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PHYLOS BIOSCIENCE, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

PHYLOS BIOSCIENCE, INC.,

Plaintiff,

v.

SILVER LION FARMS, LLC,

Defendant.

Civil Case No.:

COMPLAINT

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Phylos Bioscience, Inc. (“Phylos”), by its undersigned attorney, and for its Complaint against Silver Lion Farms, LLC (“SLF” or “Defendant”), states and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of a United States certificate of plant variety protection (“PVP certificate”) pursuant to 7 U.S.C. § 2541 et seq., a declaratory judgment pursuant to 28 U.S.C. § 2201, breach of contract, promissory estoppel, and fraud.

PARTIES

2. Plaintiff Phylos is an Oregon corporation with its principal place of business in Portland, Oregon.

3. Upon information and belief, Defendant Silver Lion Farms, LLC is a Nevada entity with its principal place of business in Ely, Nevada.

JURISDICTION AND VENUE

4. Pursuant to 28 U.S.C. § 1338(a), United States district courts such as this one have original and exclusive jurisdiction of any civil action arising under any Act of Congress relating to plant variety protection.

5. Pursuant to 28 U.S.C. § 2201, this Court has jurisdiction to enter a judgment declaring the rights of the parties with respect to the PVP certificate, hemp seeds and other issues in this action.

6. Damages to Phylos are to be established, but in any case the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, for purposes of 28 U.S.C. § 1332(a).

7. On information and belief, Phylos and Defendant are deemed citizens of different States for purposes of 28 U.S.C. § 1332(a).

8. This Court has jurisdiction over this action pursuant to at least 28 U.S.C. §§ 1332(a), 1338(a), and 1367(a).

9. Venue is proper in this Court pursuant to at least 28 U.S.C. § 1391.

10. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant conducts business within this District, has engaged and continues to engage in activities in this District, and Defendant's acts have caused and continue to cause injury to Phylos within this District. For example, Defendant entered into a contract with Phylos and, upon information and belief, conducts business in Oregon.

11. Additionally, this Court has personal jurisdiction over Defendant because, upon information and belief, Defendant committed intentional acts, expressly aimed at Phylos and this District, causing harm Defendant knew or should have known would be likely and primarily suffered in this District. For example, Defendant infringed a Phylos PVP certificate and intentionally defrauded Phylos as set out in the following.

BACKGROUND FACTS

12. Phylos and SLF executed a letter of engagement (“LOE”) (attached hereto as Exhibit A) dated November 13, 2020 and signed by the parties on November 16, 2020. Third party Plant Fuel Genetics (“PFG”) also signed the LOE but is not named in this action.

13. Pursuant to the terms of the LOE, SLF agreed and promised to purchase over 23 million hemp seeds to plant 975 acres (487.5 acres to be planted with 14,625,000 AutoCBD seeds and 487.5 acres to be planted with 8,775,000 F1 hybrid seeds) for a contract price of \$2,954,250.00.

14. The LOE specified the contract price was \$1,462,500.00 for the AutoCBD seeds to be planted at the rate of 30,000 per acre and \$1,491,750.00 for the F1 hybrid seeds to be planted at the rate of 18,000 per acre.

15. As required by the LOE, SLF paid 25 percent of the contract price, i.e., \$738,562.50, in November 2020.

16. SLF further agreed in the LOE that the balance of \$2,215,687.50 would be due upon delivery of the hemp seeds on or before May 1, 2021.

17. In foreseeable reliance on SLF’s agreement to purchase hemp seed as required by the LOE, Phylos promptly entered into an agreement with, and issued a purchase order to, an Oregon entity on November 18, 2020 for production of the seeds, thereby incurring a liability.

18. Seeds produced for SLF were tested in Oregon before delivery.

19. Seeds produced for SLF were packaged in Oregon.

20. On April 29, 2021 Phylos employee Sage Haegen traveled to SLF's farm from Oregon to deliver the hemp seeds pursuant to the terms of the LOE.

21. Attempting delivery from Oregon was induced by SLF's dealings with Phylos, including SLF's execution of the LOE.

22. SLF co-founder and president Gian Khalsa met Haegen and PFG employee Erik Jackson. Khalsa falsely represented to Haegen that SLF Chief Executive Officer ("CEO") Bob Kurilko and Phylos CEO Ralph Risch had spoken and had agreed that SLF would take possession of approximately 4.3 million F1 hybrid seeds, but not any of the AutoCBD seeds.

23. No agreement was made between Kurilko and Risch whereby SLF would only accept and Phylos would only deliver approximately 4.3 million F1 hybrid seeds.

24. Haegen did not have phone service at the place of delivery and so could not contact Risch or anyone else at Phylos to try to confirm Khalsa's representation that Kurilko and Risch had reached an agreement for delivery of approximately half the number of F1 hybrid seeds and none of the AutoCBD seeds required by the LOE.

25. Haegen did not know or have reason to believe that Khalsa made a false representation before delivering approximately 4.3 million F1 hybrid seeds and then leaving the SLF farm without delivering the balance of the seeds. Haegen acted in reliance on Khalsa's false representation.

26. Upon regaining phone service, Haegen learned from Risch that Phylos and SLF had not reached any agreement such as that which Khalsa described.

27. Risch instructed Haegen to return to SLF's farm and collect the approximately 4.3

million F1 hybrid seeds Khalsa took under false pretenses.

28. A SLF security officer refused to return any of the delivered F1 hybrid seeds to Haegen.

29. On information and belief, Khalsa and/or Kurilko knew, at the time Khalsa misrepresented otherwise to Haegen, that SLF and Phylos had not reached an agreement for delivery of only about 4.3 million of the F1 hybrid seeds and none of the AutoCBD seeds SLF was obligated to purchase under the LOE.

30. On information and belief, Khalsa and/or Kurilko intentionally deceived Phylos's employee Haegen to induce him to deliver only a portion of the F1 hybrid seeds required by the LOE.

31. SLF has neither accepted delivery nor paid for the remaining seeds it is obligated to purchase under the LOE.

32. Phylos has never agreed to partial performance under the LOE to satisfy SLF's obligation to purchase seed for the contract price of \$2,954,250.00.

COUNT I

INFRINGEMENT OF PVP CERTIFICATE NO. 201900403

PURSUANT TO 7 U.S.C. § 2541

33. Phylos hereby re-alleges and incorporates by reference each of the allegations in each of the foregoing sections and paragraphs as though fully set forth here.

34. The United States duly and legally issued Certificate of Plant Variety Protection No. 201900403 (attached hereto as Exhibit B, and hereinafter "the '403 PVP certificate") to Phylos on June 22, 2020, for hemp variety NBS CBD-1 (also known as AutoCBD).

35. Phylos owns the '403 PVP certificate and has owned it since it issued.

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