IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

DAVID COX, d/b/a COX FARMS, INC., Individually and on behalf of a Class of all others similarly situated,	)	
	)	DEMAND FOR JURY TRIAL
Plaintiff,	)	
	)	Civil Case No.
v.	)	
SYNGENTA CORPORATION; SYNGENTA CROP PROTECTION, LLC; And SYNGENTA SEEDS, INC.,	)	
Defendants.	)	

CLASS ACTION COMPLAINT

COMES NOW, Plaintiff, David Cox, d/b/a Cox Farms, Inc., ("Plaintiff"), by and through undersigned counsel, on their own behalf and on behalf of all other similarly situated (the "Class" as defined below), brings this action against Defendants Syngenta Corporation, Syngenta Crop Protection, LLC, and Syngenta Seeds, Inc. (collectively "Defendants" or "Syngenta") and alleges as follows:

I. NATURE OF THE ACTION

1. The United States ranks first in the world in corn production with nearly 80 million acres devoted to corn production.[1]

2. China is a substantial importer of the United States' corn production. It is the third largest export market for United States corn, and it has substantially increased corn imports in the last

[1] "Corn, background." USDA Economic Research Service. Last visited October 24 2014, available at: http://www.ers.usda.gov/topics/crops/corn/background.aspx.

three years. According to the United States Department of Agriculture, China purchased an estimated 5,000,000 tons of U.S. corn in 2012/13, up from 47,000 tons in 2008, making China the third largest export market for U.S. corn.

3. Syngenta is involved in the business of researching, developing, marketing, and selling corn seed that possesses genetically-engineered traits. Once Syngenta develops its genetically-modified corn, it licenses the corn seed to its subsidiaries and other manufacturers who then sell the corn seed to farmers across the country.

4. Syngenta entered MIR162 – a genetically engineered corn trait – into the United States market in 2009. The first generation was known as "Agrisure Viptera" ("Viptera"). The second generation was "Agrisure Duracade" ("Duracade") (collectively with Viptera, "genetically-modified corn"). This second generation version was sold and distributed for planting in 2014. Syngenta's Agrisure products have been genetically engineered to protect corn against insects, tolerate herbicides, and allow for "water optimization."

5. MIR162 corn was only planted on approximately 3% of the corn acres in the United States during the last two seasons.

6. Syngenta's genetically modified seeds are approved for use in the United States, as well as other countries. The seeds have not been approved for sale in China. While, Syngenta submitted its genetically-modified corn to the Chinese government for approval, it has yet to receive approval.

7. Corn farmers in the United States, and the State of South Carolina, such as the Plaintiffs and Class members, grow and harvest corn to be sold in a commodity-based system. Thus, the corn grown by the Plaintiffs and Class members is ultimately gathered, commingled, and consolidated from thousands of different farms to distribution centers. The corn is then shipped

to foreign markets through exporters. Quality and integrity in corn exports is vital to maintain the corn market.

8. In November of 2013, Chinese regulatory authorities detected traces of MIR162 in United States corn shipments. Because MIR162 is not approved in China, China will not accept any corn shipments with traces of the corn trait. There is no indication as to whether China will approve the genetically engineered corn.

9. As a result of China's prohibition on the importation of MIR162 corn, even in trace, low-level amounts, and Syngenta's decision to continue marketing MIR162 to a small minority of U.S. corn farmers – the vast majority of U.S. corn has been effectively excluded from what was previously the third-largest export market for U.S. corn, causing farmers within the State to suffer significant damages as corn prices have dropped from the loss of the Chinese market.

10. Syngenta misinformed farmers, exporters, and the general public about the potential approval of MIR162 in China and the significance of the Chinese market by suggesting that approval in China was imminent and that China's failure to approve MIR162 would not impact the corn market.

11. Syngenta's decision to bring Viptera to the market crippled the 2013/14 corn export market to China and caused damage to Plaintiffs and other Class members. Syngenta knew, or should have known, that releasing Viptera would lead to the contamination of U.S. corn shipments and prevent U.S. corn from being sold to export markets such as China, which had not granted regulatory approval to MIR162.

12. Even in wake of significant harm, Syngenta released its second generation MIR162, Duracade, for 2014. This further exemplifies Syngenta's reckless disregard and deliberate

ignorance of the consequences its conduct has on the corn market. Syngenta's conduct caused Plaintiffs and the Class members to lose millions of dollars in lost sales and income.

II. JURISDICTION & VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1332, and 15 U.S.C. § 1125(a) and supplemental jurisdiction under 28 U.S.C. § 1367(a).

14. This Court has personal jurisdiction over the Defendants because the Defendants regularly and systematically conduct business within this District, including the marketing and sale of its genetically-modified corn to farmers within this District; and/or Defendants' genetically-modified corn caused and continues to cause damage within this District.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants marketed and sold, and continue to market, sell, and/or disseminate its genetically-modified corn in this District; and/or Defendants' genetically-modified corn caused and continues to cause damage within this District.

III. PARTIES

A. PLAINTIFFS

16. David Cox is a citizen in the State of South Carolina residing in Dillon County. David Cox is engaged in the business of planting, growing, harvesting, and selling corn. David Cox does not buy MIR 162 seed from Syngenta. David Cox only buys corn seed that has not been genetically modified or corn seed that is genetically modified with traits that have been approved by all major corn importing countries, including China. At all times relevant to this action, David Cox has been engaged in farming in the State of South Carolina. David Cox's income results from the sale of corn grown on his farmland and/or on land he leases from others.

