 fertilizer, under the SUSTERRA mark.

12 4. According to a September 30, 2020, article in agrobusiness.com – an
13 online publication geared towards agricultural news – the SUSTERRA product is or
14 will be “available via retailers throughout the U.S.”

15 5. In its 2017 10-K filing, Mosaic stated that “U.S. distribution operations
16 also include leased distribution space or contractual throughput agreements in other
17 key geographical areas such as California....”

18 6. Suterra is not aware of the true names and capacities of the Defendants
19 identified herein as Does 1 through 10, inclusive, and therefore fictitiously names
20 said Defendants. Suterra will amend this Complaint to allege the true names and
21 capacities of these fictitiously named Defendants when their identities are
22 ascertained.

23 7. Suterra is informed and believes, and based thereon alleges, that
24 Defendant Mosaic and each of the fictitiously named Doe Defendants (collectively,
25 “Defendants”) were in some manner responsible for the acts alleged herein and the
26 harm, losses and damages suffered by Suterra as alleged hereinafter. Suterra is also
27 informed and believes, and based thereon alleges, that while participating in such
28 acts, each Defendant was the agent, principal, and/or alter ego of the other

1 Defendants, and was acting in the course and scope of such agency and/or acted
2 with the permission, consent, authorization or ratification of the other Defendants.

3 8. Suterra is informed and believes, and based thereon alleges, that
4 Defendants conduct business, and distribute the SUSTERRA product in California,
5 within this Court's jurisdiction.

6 JURISDICTION AND VENUE

7 9. This action arises, in part, under the Lanham Act, as amended, 15
8 U.S.C. §§ 1114 and 1125, California Business and Professions Code § 17200 et seq.
9 This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §
10 1121 (trademark infringement claims under the Lanham Act); 28 U.S.C. § 1331
11 (federal question), 28 U.S.C. § 1338 (original jurisdiction of trademark claims and
12 unfair competition claims related to same) and 28 U.S.C. § 1367 (supplemental
13 jurisdiction).

14 10. Suterra is informed and believes, and based thereon alleges, that venue
15 is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391 (c) because a
16 substantial part of the events giving rise to the claims occurred in this District.
17 Additionally, Suterra is informed and believes, and based thereon alleges, that the
18 Court has personal jurisdiction over Defendants because Defendants have
19 distributed, and sought to distribute, the infringing SUSTERRA product in this
20 District, and generally engage in business in this District.

21 FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

22 11. In 2001 Suterra began manufacturing, marketing and selling products
23 under the SUTERRA mark, and has done so continuously since then.

24 12. Suterra has invested substantially in the development, production,
25 marketing and sale of its products under the SUTERRA mark.

26 13. Suterra owns two federally registered trademarks in the United States
27 for SUTERRA in connection with the marketing and sale of its products in interstate
28 commerce. One is for the standard character mark SUTERRA, (Registration No.

1 2796835) and the other is SUTERRA and design (Registration No. 6062099),
2 collectively the “SUTERRA Marks.”

3 14. Suterra’s registrations are valid and subsisting, and Suterra owns all
4 right, title and interest to the SUTERRA Marks. Registration No. 2796835 is
5 incontestable pursuant to 15 U.S.C. Section 1065.

6 15. Defendants had constructive notice of Suterra’s rights in its federally
7 registered trademarks under 15 U.S.C. Section 1072, which states: “Registration of a
8 mark on the principal register provided by this Act or under the Act of March 3,
9 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant’s
10 claim of ownership thereof.”

11 16. Mosaic also had actual notice of Suterra’s rights when Suterra sent
12 Mosaic a letter on September 24, 2020, advising it of Suterra’s rights.

13 17. Suterra has devoted a great deal of time, money and resources to
14 develop and market its products in connection with the SUTERRA Marks. Because
15 of this, there is substantial goodwill associated with the SUTERRA Marks.

16 18. The SUTERRA Marks are used uniformly and consistently in every
17 product, advertisement, and promotion in connection with the agricultural products
18 Suterra sells.

19 19. Suterra uses the SUTERRA Marks to distinguish itself as the source of
20 goods and services in connection therewith.

21 20. The SUTERRA and SUSTERRA products, both being agricultural
22 products, are sold to the same or similar group of customers utilizing overlapping
23 trade channels.

24 21. The SUSTERRA products are bio-rational, meaning that they are non-
25 toxic. Similarly, Mosaic’s website promotes the SUSTERRA product as using “bio-
26 based technology.” By selling SUSTERRA products that mimic the SUTERRA
27 Marks, Defendants are not only creating likelihood confusion between the marks,
28 but are also attempting to fall within and capitalize on Suterra’s core business

1 proposition of being an industry leader in environmentally friendly agricultural
2 products.

3 22. The SUTERRA Marks were custom designed to be distinctive,
4 innovative and recognizable to consumers so that the SUTERRA Marks would act
5 as a source-identifier. Because of this, the SUTERRA Marks are inherently
6 distinctive. In the alternative, because of Suterra's exclusive and extensive use, the
7 SUTERRA Marks have acquired secondary meaning and distinctiveness, and are
8 thus well known to its customers as identifying and distinguishing Suterra
9 exclusively and uniquely as the source of products to which the SUTERRA Marks
10 are applied.

11 23. The SUTERRA Marks are widely recognized as a source-identifier for
12 Suterra's agricultural products. Suterra has built and owns an extremely valuable
13 goodwill which is symbolized by, and associated with its highly distinctive
14 SUTERRA Marks.

15 24. Suterra pursues a variety of marketing efforts for the sale of its
16 agricultural products bearing the SUTERRA Marks, including attending trade
17 shows, engaging in print and web-based advertising, direct mail advertising, digital
18 marketing, and via social media.

19 25. The SUTERRA Marks denote high-quality agricultural products and
20 act as a source-identifier of those products.

21 26. Notwithstanding Suterra's rights in the SUTERRA Marks, and with
22 constructive and actual notice of Suterra's rights, Defendants are intentionally and
23 willfully advertising, distributing, and selling a product that infringes the SUTERRA
24 Marks.

25 27. Defendants' use of the SUSTERRA mark infringes the SUTERRA
26 Marks by causing a likelihood of confusion with the SUTERRA Marks.

27 28. By copying and using marks similar to the SUTERRA Marks,
28 Defendants are intentionally trading on the substantial goodwill created by Suterra.

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