IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION

RICHARD FREDRICK LANIER,	)	
WILLIAM COUNCIL LANIER,	)	
AND	)	
RICHARD RALPH LANIER, JR.	)	
Plaintiffs,	)	
	)	
vs.	)	**Case No:**
	)	
SYNGENTA AG, SYNGENTA CROP	)	
PROTECTION AG, SYNGENTA	)	
CORPORATION, AND SYNGENTA	)	
SEEDS, INC.	)	

PLAINTIFFS' CLASS ACTION COMPLAINT

COME NOW the Plaintiffs, by the undersigned attorneys, who brings this action individually and on behalf of all others similarly situated against Defendants Syngenta AG, Syngenta Crop Protection AG, Syngenta Corporation, and Syngenta Seeds, Inc., (collectively "Defendants" or "Syngenta") and allege as follows:

NATURE OF THE CASE

1. Richard Fredrick Lanier ("RFL") is an individual resident of North Carolina. William Council Lanier ("WCL") is an individual resident of North Carolina. Richard Ralph Lanier ("RRL") is an individual resident of North Carolina. RFL, WCL and RRL are collectively hereinafter referred to as "Plaintiffs". Plaintiffs are engaged in the business of farming, including ownership

and cultivation of farmland whereby corn is planted, grown, harvested and ultimately sold. The Defendants are corporations actively doing business in the state of North Carolina and within this District, thus are subject to personal jurisdiction. Venue lies in this district because a substantial part of the farmland and the associated corn farming operations of the Plaintiffs and those similarly situated forming the subject and the basis of this action are situated in this District and a substantial part of the events or omissions giving rise to this action occurred in this District. Jurisdiction of this Court is proper because the amount in controversy far exceeds the minimum jurisdictional requirements of this Court.

2. Syngenta's conduct and fault is more fully described in exacting detail below, and as a consequence of the Defendants' actions Plaintiffs and those similarly situated have suffered substantial damages, and their ability to profitably grow, cultivate, harvest and market corn is at great risk. By way of background, beginning in 2009, Syngenta released, prematurely, a genetically modified corn trait, MIR162, under the trade name Agrisure VIPTERA™ ("VIPTERA") into the U.S. market. Syngenta's actions thereafter and as more specifically described herein caused the contamination of the entire U.S. corn supply with a genetic trait called MIR162. MIR162 is prohibited from sale in countries such as China where it has not been approved for either purchase or consumption.

3. A substantial amount of the total U.S. corn crop, specifically

including North Carolina's corn production, is exported. The U.S. exports of corn amount to billions of dollars annually. Further, the U.S. corn marketing system is commodity-based, meaning the corn grown by farmers such as the Plaintiffs and those similarly situated to the Plaintiffs in North Carolina and throughout the U.S. is harvested, gathered, commingled, consolidated, and otherwise shipped from thousands of farms from which it is cultivated, harvested and passed through local, regional, and terminal distribution centers. In order to maintain the stability of the corn marketing system and its integrity, it is essential that the U.S. corn supply and U.S. corn exports maintain the highest standards of purity and integrity. Prior to the incidents giving rise to this lawsuit, the U.S. corn market maintained a reputation for such purity and integrity. Now, due to Syngenta's premature release of VIPTERA corn, sale of U.S. corn previously exported to China has ceased. China now refuses to import U.S. corn, corn grown, harvested and marketed by farmers and landowners such as the Plaintiffs and those similarly situated.

4. Plaintiffs and those similarly situated have incurred losses arising from the rejection of U.S. grown corn by export markets. They have sustained damage to their farmland and entire farming operations. And because the substantial portion of the U.S. corn crop is exported annually, the United States ability and limitations of corn exports deeply impacts corn price levels, including domestic prices in the corn market. Due solely to Syngenta's release of VIPTERA,

Plaintiffs and those similarly situated have incurred, and will continue to incur, substantial losses arising from the loss of export markets in amounts that have yet to be fully determined, but are far in excess of this Court's jurisdictional amounts for diversity jurisdiction.

5. Syngenta is, among other things, in the business of developing and selling in this district, in North Carolina and throughout the U.S., corn seed with certain genetically modified traits. After development, Syngenta then licenses corn seed with multiple genetically enhanced features, called "trait stacks," to seed manufacturers, including Syngenta subsidiaries.

6. The primary focus of this case is Syngenta's corn containing the MIR162 trait, utilized in the VIPTERA and Agrisure DURACADE™ ("DURACADE") trait stacks. DURACADE is Syngenta's second generation of MIR162 corn and was released, sold and distributed for planting in 2014. Over seventy (70) varieties of corn utilize the MIR162 trait to produce a protein that results in insect resistance. These corn varieties are commonly referred to as VIPTERA corn and DURACADE corn, representing the particular traits the corn will express.

7. Plaintiffs' harm and consequent damages, and the harm and damages of those similarly situated to Plaintiffs arise primarily, if not solely, from Syngenta's intentional and reckless release of VIPTERA and DURACADE into the

U.S. market prior to Syngenta obtaining approval for MIR162 import into China and other countries.

8. VIPTERA corn has been grown, licensed, marketed, sold, and/or otherwise disseminated in the United States since early 2009. Despite this, as of the time of filing this Complaint, crops or products containing MIR162 lacked approval for import into China (among other countries), and China refuses to accept corn containing MIR162.

9. Although it lacked approval to import corn or other products containing MIR162 into China, Syngenta nevertheless misinformed farmers such as the Plaintiffs and those similarly situated, grain elevators, grain exporters, landowners, Syngenta's own investors, the farming community and the general public, leading all to believe that approval from China was imminent. For example, during Syngenta's first quarter 2012 earnings conference call, Syngenta CEO Michael Mack stated "[t]here isn't outstanding approval for China, ***which we expect to have quite frankly within the matter of a couple day***s . . . we know of no issue with that whatsoever . . . ." *Exhibit A*, Transcript of Syngenta's First Quarter 2012 Earning Conference Call Transcript (emphasis added).