17. David Cox is doing business as Cox Farms, Inc., Cox Farms, Inc., is engaged in the business of planting, growing, harvesting, and selling corn. Cox Farms, Inc., does not buy MIR 162 seed from Syngenta. Cox Farms, Inc., only buys corn seed that has not been genetically modified or corn seed that is genetically modified with traits that have been approved by all major corn importing countries, including China. At all times relevant to this action, Cox Farms, Inc., has been engaged in farming in the State of South Carolina. Cox Farms, Inc., income results from the sale of corn grown on his farmland and/or on land he leases from others.

B. DEFENDANTS

18. Syngenta Corporation is a Delaware corporation with a principal place of business at 3411 Silverside Road, #100, Wilmington, Delaware, 19810. Syngenta Corporation may be served through its registered agent, C T CORPORATION SYSTEM, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

19. Syngenta Crop Protection, LLC is a limited liability company organized and operating under Delaware law with its principal place of business at 410 South Swing Road, Greensboro, North Carolina, 27409. Syngenta Crop Protection may be served through its registered agent, C T CORPORATION SYSTEM, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

20. Syngenta Seeds, Inc. is a Delaware corporation with its principal place of business at 11055 Wayzata Blvd., Minnetonka, Minnesota, 55305. Syngenta Seeds, Inc. may be served through its registered agent, C T CORPORATION SYSTEM, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

IV. FACTUAL ALLEGATIONS

A. BACKGROUND OF CORN EXPORTATION

21. Corn is the largest crop grown in the United States, and the United States is the largest producer of corn in the world, producing nearly 32% of the world's corn crop. The United States exports approximately 20% of the domestic corn production and, as the larger exporter of corn, accounts for nearly 68% of global corn exports. [2]

22. Corn is grown for human consumption, animal consumption, high fructose corn syrup, and a myriad of other uses.

23. Corn, or *Zea mays L. subsp. mays* and maize in other parts of the world, is a plant that has male and female flowers on each plant. Human intervention is necessary for seed dispersal and propagation.

24. In the United States, corn is grown on more than 400,000 farms covering approximately 80 million acres. In 2013, South Carolina had nearly 350,000 acres planted in corn.[3]

25. There are different types of corn grown in the United States such as field corn, which occupies the majority of crop in the United States, sweet corn, and popcorn. All of these types can cross-pollinate.

26. Corn pollination is anemophily, or wind pollination, meaning that pollen is distributed by the wind as opposed to insects. Pollen can travel significant distances ranging from 200 feet to one-third of a mile. Cross-pollinations results in traits being implemented from the pollen-donating plant onto other corn plants. There is considerable potential for contamination through cross-pollination even if only a small amount of pollen drifts from a neighboring field.

B. SYNGENTA DEVELOPES GENETICALLY MODIFIED CORN TRAITS

[2] "Corn, background." USDA Economic Research Service. Last visited October 24 2014, available at: http://www.ers.usda.gov/topics/crops/corn/background.aspx

[3] "Crop Production" USDA National Agricultural Statistics Service. Last visited October 24, 2014, available at: http://www.usda.gov/nass/PUBS/TODAYRPT/crop1113.pdf

27. Syngenta developed corn trait MIR162 to help make corn resistant to damage caused by corn borers, earworms, fall armyworms, black cutworms, and western bean cutworms larvae. The earworm, for example, feeds on all parts of the corn, which can lead to diseases, mold, and overall destruction of the corn crop.

28. MIR162 uses a vegetative insecticidal protein ("Vip") known as Vip3Aa20. Vip3Aa20 confers a tolerance to certain pests of corn based on sequences from a common soil bacterium, Bacillus thurigiensis ("Bt."). Viptera uses the Vip3A protein that kills insects before they are able to cause damage to the corn. Viptera also uses crystalline proteins ("Cry") derived from Bt. to control insects before they can damage the corn. MIR162 also contains the manA gene and phophomannose isomerase ("PMI") enzyme found in Escherichia coli that allows for positive selection for recovery of transformed plants.

29. Syngenta invested approximately $200 million on developing Viptera corn over approximately five to seven years.

30. Because Viptera was a bio-engineered product, it was subject to United States regulatory approval before it could be sold and cultivated in the United States. The United States Department of Agriculture ("USDA") deregulated Viptera in 2010.

31. Following approval, Syngenta released Viptera corn commercial for the 2011 growing season through products such as Agrisure Viptera 3110A and 3111A. It was sold through numerous independent retailers such as Golden Harvest and Garst. Although Syngenta could sell the trait in the United States, other key countries had not yet approved Viptera corn, including China and Japan. Japan and others have since approved the Viptera corn, but China has not granted approval.

32. Because China has not approved Viptera corn, it can, and has, rejected any shipment containing MIR162. Syngenta knew of China's lack of approval of MIR162 and no-tolerance policy of shipments containing MIR162 prior to its commercialization and promotion of Viptera corn.

33. Viptera corn is protected by multiple patents belonging to Syngenta. These patents allow Syngenta to sell its Viptera corn absent competition. Thus, Syngenta pushed Viptera corn to farmers in order to maximize profits during this exclusivity period.

34. In September 2014, Syngenta announced 52 new corn hybrids for the 2015 season in the United States.[4] Viptera is featured in 23 of these new hybrids while Duracade is featured in 18 of the hybrids. Syngenta is continuing to market these hybrids to farmers throughout the State and the country knowing that these traits have not been approved in China.

C. SYNGENTA'S MISREPRESENTATIONS CONCERNING ITS GENETICALLY MODIFIED CORN

35. Syngenta has promoted and touted its genetically modified corn while downplaying and manipulating the impact it can have on the export market and overall corn prices. Syngenta encouraged farmers to plant the MIR162 corn while misrepresenting the potential of Chinese approval of MIR162.

36. For example, Syngenta has published a "fact sheet" on its website about Viptera called "Plant with Confidence," which is directed at farmers.[5] Syngenta's fact sheet engages in direct misrepresentations about U.S. corn exports:

[4] "Syngenta Announces 52 New Corn Hybrids for 2015 Season," Last visited October 24 2014, available at: http://www.agprofessional.com/news/Syngenta-announces-52-new-corn-hybrids-for-2015-season-275494841.html

[5] Agrisure Viptera "Plant With Confidence" Fact Sheet. Last visited October 24 2014, available at: http://www.syngenta-us.com/viptera_ exports/images/Agrisure-Viptera-Fact-Sheet.pdf

a. To downplay the importance of the export market, Syngenta states that in the last five years, on average, only about 13 percent of U.S. corn has been exported. The rest has been used domestically.

b. Syngenta further states that China has imported, on average, a little more than half of one percent (0.5%) of all U.S. corn produced in the past five years. It goes on to say that "traditional major markets are legally able to accept Agrisure Viptera grain," which implies that China is not a traditional major market.

37. To the contrary, the USDA describes the United States as "a major player in the world corn trade market" exporting approximately 20% of United States corn. Further, its implication that major markets are able to accept Viptera corn is wholly inaccurate in light of China's significant role in the market as the third largest importer of corn and its ban of Viptera.

38. Further, Syngenta continued to downplay the Chinese market and its potential acceptance of Viptera.

39. In Syngenta's 2010 Full Year Results, CEO Michael Mack acknowledged that Chinese "import requirements alone influence global commodity prices."

40. In Syngenta's 2011 Half Year Earnings Report, Mr. Mack remarked on the importance of the Chinese market, stating that China "continues to have the greatest impact on world markets, with increasing imports not just of soybeans but also now of corn." This is contrast to what Syngenta was telling farmers (and continues to do so).

41. For example, in response to a question during the 2012 first quarter earnings conference call regarding the status of Chinese approval of Viptera, Mr. Mack stated: "[t]here isn't outstanding approval for China, which we expect to have quite frankly within the matter of a couple days . . . we know of no issue with that whatsoever . . . ."

42. Mr. Mack's statement was publicized sufficiently to constitute promotion within the grain industry. This statement dangerously impacted the corn market by encouraging (1) farmers to plant MIR162 without worrying about their ability to sell the corn to grain elevators, (2) grain

elevators to accept and commingle MIR162 with other grains, and (3) exporters to purchase and ship products containing MIR162 without concerns that the shipments would be rejected in China.

43. By 2014, Syngenta knew, or should have known, that China was no closer to approving MIR162, especially as the timing grew closer to the 2014 planting season. Mr. Mack stated during a conference call that "I think it is fair to say at this point in time that we don't have – that we will not have any approval before the start of the season. That's for sure." But what Syngenta told to outside investors, it failed to disclose to farmers.

44. During Syngenta's second quarter 2014 earnings conference call, Mr. Mack stated that the delay of approval from Chinese authorities "is a regulatory matter in China as opposed to any regulatory matter with Syngenta. The delays coming out of China are such that people just aren't really understanding right now even what the process is."

45. Despite these statements in 2014 expressing uncertainty to as when China would grant approval, Syngenta also misled and continues to mislead exporters into believing that products containing MIR162 will be accepted in China.

46. For example, on its website, Syngenta offers information about the status of Chinese import approval.[6] The website states that Syngenta is attempting to "expedite import approval of MIR162" and that Syngenta's Duracade technology is "under active review." Notably, the "China Grain Import Situation" website fails to acknowledge that shipments of U.S. corn to China have been halted due to fears of contamination with MIR162.

47. On its website, Syngenta continues to offer a form entitled: "Request Form for Biosafety Certificates Issued by Chinese Ministry of Agriculture." The form states that the certificates for

[6] "China Grain Import Situation" Last visited October 24 2014, available at http://www.syngenta-us.com/viptera_exports

the following transgenic events were issued to Syngenta Seeds by the Ministry of Agriculture, and one of the transgenic events identified on the form is MIR162.

48. Moreover, the form states that "The Biosafety Certificate(s) provided allows importation of the above marked corn products as raw materials for processing for food and feed use only, not for any research purpose or cultivation purpose."

49. The form and corresponding language appear to emphasize that if an exporter completes the form, Syngenta will then issue a Biosafety Certificate, which will allow the cargo to enter China. The form thus contains misleading implications because it does not state that any products with MIR162 would be rejected.

50. Thus, Syngenta's request form was released as an advertisement for Viptera corn, as it indicates that products containing MIR162 may be imported into China if the form is correctly filled out.

51. Syngenta included MIR162 on this request form, even though Syngenta knew that MIR162 was not approved for import into China, based on economic motivations, including the continued sales of Viptera corn.

52. Syngenta's request form was disseminated sufficiently to constitute promotion within the seed sales industry.

53. The statements made by Syngenta officials, including by Mr. Mack, as described above, illustrate that Syngenta knew that MIR162 had not been approved for import into China, even though other corn products/transgenic events identified on the form had been approved.