10. Contrary to Syngenta's affirmative misstatements, MIR162 was not approved for import by China in 2012 and remains unapproved.

11. Despite knowing MIR162 has never been approved for import into

China, Syngenta created and distributed forms and documents that imply MIR162 is accepted in China. Syngenta's "Request Form for Biosafety Certificate Issued by the Chinese Ministry of Agriculture" states, "Biosafety Certificates for the following transgenic event(s) were issued to Syngenta Seeds AG . . . by the Ministry of Agriculture (MOA) of the People's Republic of China (PRC)." Syngenta's request form includes MIR162 among approved genetically modified traits, even though MIR162 is not approved. *See Exhibit B*, Syngenta's Request Form For Biosafety Certificate(s) Issued by the Chinese Ministry of Agriculture.

12. *Exhibit B*, the Syngenta form, further states: "The requested Biosafety Certificates will be provided to Recipient to assist Recipient in obtaining required authorization for shipments containing the above marked Corn Product(s) into China." Syngenta's form is flagrantly deceptive, and deceives those like the Plaintiffs and those similarly situated because MIR162 has never been approved for import into China.

13. Plaintiffs and those similarly situated relied upon the statements in this and similar forms from Syngenta, and Syngenta omitted material information while marketing its seeds to the Plaintiffs and those similarly situated when it failed to disclose that MIR162 has never been approved for import into China, which was set to be one of the largest, if not the largest, importers of corn in the world

14. In November 2013, shipments of corn containing MIR162 arrived in China. These shipments were rejected because MIR162 was present and not approved for import. Since this initial rejection, China has continued to reject shipments of corn due to the MIR162 contamination caused by Syngenta. In fact, the widespread nature of MIR162 contamination has, for all intents and purposes, shutdown the 2014 U.S. corn export market to China, causing billions of dollars of damages to U.S. exporters, including farmers, farm landowners and farming entities.

15. It is also without serious dispute that Syngenta knew the potential for catastrophic damage when unapproved traits are released prematurely. The NGFA and NAEGA advised:

> U.S. farmers, as well as the commercial grain handling and export industry, depend heavily upon biotechnology providers voluntarily exercising corporate responsibility in the timing of product launch as part of their product stewardship obligation. Technology providers must provide for two critical elements: First maintaining access to key export markets like China, or for that matter any market like China that has a functional, predictable biotech-approval process in place; for restricted marketability of their products based upon approval status in major markets. The negative consequences of overly aggressive commercialization of biotech-enhanced events by technology providers are numerous, and include exposing exporting companies to financial losses because of cargo rejection, reducing access to some export markets, and diminishing the United States' reputation as a reliable, often-preferred supplier of grains, oilseeds and grain products. Premature commercialization can reduce significantly U.S. agriculture's contribution to global food security and economic growth. Putting the Chinese and other markets at risk with such aggressive commercialization of biotech-enhanced events is not

in the best interest of U.S. agriculture or the U.S. economy.

Exhibit C, NGFA and NAEGA Joint Statement on Media Reports of Lawsuit Involving Syngenta's Agrisure VIPTERA™ Corn (MIR162).

16. According to the National Grain and Feed Association, Syngenta's premature release of VIPTERA corn cost the U.S. corn market a minimum of $1 Billion - and up to $3 Billion - due to the rejection and resulting seizures of U.S. containers and cargo ships transporting U.S. corn to China. *Exhibit D*, Legal Obligations and Potential Market Impacts Associated with Biotech-Enhanced Seeds Producing Grain Not Approved for Import into US. Export Markets.

17. Syngenta's motivation in prematurely releasing VIPTERA corn is purely profit driven, placing Syngenta's profits first and foremost ahead of the U.S. Corn interests, including but not necessarily limited to the Plaintiffs and those similarly situated. Upon information and belief, VIPTERA corn is presently approximately 25% of Syngenta's corn portfolio. In 2013, Syngenta's corn sales were over $3.5 billion. *Exhibit E*, Syngenta's Annual Report, Form 20-F, Pg. 13, filed with the Securities and Exchange Commission on February 13, 2014.

18. And at present, Syngenta nevertheless continues its irreparable damage to U.S. exports of corn to China, although Syngenta either knew or should have known, or actually knows, that VIPTERA corn would and now has crippled exports of corn to China. Syngenta likewise knew or should have known of the

devastating effect of its release of MIR162 because, as Syngenta states in its Bio Product Launch Policy, "We will conduct market and trade assessments to identify key import markets for all of our biotech products prior to product commercialization." *See*, www.syngentabiotech.com/ biopolicy.aspx (as of Sept. 11, 2014). Nevertheless, with such knowledge, Syngenta released its MIR162 in reckless disregard of the consequences from which malice may be inferred, and punitive damages should be assessed to punish Syngenta and deter others from such outrageous, selfish conduct in utter disregard of the damage to those such as the Plaintiffs and those similarly situated.

19. Despite the above, Syngenta continues its conduct by releasing a second version of MIR162 corn, DURACADE, once again without import approval from China.

20. Concerned about another premature release and given the damage Syngenta singlehandedly caused to the corn export market with its premature release of VIPTERA corn, the National Grain and Feed Association ("NGFA") and North American Export Grain Association ("NAEGA") released a joint statement to Syngenta requesting that Syngenta stop the release of DURACADE corn, so that it would stop the cycle of rejection and damage.

21. In that statement, the two organizations stated:

> NAEGA and NGFA are gravely concerned about the serious economic harm to exporters, grain handlers and, ultimately,

> agricultural producers - 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.

Exhibit F, Joint Statement Issued by NGFA and NAEGA Regarding Letter to Syngenta Requesting Suspension of Commercialization Activities of Syngenta's Agrisure VIPTERA® and DURACADE® Corn.