54. Further For example, in the lawsuit that Syngenta brought against Bunge, as previously described herein, unrebutted evidence indicated that redirection costs for a rejected shipment of corn contaminated with the MIR162 trait could cost between $4 million to $20 million for a

single shipment. See Syngenta Seeds, Inc. v. Bunge North America, Inc., No. 5:11-cv-04074-MWB, (N.D. Iowa Sept. 26, 2011) ECF No. 42, at 12.

55. More than two years have passed since the earnings conference call where Syngenta's CEO expressed that approval was days away, and yet, MIR162 still has not been approved in China. Further despite acknowledging that the earliest China might approve Agrisure Duracade corn would be March 2015, Syngenta stated that it intends to proceed with commercializing and selling this corn.

D. GRAIN HANDLERS REFUSE VIPTERA

56. Grain elevator operators buy grain, including corn, from farmers and then sell the grain later. Many grain operators and handlers refuse to accept Viptera corn because of the contamination risk and lack of approval in China

57. In 2011, Bunge North America, Inc., ("Bunge") a grain elevator and handler based in St. Louis, Missouri, posted signs and distributed materials stating that Viptera corn would not be accepted during the 2011 harvest season because China had not approved Viptera corn.

58. Syngenta sued Bunge in federal court, Syngenta Seeds, Inc. v. Bunge North America, Inc., No. C 11-4074-MWB (N.D. Iowa) (Bennett, J.), seeking preliminary and permanent injunctions requiring Bunge to stop posting materials regarding its refusal to accept Viptera corn. The lawsuit also sought an injunction which would have required Bunge to accept Viptera corn at its facilities.

59. Bunge answered, stating that its decision not to accept Viptera corn complied with the North American Export Grain Association's policy to advocate that technology providers receive

all major international approvals for a trait prior to seed sales. Bunge stated that Syngenta had undertaken an action which could put at risk a major export market for U.S. corn (China).[7]

60. Likewise, Mark Stonacek, President of Cargill, Inc., a grain and oilseed supply chain, stated, "Unlike other seed companies, Syngenta has not practiced responsible stewardship by broadly commercializing a new product before receiving approval from a key export market like China. Syngenta also put the ability of U.S. agriculture to serve global markets at risk, costing both Cargill and the entire U.S. agricultural industry significant damages."[8]

61. Major grain handlers, such as Bunge, still refuse to accept Viptera corn, because preventing commingling is essentially impossible.

E. VIPTERA CONTAMINATES THE CORN SUPPLY

62. When it released its Viptera corn, Syngenta encouraged a side-by-side planting process whereby it encouraged farmers to plant Viptera corn next to other corn, including corn that had not been genetically modified. In promoting this process, Syngenta knew that side-by-side planting contained risks of contamination. Further, Syngenta is aware of the risk of commingling different varieties of corn during planting, harvesting, drying, and storing the corn. Without thorough precaution, one corn variety can contaminate an entire, larger corn supply.

[7] The Court denied Syngenta's request for a preliminary injunction, several of Syngenta's claims were dismissed on the pleadings while others were voluntarily dismissed, and on appeal, dismissal was affirmed in part, with Syngenta's action remanded to determine whether Syngenta had standing under the zone-of-interests test and proximate causality requirement for asserting a Lanham Act claim related to Bunge's posting of its policy to reject Viptera corn at its elevators. The remanded action remains pending.

[8] Cargill Files Suit Against Syngenta on MIR162 Trade Disruptions, Farm Futures, Last visited October 24, 2014, available at: http://farmfutures.com/story-cargill-files-suit-against-syngenta-mir-162-trade-disruptions-0-117632

63. Given its experience and leadership in the field of corn biotechnology, Syngenta was fully aware of the effects of cross-pollination as it relates to corn plants before, during, and after it released and promoted its Viptera corn.

64. By promoting this side-by-side program, Syngenta increased the amount of MIR162 in the United States corn supply ultimately putting countries like China that had not approved the trait at risk of receiving contaminated corn.

65. Syngenta promoted this program despite the fact that pollen from corn is carried by the wind and has been known to drift substantial distances (anywhere from 200 feet to one-third of a mile) and cross-pollinate with other corn plants. This cross-pollination can lead to corn plants obtaining traits from the pollen-donating plant. Moreover, contamination through cross-pollination can occur even if only a small amount of pollen drifts from a neighboring field.

F. CHINA REJECTS CONTAMINATED CORN EXPORTS

66. In or about November 2013, Chinese regulatory officials started rejecting shipments of United States corn after the shipments tested positive for traces of Viptera corn.

67. On December 24, 2013, the General Administration of Quality Supervision, Inspection and Quarantine of China issued a warning notification strengthening the inspection and supervision for the import of GMO feed materials. This notification stated that the Shanghai Chinese Inspection and Quarantine Service had detected MIR162 in corn shipments from the United States. The notification stated that every single shipment of corn would now be tested at Chinese ports for MIR162, and that any cargo that tested positive would be returned or destroyed.

68. The decision to test corn exports at Chinese ports caused some Chinese customers to refuse to honor their contracts to purchase corn, and it also injected a great deal of uncertainty into the market. Ultimately, all United States corn exports were put at risk.

69. Since November 2013, Chinese imports for United States corn have decreased by an estimated 85 percent. As a result, domestically, corn prices have fallen considerably downward. These effects resulted from the fact that each export contract is at risk.