22. Yet, despite the joint petitions and pleas from the NGFA and NAEGA, Syngenta released DURACADE. This second premature release further jeopardized the Chinese import market, as DURACADE contains not only unapproved MIR162, but also other unapproved traits. Contamination of corn with these additional genetically modified ("GM") traits, as set forth more fully below, will continue the rejection of U.S. corn shipments to China.

23. Plaintiffs are North Carolina corn farmers in the business of owning and cultivation of farmland, planting, growing, and harvesting corn with the expectation of ultimately selling the corn they grow, just as those similarly situated. Plaintiffs and those similarly situated, have been damaged, at least, by: 1) Syngenta's premature release of VIPTERA corn into the U.S. corn and corn seed supply which has destroyed the export of U.S. corn to China; 2) Syngenta's premature release of DURACADE corn into the U.S. corn and corn seed supply which, again, has effectively foreclosed U.S. exports of corn to China; 3)

Syngenta's materially misleading statements relating to the approval status of MIR162 in China upon which Plaintiff and those similarly situated relied or upon which Syngenta failed to disclose material facts that MIR162 was not approved in China; 4) and upon information and belief, Syngenta's widespread contamination of the U.S. corn and corn seed supply with MIR162 which will continue to result in the destruction of the U.S. corn export market to China for years to come.

24. Plaintiffs for themselves and all others similarly situated seek relief for compensatory, consequential, and punitive damages, and injunctive relief arising from, inter alia:

a. Syngenta's harm to Plaintiffs caused by contamination of the general U.S. corn and corn seed supply in the form of, inter alia, (i) inability to export corn to China, (ii) diminished corn and corn product prices resulting from the loss of the entire Chinese corn import market.

b. Syngenta's premature release of VIPTERA corn into the U.S. corn supply, knowing that once VIPTERA corn was released, it would be commingled with and would contaminate the U.S. corn supply resulting in the inability to export to markets that had not approved products containing MIR162 (such as China);

c. Syngenta's encouragement of farmers to plant VIPTERA corn in such a manner that it would contaminate the U.S. corn supply, so that U.S. corn could not be sold to markets that had not approved products containing MIR162;

d. Syngenta's failure, either by itself or through its agents, to adequately warn VIPTERA corn farmers of the necessary precautions and limitations required to prevent contamination to non-VIPTERA corn via cross-pollination, including the necessity for carefully cleaning all equipment, storage bins and related farm implements;

e. Syngenta's failure, either by itself or through its agents, to adequately warn DURACADE corn farmers of the necessary precautions and limitations required to prevent contamination to non- DURACADE corn via cross-pollination;

f. Syngenta's testing, growing, storing, transporting, marketing, selling, disposing, or otherwise disseminating VIPTERA corn in light of knowledge that it was essentially impossible to prevent contamination of other non-VIPTERA corn via cross-pollination;

g. Syngenta's testing, growing, storing, transporting, marketing, selling, disposing, or otherwise disseminating DURACADE corn in light of knowledge that it was essentially impossible to prevent contamination of other non- DURACADE corn via crosspollination;

h. Syngenta's marketing, selling, or otherwise disseminating VIPTERA corn in light of knowledge that it was essentially impossible to prevent contamination of other non-VIPTERA corn via cultivation, harvesting, handling, storage, and transportation, resulting in damages from loss of sales and to equipment;

i. Syngenta's marketing, selling, or otherwise disseminating DURACADE corn in light of knowledge that it was essentially impossible to prevent contamination of other non-DURACADE corn via cultivation, harvesting, handling, storage, and transportation;

j. Syngenta's materially false statements and representations made regarding the regulatory-approval status of MIR162 and VIPTERA corn or, in the alternative, Syngenta used deception, fraud or false pretense, or through failure disclose material facts, through concealment or suppression of material facts, omission, deception, fraud or false pretense of material facts in connection with the regulatory-approval status of MIR162 and VIPTERA corn with the intent that the Plaintiffs and those similarly situated, along with the corn farming industry rely upon their concealment, suppression or omission of material facts, all of which was a proximate cause of the Plaintiffs damages and damages to those similarly situated; and

25. Syngenta made the conscious decision in reckless disregard of the consequences from which malice may be inferred that it was more profitable to

speed VIPTERA to the market, maximize and extract a huge profit, and recoup its research costs, even though it knew the premature release of VIPTERA corn would prevent U.S. corn from being sold to markets such as China. By doing this, Syngenta crippled the 2013 and 2014 corn export markets to China. Further, on top of devastating the entire corn market and inflicting at least $1 billion in economic damage, Syngenta prematurely released another MIR162 corn hybrid, further devastating and inflicting widespread harm to the U.S. corn market, and all causing lost sales and income to the Plaintiffs.

PARTIES

26. Plaintiffs are engaged in the business of farming, including ownership and cultivation of farmland whereby corn is planted, grown, harvested and ultimately sold. Plaintiffs' income is premised upon the ultimate sale of the crops grown on their farmland, here corn. Plaintiffs have never purchased MIR162 corn from Syngenta.

27. Defendant Syngenta AG is a corporation organized and existing under the laws of Switzerland with its principal place of business at Schwarzwaldallee 215, 4058 Basel-Stadt, Switzerland.

28. Defendant Syngenta Crop Protection AG is a corporation organized and existing under the laws of Switzerland with its principle place of business at Schwarzwaldallee 215, 4058 Basel-Stadt, Switzerland.

29. Defendant Syngenta Corporation is a Delaware corporation with a principle place of business at 3411 Silverside Road #100, Wilmington, Delaware 19810-4812 and may be served through its registered agent, CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 37601.

30. Defendant Syngenta Seeds, Inc. is a Delaware corporation which, upon information and belief, is doing business in North Carolina under the fictitious name of Novartis Seeds, Inc., with its principle place of business at 11055 Wayzata Boulevard, Minnetonka, Minnesota 55305-1526, and may be served through its registered agent, CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 37601.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332 and supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

32. This Court has personal jurisdiction over the Defendants because Defendants regularly and systematically conduct business in this District, including, at minimum, the marketing and sale of VIPTERA and DURACADE corn within this District.

33. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants have and continue to market, sell, and/or otherwise disseminate VIPTERA and DURACADE corn in this District, and because

Defendants are actively doing business in this District.

34. Venue is further proper because a substantial part of the property, particularly the farming operations and the farmland that is the subject of and forming the basis of this action, is situated in this District, and a substantial part of the events or omissions giving rise to this action occurred in this District.

FACTUAL ALLEGATIONS

The United States Corn Export Market

35. Corn is the most widely-cultivated grain crop in the U.S. The United States is a major player in the world corn trade market, and is the world's largest producer and exporter of corn. Approximately 80 million acres of farmland is devoted to growing corn. Nearly 20% of U.S. corn is exported to other countries.

36. The premature release of VIPTERA corn has hurt the U.S. corn market in many ways.

37. The NGFA estimated that the premature release of VIPTERA corn caused corn prices to decline by $0.11 per bushel. *Exhibit G*, Lack of Chinese Approval for Import of U.S. Agricultural Products Containing Agrisure VIPTERA™ MIR162: A Case Study on Economic Impacts in Marketing Year 2013/14.

38. The U.S. corn marketing system, generally, is commodity-based and gathers, commingles, and ships corn from hundreds of thousands of farmers just

like Plaintiffs together with those similarly situated, through local, regional, and terminal grain elevators. Grain elevators and other corn storage and transportation facilities are generally not equipped to test and segregate corn varieties, and to undertake testing and segregation at these facilities causes disruption and expense.

39. After rejections of U.S. corn by China started in late 2013, Plaintiffs corn prices plunged and continue downward.

40. VIPTERA corn was developed by Syngenta by using modern biotechnology techniques. Syngenta modified the corn by inserting genetic material from a bacterium, *Bacillus thuringiensis ("Bt").* Within the corn-biotechnology industry, corn manipulated in this fashion is commonly referred to as "*Bt corn*."

41. The specific genetic material inserted into the genome of VIPTERA corn allows the genetically altered corn to produce certain proteins including Cry1Ab, mCry3A, and Vip3A.

42. These proteins have insecticidal properties which, according to Syngenta, "controls more insects than any other trait stack on the market" including Black Cut Worm, Corn Earworm, European Corn Borer, Fall Armyworm, Western Bean Cutworm, and Stalk Borer.

43. VIPTERA's insecticidal protection comes from the Vip3A protein, a "vegetative insecticidal protein," which binds to the insect's midgut epithelium and

forms pores, killing the insect before further crop damage may be done.

44. Syngenta invested approximately $200 million and five to seven years developing VIPTERA corn.

45. Notably, VIPTERA corn is protected by Syngenta patent(s) giving Syngenta the right to exclude others from selling products with the VIPTERA corn traits. This is part of its motivation in pushing this product prior to approval from China (i.e., Syngenta is attempting to maximize its period of exclusivity when no others can sell VIPTERA corn).

46. As a bio-engineered product, VIPTERA corn was subject to U.S. and foreign regulatory approval prior to cultivation or import.

47. Syngenta had registered VIPTERA corn as a pesticide with the Environmental Protection Agency.

48. VIPTERA was deregulated by the U.S. Department of Agriculture in April 2010.

49. In the spring of 2010, Syngenta made the decision to release VIPTERA corn commercially for the 2010/11 growing season. This release came at a time when VIPTERA corn lacked approval by import markets such as China, Japan, and the European Union.

50. At the time of release, Syngenta believed and reassured the public that approval in Japan and the European Union was imminent. Syngenta, however,

was silent regarding China.

51. Japan and the European Union have since approved the importation of VIPTERA corn. China, however, has not. Despite this, Syngenta encouraged and still encourages farmers to grow VIPTERA corn.

52. To date, China has still not approved the importation of any product containing MIR162.

Contamination of the United States Corn Supply

53. Commingling different varieties of corn is always a risk during planting, harvesting, drying, storage, and transportation of corn. Thus, once released, a corn variety will, without adequate protections, contaminate the broader corn supply.

54. Despite contamination risks, Syngenta offered farmers a "side-by-side program" which encouraged farmers to plant VIPTERA corn side-by-side with other corn seed.

55. Rather than instruct its customers on how to limit the contamination of VIPTERA corn into the broader corn supply, Syngenta's side-by-side program encouraged farmers to not take precautions. By doing this, Syngenta helped spread the amount of MIR162 that would appear in the U.S. corn supply, thus putting at risk Chinese exports.

56. Syngenta knew or should have known that encouragement of side-by-

side planting of VIPTERA and non-VIPTERA corn would inevitably lead to commingling.

57. Syngenta knew or should have known that this commingling would result in rejected shipments of U.S. corn by Chinese regulatory officials.

58. In short, Syngenta knew or should have known of the high risk and consequences of commingling VIPTERA corn with the broader corn supply. Syngenta encouraged farmers to disregard practices designed to prevent commingling and encouraged side-by-side planting of VIPTERA and non-VIPTERA corn, essentially ensuring the contamination by commingling.

59. Corn replicates by cross-pollination from one plant to another. Pollen from corn has been shown to "drift" over considerable distances and cross-breed with corn from other plants.

60. The corn resulting from cross-pollination can express traits from the pollen-donating plant.

61. Those knowledgeable in the field suggest that, at a minimum, pollen can travel 200 feet. Some studies have found that cross-pollination cannot be eliminated, even at a distance of one third of a mile. *Exhibit H*, Peter Thomison, Managing "Pollen Drift" to Minimize Contamination of Non-GMO Corn, The Ohio State University Extension Fact Sheet, available at http://ohioline.osu.edu/agf-fact/0153.html (last visited Sept. 9, 2014).