70. China strengthened its policy regarding MIR162 again in July 2014, after an increasing number of U.S. corn shipments began testing positive.

71. This market shift comes as China was projected to import a record high 7,000,000 tons of United States corn, according to the USDA.

72. Syngenta knew, or should have known, that disruption to the Chinese import market would influence the global corn market, that contracts between grain exporters and Chinese corn buyers would be negatively affected if MIR162 was found in grain exports to China, and that farmers in Alabama would suffer damages if these contracts were placed at risk, in the form of a declining market and a lower sale price per bushel of corn.

G. SYNGENTA'S CONDUCT DEVASTATES THE MARKET

73. As a result of Syngenta's conduct, farmers within the State of Alabama, and across the country, have suffered substantial losses.

74. The National Grain and Feed Association (NGFA) found that Chinese rejection of U.S. corn, which resulted solely from concerns that MIR162 had infiltrated the entire U.S. corn supply, have lowered corn prices by 11 cents per bushel, leading to a projected loss of $1.14 billion for the last nine months of the marketing year ending on August 31, 2014.

75. Overall, corn exports for the 2013-14 marketing year totaled 46,867,700 metric tons, which amounted to four percent less than the USDA's projection of 48,770,000 metric tons, according to USDA figures released in September 2014.

76. In a joint statement with the North American Export Grain Association (NAEGA), NGFA also requested that Syngenta stop the release of Duracade corn, stating: "NAEGA and NGFA are gravely concerned about the serious economic harm to exporters, grain handlers and, ultimately, agricultural procedures – as well as the United States' reputation to meet its customers' needs – that has resulted from Syngenta's current approach to stewardship of Viptera. Further, the same concerns now transcend to Syngenta's intended product launch plans for Duracade, which risk repeating and extending the damage. Immediate action is required by Syngenta to halt such damage."[9]

77. Instead of agreeing to this request, Syngenta is proceeding with plans to expand upon its limited release of Duracade – a new type of genetically modified corn, which also is not yet approved in China. One NGFA official stated that this new gene is also likely to show up in exports, further exacerbating problems with China and other nations that have not granted approval, but that Syngenta remains motivated by its profit margin. "They're being a bad actor here," Max Fischer of NGFA said, referring to Syngenta. "They're making $40 million" selling the new corn varieties, "but it's costing U.S. farmers $1 billion."[10]

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[9] NGFA, NAEGA Issue Joint Statement Urging Syngenta to Supsend Commercialization of Agrisure Viptera and Duracade Biotech Corn, Last visited October 24, 2014, available at: http://www.ngfa.org/2014/01/24/ngfa-naega-issue-joint-statement-urging-syngenta-to-suspend-commercialization-of-agrisure-viptera-and-duracade-biotech-corn

[10] Dan Charles, "When China Spurns GMO Imports, American Farmers Lose Billions," July 31, 2014, Last visited October 24, 2014 available at: http://www.npr.org/blogs/thesalt/2014/07/31/336833095/when-china-spurns-gmo-corn-imports-american-farmers-lose-billions.

78. Upon information and belief, Viptera corn accounts for approximately 25% of Syngenta's corn portfolio. In 2013, Syngenta's corn sales totaled more than $3.5 billion.

79. In addition to falling prices for corn, Plaintiffs and other Class members have been damaged in other ways as a result of Syngenta's reckless decision to sell and distribute genetically modified corn seeds without receiving import approval from China. As further detailed herein, United States grain companies cannot put themselves at risk of having an unmarketable product when their blended corn arrives at export terminals. Thus, United States grain companies are asking farmers to ensure that Viptera and Duracade corn traits are completely removed from their deliveries.

80. Thus, farmers must segregate different types of corn on their farm, until the regulatory concerns are resolved. The National Corn Growers Association has urged farmers to "double recheck any seed plots" on farms or contract with a third party to verify that corn with unapproved traits, such as MIR162, have not infiltrated the overall export supply.[11]

81. Syngenta knew, or should have known, before it disseminated corn with the MIR162 genetic trait, that such cross-pollination could not be prevented despite farmers' best efforts. Syngenta knew, or should have known, that the United States corn production and marketing chain is a commodity-based system that gathers, commingles, and ships corn from thousands of farms, and that widespread commingling of genetically modified corn with non-genetically modified corn could not be completely prevented. Further, Syngenta knew or should have known that its conduct would cause significant damages to the farmers in this state.

V. CLASS ALLEGATIONS

[11] Last visited October 24, 2014, available at: http://www.ncga.com/news-and-resources/news-stories/article/2014/09/ncga-online-campaign-highlights-the-importance-of-proper-grain-channeling

82. The Plaintiffs bring this action as a class action pursuant to Federal Rules of Procedure Rule 23(a), Rule 23(b)(2), and Rule 23(b)(3) on behalf of themselves and a class consisting of the following members:

a. All persons and entities in South Carolina that grew, harvested, and sold non-MIR162 corn on a commercial basis, or who received revenue from non-MIR162 corn under a crop-share arrangement, from November of 2013 to the present. ("Class")

b. Excluded from the Class are the Court and its employees; Syngenta; any parent, subsidiary, or affiliate of Syngenta; and all employees and directors who are or have been employed by Syngenta during the relevant time period.