62. Without adequate precautions, neighboring com fields will exchange pollen.

63. The Thomison article states "[e]ach corn plant is capable of producing 4 to 5 million pollen grains." *Id.*

64. Further, the Thomison article states "even if only a small percentage of the total pollen shed by a field of corn drifts into a neighboring field, there is considerable potential for contamination through cross pollination." *Id.*

65. Syngenta, as a leader in the field of corn biotechnology, understood or should have understood the effects of contamination by cross-pollination at the time of the release of VIPTERA corn.

66. Syngenta recognized in its "Agrisure™ Traits Stewardship Guide" that "[a] normal occurrence in corn production is cross-pollination ... " and "[i]t is not possible to achieve 100% purity of seed or grain in any corn production system and a certain amount of adventitious pollen movement will occur." *Exhibit I*, Syngenta 2011 Agrisure™ Traits Stewardship Guide.

67. Other seed producers agree. DuPont Pioneer published a fact sheet stating "Remember that achieving 100% purity is virtually impossible in seed or grain production." *Exhibit J*, DuPont Pioneer Maximizing Genetic Purity of Corn in the Field, available at https://www.pioneer.com/CMRoot/Pioneer/US/products/stewardship/genetic purity.pdf (last visited Sept. 9, 2014).

68. Upon information and belief, Syngenta encouraged cross-pollinating of VIPTERA corn with non-VIPTERA corn and its "side-by-side program" because it knew that cross-pollination was certain to occur. Unfortunately, this led to additional contamination of the U.S. corn supply with the MIR162 trait.

69. To summarize, Syngenta knew that pollen drift was certain to occur and encouraged farmers to plant VIPTERA corn in a way that promoted cross-pollination and thus contamination of the U.S. corn supply.

VIPTERA – A Continuing Controversy

70. After the 2011 planting season, but before the 2011 harvest season, 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 harvest season.

71. Bunge cited the lack of Chinese import approval as its reason for not accepting VIPTERA corn.

72. In response, Syngenta sued Bunge in the Northern District of Iowa, seeking, inter alia, preliminary and permanent injunctions requiring Bunge to stop posting materials regarding its refusal to accept VIPTERA corn, and, more importantly, requiring Bunge to accept VIPTERA corn at its facilities. Complaint, Syngenta Seeds, Inc., v. Bunge North America, Inc., No. 5: 11-cv-04074-MWB, (N.D. Iowa Aug. 22, 2011) ECF No. 1.

73. Bunge responded to the lawsuit stating" ... we are surprised and disappointed that Syngenta has taken an action which could put at risk a major export market for U.S. corn producers [-] China." Further, in the same statement, Bunge made clear:

> Bunge's decision not to accept Agrisure VIPTERA is consistent with the North American Export Grain Association's (NAEGA) policy to advocate that technology providers receive all major international approvals for a trait prior to seed sales. The grain export industry, which includes Bunge, notified Syngenta more than a year ago that China is considered a major export market.

Exhibit K, Statement of Soren Schroder, President and CEO of Bunge North America, https://www.bungenorthamerica.com/news/28-bunge-responds-to-syngenta-suit (last visited August 21, 2014).

74. Syngenta's request for a preliminary injunction was denied. Memorandum Opinion and Order: Denying Motion for Preliminary Injunction, Syngenta Seeds, Inc., v. Bunge North America, Inc., No. 5:11-cv-04074-MWB, (N.D. Iowa Sept. 26, 2011) ECF No. 42.

75. Major grain handlers including Bunge, Archer Daniels Midland, Cargill, and Consolidated Grain and Barge still refuse to accept VIPTERA corn, as preventing commingling is essentially impossible.

The Chinese Imports Market

76. In the past, Japan and Canada were considered the major corn import markets. Accordingly, many biotech-trait commercialization decisions were made

based on approval obtained from these two countries.

77. However, in recent years, China has become a major importer of corn and corn products. A recent study by the USDA shows that during the 2012/13 import year China imported five times more corn than Canada. http://www.usda.gov/oce/commodity/wasde/latest.pdf (last visited Sept. 11, 2014).

Table 1
Corn Imports by Country by Trade Year
(Thousand Metric Tons)

	2009/10	**2010/11**	**2011/12**	**2012/13**	**2013/14 (estimated)**
Japan	15,971	15,648	14,892	14,412	15,500
China	1,296	979	5,231	2,702	3,500
Canada	2,100	950	870	480	400

Data compiled from USDA World Agricultural Supply and Demand Estimates available at http://www.usda.gov/oce/commodity/wasde/

78. China, having not approved the importation of VIPTERA corn, maintains a strict zero tolerance policy regarding contamination of corn imports with corn containing MIR162.

79. This means that any detection of MIR162 in a shipment to China could result in rejection of that shipment.

80. Syngenta had knowledge of China's zero-tolerance policy prior to the commercialization of VIPTERA corn.

81. Further, Syngenta had knowledge that there was no means of detecting a "zero" level of MIR162 in a given sample. At least, Charles Lee -

Syngenta's North American Head of Corn - stated, when asked about potential detection methods, "Yeah, nothing can detect to zero." *Exhibit L*, Deposition of Charles R. Lee - Sept. 7, 2011, Syngenta Seeds, Inc., v. Bunge North America, Inc., No. 5:11-cv-04074-MWB, (N.D. Iowa Sept. 15, 2011) ECF No. 32-6, 92:21. In other words, there is always a risk that if a corn shipment is tested in the U.S. and is negative for MIR162, a second test at port could result in a positive for MIR162.

82. Even further, when questioned about the decision-making process to commercialize VIPTERA corn, Mr. Lee stated that commercialization was premised on U.S. deregulation and Japanese and Canadian approval. *Id.* at 82:15-20.

83. Mr. Lee stated in his deposition "we operate on the principle that we need U.S., Japan and Canada. And so once we have those approvals, we do commercialization of the product . . . ." *Id.* at 90:10-13.