83. The Plaintiffs reserve the right to amend the Class definition prior to class certification.

84. Plaintiffs seek to represent the Class for any damages and injunctive relief. Plaintiffs assert claims against Syngenta individually and on behalf of all Class members for the violations of law alleged herein.

85. The requirements of Rule 23(a) are satisfied for the proposed class because the members of the proposed Class are so numerous that joinder of all its members is impracticable. Although the exact number and identity of each Class member is unknown at this time, there are believed hundreds of Class members in the State of Alabama. Therefore, the numerosity requirement of Rule 23(a)(1) is met.

86. The commonality requirement of Rule 23(a)(2) is satisfied because there are questions of law or fact common to Plaintiffs and the other Class members. Among those common questions of law and fact are:

a. Whether Syngenta, through its acts or omissions, caused or allowed MIR162 to contaminate and commingle South Carolina corn and corn seed supplies;

b. Whether Plaintiffs and the other Class members have sustained or continue to sustain damages as a result of Syngenta's wrongful conduct, and, if so, the proper measure and appropriate formula to be applied in determining damages for the injuries sustained;

c. Whether Plaintiffs and the other Class members are entitled to compensatory, consequential, and exemplary damages; and

d. Whether Plaintiffs and the other Class members are entitled to declaratory, injunctive, or other equitable relief.

87. Plaintiffs' claims are typical of the other Class members' claims because the claims arise from the same course of conduct by Syngenta and are based on the same legal theories. Further, Plaintiffs seek the same forms of relief for itself as it seeks for the other Class members. Therefore, the "typicality" requirement of Rule 23(a)(3) is satisfied.

88. Because Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs seek to represent, Plaintiffs have every incentive to vigorously pursue those claims. Plaintiffs have no conflicts with, or interests antagonistic to, the other Class members, who have been damaged as a result of the conduct alleged herein. Plaintiffs are committed to the vigorous prosecution of this action, which is reflected in Plaintiffs' retention of competent counsel experienced in complex and challenging litigation.

90. Plaintiffs' counsel satisfies the requirements of Rule 23(g) to serve as Class counsel here. Plaintiffs' counsel has identified and thoroughly investigated the claims set forth herein, and are highly experienced in the management and litigation of class actions and complex litigation. Plaintiffs' counsel also has extensive knowledge of the applicable law and possesses the resources to commit to the vigorous prosecution of this action on behalf of Plaintiffs and the other Class members. Accordingly, Plaintiffs satisfy the adequacy of representation requirements of Rule 23(a)(4).

91. This action also meets the requirements of Rule 23(b)(2). Syngenta has acted, or refused to act, on grounds generally applicable to Plaintiffs and other members of the proposed Class,

making final injunctive relief or corresponding declaratory relief with respect to the proposed Class appropriate.

92. Moreover, this action meets the requirements of Rule 23(b)(3). Common questions of law and fact, including those set forth above, exist as to all Class members' claims. These common questions predominate over questions affecting only individual Class members. A class action is superior – if not the only method – for the fair and efficient adjudication of this controversy.

93. Class treatment will permit large numbers of corn farmers similarly situated to prosecute their respective claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce.

94. This action is manageable as a class action. Notice may be provided to members of the proposed Class by First Class U.S. Mail and through alternative means, including publication. Furthermore, the claims set forth below based on federal law will apply evenly to all proposed Class members. Thus, the superiority and manageability requirements of Rule 23(b)(3) are satisfied.

VI. CAUSES OF ACTION

COUNT I:
Violation of the Lanham Act 15 U.S.C. § 1125(a)(1)(B)

95. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

96. The Lanham Act, 15 U.S.C. § 1125(a), provides in pertinent part:

> (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which –
>
> (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

97. Syngenta used and/or continues to use in commerce false or misleading descriptions of fact, and/or false or misleading representations of fact, which were likely to cause and/or did cause confusion and mistake.

98. Specifically, Syngenta's statements and commentary made to the press, statements on the Internet including, but not limited to, the statements on its "Plant With Confidence" fact sheet, in its frequently asked questions during quarterly conference calls, and incorporated into Syngenta's forms, which represent that Viptera corn is or would imminently be approved for import into China, as alleged above, are materially false statements that are, and continue to be, likely to cause confusion and mistake as to the nature, characteristics, and qualities of Viptera corn.

99. Syngenta's misleading representations of fact relating to the United States corn export market, and particularly in relation to China's position as a major export market, also deceived and/or continue to deceive farmers and other consumers. Syngenta's "Plant With Confidence" fact sheet has, and is likely to continue, to cause confusion and mistake as to the percentage of U.S. corn exported to China on an annual basis, among other facts.

100. Additionally, Syngenta's representations deceived and/or continue to deceive farmers and other consumers as to the approval of their goods (Viptera and Duracade corn).

101. Syngenta's Viptera and Duracade corn products caused, and/or were likely to cause, customer confusion regarding the approval of the products from foreign regulatory authorities, including the Chinese government.

102. Yet, Syngenta used and/or continues to use false representations regarding the approval of Viptera and Duracade corn to capture business, increase sales, and enhance products.

103. Syngenta's statements were made as an advertisement for Viptera corn.

104. Syngenta's statements specifically refer to Viptera corn.

105. Syngenta had an economic motivation for making its statements, as Syngenta was incentivized to sell its Viptera corn product.

106. Syngenta's statements were likely to influence purchasing decisions by domestic corn producers.

107. Syngenta's statements were widely distributed, which is, at least, sufficient to constitute promotion within the grain industry.