84. Therefore, Syngenta recognized that it is improper to rush a product to market without first receiving approvals from certain other countries to which U.S. corn is exported. Despite this knowledge, it did not wait for Chinese approval.

85. There was no requirement that Syngenta commercialize VIPTERA corn at this time. However, as stated by Mr. Lee, Syngenta was "trying to recoup

[its] costs as an organization." Further, Syngenta "[l]ike anybody, [wanted] to derive some income from [its] products." *Id.* At 70:22-71:13.

86. Syngenta also commercialized VIPTERA corn before major market approval as "[y]ou have to operate in the nongeneric period [of Syngenta's patent covering VIPTERA corn]. You like to optimize that period." *Id*. at 72:3-6.

87. On or about November 2013, cargo shipments of U.S. corn were rejected by Chinese regulatory officials after testing positive for VIPTERA corn.

88. 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 the impetus was that Shanghai Chinese Inspection and Quarantine Service ("CIQ") had detected MIR162. The December 24 notification indicated that all batches of corn would now be tested at the Chinese ports for MIR162, and that any cargo which tested positive for MIR162 would be returned or destroyed.

89. After this notification, corn transactions were at increased risk.

90. Also, since China initially only required certification from the seller/exporter that the shipped corn did not contain MIR162, a negative test result from the seller/exporter was sufficient. This allowed predictability in that customers in China would know from the beginning of a contract that the corn

products would clear Chinese customs.

91. Now that testing occurred at Chinese ports, an increased risk was placed on export contracts, because, as Syngenta testified, there was no way to detect a "zero" level of MIR162 (i.e., a negative test of a container in the U.S. could still result in a positive test in China). This caused an initial amount of Chinese customers to walk away from their contracts, placed great deal of uncertainty on the market, and dramatically hurt corn prices.

92. An increased frequency of corn shipments were testing positive, and in July 2014, China again strengthened its policy regarding MIR162.

93. Since November of 2013 (i.e., the positive tests for MIR162 in China), Chinese imports for U.S. corn have fallen by an estimated 85%.

94. This market shift comes as China was expected to import a record high 7 million tons of U.S. corn according to estimations made by the U.S. Department of Agriculture.

95. The rejection of U.S. corn imports has and continues to negatively impact the global corn market.

96. Syngenta knew or should have known that disruption to the Chinese import market would influence the global corn market.

97. Syngenta knew or should have known that contracts between grain exporters and Chinese corn buyers would be negatively affected if MIR162 was

found in grain exports to China.

Syngenta's Admissions Regarding MIR162

98. Syngenta knew or should have known of the damage that the rejection of corn by China would cost. For example, the unrebutted evidence at the hearing on Syngenta's Motion for Preliminary Injunction indicated that the redirection costs for a rejected shipment of contaminated corn could be anywhere from $4 million to $20 million for a single shipment. Memorandum Opinion and Order Regarding Plaintiff Motion for Preliminary Injunction, *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 (emphasis added).

99. Syngenta also knew or should have known that releasing MIR162 prior to Chinese approval would affect corn prices.

100. In Syngenta's 2010 Full Year Results, CEO Michael Mack ("Mr. Mack") stated that Chinese "import requirements alone influence global commodity prices." *Exhibit M*.

101. During Syngenta's 2011 Half Year Earnings Report, Mr. Mack again commented 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." *Exhibit N*.

102. In response to a question during the first quarter 2012 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 . . . ." *Exhibit A*.

103. Yet as set forth in the preceding paragraphs: the CEO of Syngenta publicly stated in 2012 that approval of VIPTERA was days away.

104. Mr. Mack's statement was made as an advertisement for VIPTERA corn.

105. Mr. Mack refers specifically to VIPTERA corn.

106. Mr. Mack had an economic motivation for making this statement—continued sales of VIPTERA corn.

107. Mr. Mack's statement was disseminated sufficiently to constitute promotion within the grain industry.

108. This statement, and others like this, dangerously impacted the corn market by, for example, encouraging 1) farmers to plant MIR162, 2) grain elevators to accept and comingle MIR162 with other grains, and 3) exporters to purchase and ship products containing MIR162.

109. Obviously, Syngenta was incorrect with its "matter of a couple days" prediction.

110. In 2014, Syngenta knew or should have known that China would not

approve MIR162 in time for 2014 planting. For example, Mr. Mack stated during Syngenta's first quarter 2014 conference call "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." *Exhibit O*.

111. During Syngenta's most recent earnings conference call—second quarter 2014—Mr. Mack made the following statements regarding Chinese approval of VIPTERA corn:

> You ask about VIPTERA and our regulatory issues. Actually, I think this 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.
>
> We don't have it in hand and I wouldn't want to say any more about when we might have it in hand, beyond to say that there is no question; there is no technical question right now waiting from the Chinese about it, and it's been approved already in virtually every other market. So, we'll see what happens over the coming weeks, months, quarters.

Exhibit P.

112. This statement confirms that Syngenta recognizes there is no end in sight for problems with exports to China due to its MIR162 products. Despite this, Syngenta continues to sell MIR162 products, as well as launch new GMO products, none of which have been approved by China. In doing so, Syngenta knows or should know that it will continue to destroy U.S. exports of corn to China.

113. Further, and despite its 2014 statements as to uncertainty in China, Syngenta misled exporters into believing products containing MIR162 would be accepted in China.

114. On its website, Syngenta has offered and continues to offer a form entitled "Request Form for Biosafety Certificate Issued by the Chinese Ministry of Agriculture." *See*, e.g., http://www3.syngenta.com/country/us/en/agriculture/Stewardship/Documents/ChinaSafetyCertificateApplication.pdf (last visited Sept. 9, 2014).

115. This form states, "Biosafety Certificates for the following transgenic event(s) were issued to Syngenta Seeds AG . . . by the Ministry of Agriculture (MOA) of the People's Republic of China (PRC)." One of the "transgenic event(s)" listed on this Syngenta form is MIR162.

116. The Syngenta form continues "The requested Biosafety Certificates will be provided to Recipient to assist Recipient in obtaining required authorization for shipments containing the above marked Corn Product(s) into China," and additionally states, "The Biosafety Certificate(s) provided allows importation of the above marked Corn Product(s) as raw materials for processing for food and feed use only, not for any research purpose or cultivation purpose."

117. The implication of this form is clear: if completed (by, for example, an exporter), Syngenta will issue Biosafety Certificates, which will ensure the

cargo can enter into China.

118. Syngenta's request form was released as an advertisement for VIPTERA corn, as it indicates that products containing MIR162 may be imported into China.

119. Syngenta's request form refers specifically to MIR162, the key trait in VIPTERA corn.

120. Syngenta had an economic motivation to include MIR162 on its request form, even though Syngenta knew MIR162 was not approved for import into China - continued sales of VIPTERA corn.

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

122. The statements made by Syngenta officials above show Syngenta knew that while the other Corn Products/transgenic events identified on this form were approved in China, MIR162 was not.

PLAINTIFFS' CLAIMS FOR RELIEF

COUNT I
VIOLATION OF LANHAM ACT – § 15 U.S.C. 1125(a)(1)(B)

123. Plaintiffs incorporate by reference Paragraphs 1-122 as though fully set forth herein.

124. 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.

125. Syngenta's statements and commentary made to the press, statements on the internet, during quarterly conference calls, and incorporated into Syngenta's forms, which, inter alia, represent 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.

126. Syngenta's statements were made as an advertisement for VIPTERA corn.

127. Syngenta's statements refer specifically to VIPTERA corn.

128. Syngenta had an economic motivation for making its statements—sales of VIPTERA corn.

129. Syngenta's statements were likely to influence purchasing decisions.

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

131. Upon information and belief, Plaintiffs and the farming community

have relied on Syngenta's material misrepresentations.

132. Plaintiffs have and continue to be damaged by Syngenta's material misrepresentations.

133. Plaintiffs' damages were proximately caused by Syngenta's acts.

134. Syngenta indicated Chinese approval of MIR162 was imminent, when in fact it was not, and Syngenta's "Certificate for Biosafety Certificate Issued by the Chinese Ministry of Agriculture" falsely represents that VIPTERA corn was approved for import into China. *See, Exhibit B*.

135. Syngenta's acts constitute the use of false descriptions and false representations in interstate commerce in violation of the § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT II
PUBLIC NUISANCE

136. Plaintiffs incorporate by reference Paragraphs 1-135 as though fully set forth herein.

137. Through the conduct alleged above, Syngenta has created a public nuisance by causing widespread contamination of the U.S. corn supply with the MIR162 trait.

138. 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 supplies; or (d) with the knowledge that there was a substantial risk of contamination of corn and corn seed supplies earmarked for export.

139. Syngenta has unreasonably interfered with the public's right to expect compliance with the federal laws governing the testing, growing, storing, transporting, selling, disposing, or otherwise disseminating VIPTERA corn. Syngenta has further unreasonably interfered with the public's right to expect that the corn sold to the general public is free from contamination with VIPTERA corn as well as the public's right to be notified of whether the corn sold to the public is contaminated with genetically-modified organisms—including corn containing MIR162—so that the public has the freedom to choose to purchase and consume non-contaminated corn.

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

141. Plaintiffs 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 the crops by certain export markets, namely China.

142. This constitutes an unreasonable and substantial interference with rights common to the general public, restricted demand for their products and services in certain markets; and reduced prices for their corn in all markets.

143. In light of the surrounding circumstances, Syngenta knew or should have known that their conduct would naturally or probably result in injuries and damages to the Plaintiffs. Nevertheless, Syngenta continued such conduct in reckless disregard of or conscious indifference to those consequences from which malice may be inferred and, consequently, punitive damages should be assessed to punish and deter.

COUNT III
COMMON LAW NEGLIGENCE

144. Plaintiffs incorporate by reference Paragraphs 1-143 as though fully set forth herein.

145. With respect to its testing, growing, storing, transporting, selling, disposing, or otherwise disseminating VIPTERA corn, Syngenta had a duty to utilize its professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar circumstances by a person or entity in

Syngenta's business.

146. 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.

147. Upon information and belief, Syngenta further breached their 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 MIR162.

148. The damages incurred by Plaintiffs were or should have been foreseen by Syngenta as Syngenta understood 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 MIR162, and China's large, and growing, U.S. corn import market.

149. Syngenta breached its duties, as alleged above, breached the requisite standard of care owed to all foreseeable Plaintiffs and those similarly situated, and was therefore negligent.

150. Syngenta's breaches are a direct and proximate cause of the injuries and damages sustained by the Plaintiffs in amounts not yet fully determined but far in excess of any amounts necessary for diversity jurisdiction.

COUNT IV
FAILURE TO WARN

151. Plaintiff incorporates by reference Paragraphs 1-150 as though fully set forth herein.

152. Syngenta is strictly liable to the Plaintiffs resulting from its failure to warn about the dangers of planting, growing, harvesting, transporting, or otherwise utilizing VIPTERA corn.

153. Syngenta sold VIPTERA corn in the course of its business, as alleged above.

154. 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.

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

156. Upon information and belief, VIPTERA corn was used in a reasonably anticipated manner.

157. Plaintiffs 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 utilizing VIPTERA corn at the time VIPTERA corn was sold.

158. In light of the surrounding circumstances, Syngenta knew or should

have known that their conduct would naturally or probably result in injuries to the Plaintiffs and class members.

159. Nevertheless, Syngenta continued such conduct in reckless disregard of or conscious indifference to those consequences from which malice may be inferred and punitive damages should likewise be assessed.