108. Thus, upon information and belief, Syngenta's misleading representations are and/or were material.

109. Syngenta's products travel or traveled in interstate commerce.

110. Plaintiffs and the other Class members have and continue to be damaged by Syngenta's material misrepresentations. Plaintiffs and the other Class members were injured and/or continue to be injured by declining sales, lost profits, loss of reputation, among other injuries.

111. Plaintiffs and the other Class members' damages were proximately caused by Syngenta's misleading representations as described herein.

112. Syngenta's acts constitute the use of false descriptions and false representations in interstate commerce in violation of § 43(a) of the Lanham Act and entitle Plaintiffs, individually and on behalf of the other Class members, to recover damages, the costs of this action, and reasonable attorneys' fees.

COUNT II:
PUBLIC NUISANCE

113. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

114. Through the conduct alleged above, Syngenta has created a public nuisance by causing widespread contamination of the U.S. corn supply with the MIR 162 trait.

115. This conduct constitutes an unreasonable and substantial interference with rights common to the general public.

116. This unreasonable interference is imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Syngenta's testing, growing, storing, transporting, selling, disposing, or otherwise disseminating Viptera corn: (a) without adequate precautions to prevent contamination of the U.S. corn and corn seed supplies; (b) with the knowledge that Viptera corn would contaminate other corn; (c) with the knowledge that this contamination would likely affect the U.S. corn and corn seed supplied; or (d) with the knowledge that there was a substantial risk of contamination of corn and corn seed supplies earmarked for export.

117. This interference is unreasonable in that it involves a significant interference with the public health, public safety, public peace, public comfort, and/or for the public convenience. It is also unreasonable in that it is proscribed by law, is of a continuing nature and has produced permanent or long-lasting effects.

118. Plaintiff and the other Class members have suffered harm caused by Syngenta's public nuisance, distinct from and different than that suffered by the general public in that, as described above, they have suffered business losses in the form of, among other things, the rejection of their crops by certain export markets (namely China); wrongful rescission of sales contracts; reduced or restricted demand for their products and services in certain markets; and reduced prices for their products and services in markets still utilizing their products and services.

119. Syngenta knew, or should have known, that its conduct would naturally result in injuries and damages to Plaintiffs and the other class members. Nevertheless, Syngenta continued such conduct in reckless disregard of, or conscious indifference to, those consequences.

COUNT III:
TRESPASS TO CHATTELS

120. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

121. Plaintiffs and the other Class members entered into contracts for the sale of corn.

122. As previously described herein, Syngenta, by testing, growing, storing, transporting, selling, disposing, or otherwise disseminating Viptera corn, has contaminated the United States corn supply, including the corn supply from the State of South Carolina.

123. The contamination of the corn supply from the MIR 162 trait has negatively impaired the condition, quality, or value of the U.S. corn supply, including corn supply from the State of South Carolina.

124. Plaintiffs and the other Class members, due to the loss of markets and the decline of corn prices, have been damaged in an amount to be proven at trial as a direct and proximate result of Syngenta's wrongful conduct.

125. Syngenta's actions, including the growing, testing, storing, transporting, selling, disposing, or otherwise disseminating Viptera corn, which led to the market-wide contamination, have harmed Plaintiff's and the other class members' economic interests and interfered with Plaintiff and Class members' possessory rights.

COUNT IV:
NEGLIGENCE

126. The Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

127. With respect to its testing, growing, storing, transporting, selling, disposing, or otherwise disseminating Viptera corn, Syngenta had a duty to use its professional expertise and exercise the degree of skill and learning ordinarily used under the same, or similar, circumstances by a person or entity in Syngenta's business.

128. Syngenta breached this duty by failing to exercise the requisite degree of care in testing, growing, storing, transporting, selling, disposing, or otherwise disseminating Viptera corn to prevent it from contaminating the U.S. corn supply, including South Carolina corn supply.

129. Upon information and belief, Syngenta breached its duty by failing to notify the appropriate regulatory bodies and the public in a timely fashion after it first learned of the contamination of the U.S. Corn supply with MIR 162.

130. The damages incurred by Plaintiff and the other Class members were, or should have been, foreseen by Syngenta, as Syngenta was uniquely positioned to understand the risks of releasing Viptera corn, including but not limited to, the near certainty of cross-pollination, risks of intentional or unintentional commingling of Viptera corn with non-Viptera corn, China's zero-tolerance policy for MIR 162, and China's large-and growing- United State corn import market.

131. Syngenta breached its duties, as alleged above, and also breached the requisite standard of care owed to all foreseeable plaintiffs, and was therefore negligent.

132. Syngenta's breaches are a direct and proximate cause of the injuries and damages sustained by the Plaintiffs and the other Class members.

COUNT V:
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

133. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

134. Plaintiffs had a business relationship with various grain elevators, co-ops, and supply companies whereby Plaintiffs would sell their corn to such companies. This business relationship was memorialized by invoices, receipts, and other documents showing a consistent course of sales.

135. Plaintiffs had a reasonable expectation of economic gain resulting from the relationship with these grain elevators and supply companies, and Plaintiffs reasonably expected to continue to sell corn from its farms to such companies. Thus, Plaintiffs rightfully maintained the expectation that such business relationships would continue in the future.

136. Defendant Syngenta knew that Plaintiffs and other farmers had business relationships with such grain elevators and supply companies in the normal chain of crop export and sales, and Syngenta was fully aware that Plaintiff and other farmers expected these business relationships to continue in the future.