COUNT V
TORTIOUS INTERFERENCE

160. Plaintiffs incorporate by reference Paragraphs 1-159 as though fully set forth herein.

161. Plaintiffs had business relationships whereby Plaintiffs would sell their corn to grain purchasers. These business relationships were memorialized by invoices, receipts, and other documents showing a consistent course of sales.

162. Plaintiffs had a reasonable expectation of economic gain resulting from the relationships with their grain purchasers. Plaintiffs reasonably expected to continue to sell corn from their farms to such companies, and that the price at which they would be able to do so would be based on marketplace conditions and would not be adversely affected by the contamination of the U.S. corn supply with corn seed products that were not approved in all major export markets. Plaintiffs rightfully maintained the expectation that such business relationships would continue in the future.

163. Syngenta knew that Plaintiff 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.

164. Despite this knowledge, Syngenta made representations that deceived farmers and other consumers as to whether grain elevators and other supply companies would accept MIR162 corn, and deceived farmers and other consumers regarding the negative impact of MIR162 on U.S. corn prices. These misrepresentations, stated that MIR162 corn is or would imminently be approved for import into China.

165. Syngenta interfered with these prospective future business relationships through its conscious decision to bring MIR162 corn to the market. Syngenta knew, or should have known, that releasing MIR162 corn would lead to the contamination of all U.S. corn shipments and prevent U.S. corn from being sold in China, which had not granted import approval.

166. Syngenta's release of MIRl62 corn has destroyed the export of U.S. corn to China and caused depressed prices for all domestic corn producers. Thus, Plaintiffs and others similarly situated are unable to sell their corn to grain elevators and supply companies at the price they reasonably expected to receive.

167. 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 MIR162 corn into the U.S. market.

168. Plaintiffs have been proximately damaged and continue to be damaged as a result of Syngenta's interference.

169. Syngenta's tortious conduct serves as a direct and proximate cause of the injuries and damages sustained by Plaintiffs and the others similarly situated.

CLASS ACTION ALLEGATIONS

170. Plaintiffs bring this action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of itself and a class of persons or entities similarly situated.

171. Those similarly situated include persons and entities (excluding Syngenta and its officers, directors, and employees and all governmental entities) who, during the relevant time period grew, harvested or sold non-MIR162 corn and corn-related products on a commercial basis.

172. Plaintiffs assert claims against Syngenta, individually and on behalf of all class members for violations of the law as set forth below.

173. The requirements of Rule 23(a) are satisfied for the proposed class because the members of the proposed class are so numerous and geographically dispersed 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 to be hundreds of potential class members nationwide. Therefore, the "numerosity" requirement of Rule 23(a)(1) is met.

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

a. whether Syngenta, through its acts or omissions, caused or allowed MIR162 to contaminate the U.S. corn and corn seed supplies;

b. whether Syngenta, through its acts or omissions, caused or allowed MIR162 to contaminate the U.S. DDGS supply;

c. whether Plaintiffs and the members of the proposed class 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;

d. whether Plaintiffs and the members of the proposed class are entitled to compensatory, consequential, and exemplary damages; and

e. whether Plaintiffs and the members of the proposed class are entitled to declaratory, injunctive, or other equitable relief.

175. Plaintiffs' claims are typical of the claims of the proposed class that it seeks to represent, as described above, because they arise from the same course of conduct by Syngenta and are based on the same legal theories. Further, Plaintiffs seeks the same forms of relief for itself and the proposed class. Therefore, the "typicality" requirement of Rule 23(a)(3) is satisfied.

176. Because its claims are typical of the proposed class that Plaintiffs seeks to represent, Plaintiff has every incentive to pursue those claims vigorously.

Plaintiffs has no conflicts with, or interests antagonistic to, the farmers who have lost income and sustained other economic loss as a result of the loss of the China market. Plaintiffs are committed to the vigorous prosecution of this action, which is reflected in their retention of competent counsel experienced in complex and challenging litigation.

177. Plaintiffs' counsel satisfies the requirements of Rule 23 (g) to serve as counsel for the proposed class. Plaintiffs' counsel has (a) identified and thoroughly investigated the claims set forth herein, are (b) highly experienced in the management and litigation of class actions and complex litigation in general; (c) have extensive knowledge of the applicable law; and (d) possess the resources to commit to the vigorous prosecution of this action on behalf of the proposed class. Accordingly, Plaintiffs satisfy the adequacy of representation requirements of Rule 23(a)(4).

178. In addition, this action 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 or corresponding declaratory relief with respect to the proposed class appropriate.

179. This action also meets the requirements of Rule 23(b)(3). Common questions of law or fact, including those set forth above, exist as to the claims of all members of the proposed class and predominate over questions affecting only

individual class members, and a class action is superior - if not the only method - for the fair and efficient adjudication of this controversy.

180. 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.

181. This action is manageable as a class action. Notice may be provided to members of the proposed class by first-class mail and through the alternative means, including publication. Further, 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.

PRAYER FOR RELIEF

WHEREFORE, PREMISSES CONSIDERED, Plaintiffs pray they have of and recover from the Defendants, jointly and severally, compensatory and punitive damages, together with appropriate equitable relief, as follows:

A. Entry of 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 as MIR162 has been approved for import to China;

B. Entry of judgment ordering Syngenta to take affirmative steps to remediate the contamination that it has already caused;

C. Entry of judgment finding:

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

ii. Syngenta's release of VIPTERA corn constitutes a public nuisance;

iii. Syngenta's release of VIPTERA corn was negligent;

iv. Syngenta is strictly liable for damages done by the release of VIPTERA corn;

v. Syngenta release of VIPTERA corn constitutes tortious interference; and

D. Monetary damages including compensatory relief to which Plaintiffs are entitled and will be entitled at the time of trial, in an amount exceeding $75,000;

E. Prejudgment interest;

F. The costs of this action;

G. Attorneys' fees; and

H. Such other and legal and proper relief.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues.

Respectfully submitted,

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