137. Despite this knowledge, Syngenta made representations that deceived and/or continue to deceive farmers and other consumers as to whether grain elevators and other supply companies would accept Viptera and Duracade corn. These misrepresentations, which included a "Plant With Confidence" fact sheet on Syngenta's website and other various forms, stated that Viptera corn is or would be imminently approved for import into China. As a result of these representations, Plaintiff and other Class members reasonably believed that growing Viptera and Duracade was commonplace and that their ability to sell such corn would not be impacted.

138. Syngenta interfered with these prospective future business relationships through its conscious decision to bring Viptera and Duracade corn to the market. Syngenta knew, or should have known, that the releasing MIR 162 corn would lead to the contamination of all United States corn shipments and prevent United States corn from being sold to export markets such as China, which has not granted import approval.

139. Syngenta's release of MIR 162 corn has destroyed the export of U.S. corn to China and caused depressed prices for all domestic corn producers. Thus, Plaintiffs and other Class

members are unable to sell their corn to grain elevators and supply companies at the price they reasonably expect to receive.

140. Syngenta intentionally interfered with Plaintiffs' prospective business relationships; and Syngenta knew the interference was certain or substantially certain to occur as a result of its conduct in releasing the MIR 162 corn into the U.S. market.

141. Plaintiff and Class members have been proximately damaged and continue to be damaged as a result of Syngenta's interference.

142. Syngenta's tortious conduct serves as a direct and proximate cause of the injuries and damages sustained by the Plaintiff and the other class members.

COUNT VI:
PRODUCTS LIABILITY: DESIGN DEFECT

143. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

144. Syngenta was, and continues to be, a supplier of Viptera corn.

145. Syngenta has and continues to manufacture, sell, or otherwise distribute Viptera corn.

146. Viptera corn was used in a manner reasonably anticipated.

147. Viptera is unreasonably dangerous in its composition and design as explained in detail above.

148. As a direct and proximate cause of the defective and unreasonably dangerous condition of Viptera corn as it existed when Syngenta supplied it, Plaintiff and the other Class members have sustained injuries and damages as alleged above.

149. Syngenta knew, or should have known, that its conduct would naturally or probably result in injuries and damages to the Plaintiff and the Class members.

150. Syngenta's Viptera corn is the direct and proximate cause of the injuries and damages sustained by Plaintiffs and the other Class members.

151. Syngenta is strictly liable to Plaintiffs and other Class members for harm caused by its unreasonably dangerous products.

152. Nevertheless, Syngenta acted and continues to act in reckless disregard with conscious indifference to those consequences.

COUNT VII:
PRODUCTS LIABILITY: FAILURE TO WARN

153. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.

154. Syngenta is strictly liable to Plaintiffs and other Class members as a result of its failure to warn about the dangers of planting, growing, harvesting, transporting, or otherwise using Viptera corn.

155. Syngenta sold Viptera corn in the course of its business, as alleged above.

156. When planted, grown, harvested, transported, or otherwise utilized as reasonably anticipated and without knowledge of its characteristics, Viptera corn was unreasonably dangerous at the time of its sale.

157. Syngenta did not give an adequate warning of the danger of planting, growing, harvesting, transporting, or otherwise utilizing Viptera corn.

158. Upon information and belief, Viptera corn was used in a reasonably anticipated manner.

159. Plaintiff and the other Class members suffered injury and damages as a direct and proximate result of Syngenta's failure to provide an adequate warning regarding the dangers of planting, growing, harvesting, transporting, or otherwise using Viptera corn at the time Viptera corn was sold.

160. Thus, Syngenta knew, or should have known, that its conduct would naturally or probably result in injuries to Plaintiff and the other Class members.

161. Nevertheless, Syngenta continued such conduct in reckless disregard of, or conscious indifference to, those consequences.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully requests that the Court enter judgment in their favor and against Defendants, jointly and severally, as follows:

A. That the Court certify the Class and Subclass pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), and designate Plaintiff as Class Representative and its counsel as Class Counsel;

B. That the Court enter preliminary and permanent injunctions providing that Syngenta shall be enjoined from selling, marketing, distributing, or otherwise disseminating Viptera corn and Duracade corn, in addition to any other product featuring MIR162, until such time that MIR162 has been approved for import to China;

C. That the Court enter a judgment ordering Syngenta to take affirmative steps to remediate the contamination that it has already caused;

D. That the Court enter a judgment finding:

(1) Syngenta falsely advertised Viptera corn under §43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

(2) Syngenta's release of Viptera corn constitutes a public nuisance.

(3) Syngenta's release of Viptera corn and the contamination of the U.S. corn supply constitute a trespass to chattels.

(4) Syngenta's release of Viptera corn was negligent.

(5) Syngenta is strictly liable for damages caused as a result of the release of Viptera corn.

(6) Syngenta fraudulently misrepresented the approval status of Viptera corn.

(7) Syngenta tortuously interfered with Plaintiff's prospective business relationships by releasing MIR 162 corn into the U.S. market.

E. That the Court award monetary damages, including compensatory relief, to which Plaintiff and the proposed class members are entitled to, in an amount to be determined at trial but exceeding $75,000.00.

F. That the Court award prejudgment interest, the costs of this action,

G. Reasonable attorneys' fees; and

H. All such other and further relief as the Court deems proper.

DATED: November 10, 2014

Respectfully submitted:

/s/ J. Preston Strom, Jr.
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