

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

BADER FARMS, INC. and	)	
BILL BADER,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:16-cv-00299
	)	
MONSANTO CO.,	)	
	)	
Defendant.	)	

**AMENDED COMPLAINT**

COME NOW Plaintiff Bader Farms, Inc. and Plaintiff Bill Bader, by and through their undersigned counsel, and for their Amended Complaint against Monsanto Company, state as follows:

**The Parties**

1. Plaintiff Bader Farms, Inc. (hereinafter “Plaintiff Bader Farms”), is a Missouri corporation authorized to do business in the State of Missouri. Plaintiff Bader Farms is located and has its principal place of business in Campbell, Dunklin County, Missouri.

2. Plaintiff Bill Bader (“hereinafter “Plaintiff Bader”) is a resident of Campbell, Dunklin County, Missouri.

3. Defendant Monsanto Company (“Defendant Monsanto”) is a global agrochemical and agricultural biotechnology corporation, incorporated in the State of Delaware, with its world headquarters and principal place of business in St. Louis, Missouri.

**Jurisdiction and Venue**

4. At all times relevant to this Complaint, Defendant Monsanto is the entity that researched, designed, formulated, compounded, developed, tested, manufactured, produced,

processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised, and sold herbicide-tolerant cotton seeds under the brand name, Bollgard II XtendFlex, that are allegedly resistant to the dicamba herbicide to protect crops from harm caused by weeds, most especially from highly aggressive pigweeds such as Palmer amaranth, waterhemp, and marestalk.

5. At all times relevant to this Complaint, Defendant Monsanto is the entity that researched, designed, formulated, compounded, developed, tested, manufactured, produced, processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised, and sold herbicide-tolerant soybeans under the brand name, Roundup Ready 2 Xtend, that are allegedly resistant to the dicamba herbicide to protect crops from harm caused by weeds, most especially from highly aggressive pigweeds such as Palmer amaranth, waterhemp, and marestalk.

6. Plaintiffs assert these claims pursuant to Sections 537.760 (Strict Liability; Negligence) and 407.020 (Unfair Practices) of the Missouri Revised Statutes and Missouri common law.

7. Venue is proper in this Court pursuant to Section 508.010(4) of the Missouri Revised Statutes, which provides:

Notwithstanding any other provisions of law, in all actions in which there is any count alleging a tort and in which the plaintiff was first injured in the state of Missouri, venue shall be in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action.

8. Venue is proper in this Court because Dunklin County, Missouri is where the injury to Plaintiff Bader Farms and Plaintiff Bader occurred, and it is also where Plaintiff Bader Farms has its principle place of business and where Plaintiff Bader resides.

### Summary of Claims

9. Plaintiff Bader is one of over a hundred farmers throughout the nation, including Southeast Missouri, who has been victimized by dicamba, a drift-prone herbicide that has wiped out tens of thousands of acres of farmland in Southeast Missouri.

10. The cause of such destruction to Plaintiff Bader Farms' crops is Defendant Monsanto's willful and negligent release of a defective crop system – namely its genetically modified Roundup Ready 2 Xtend soybeans and Bollgard II Xtend cotton seeds (“Xtend crops”) – without an accompanying, EPA-approved dicamba herbicide.

11. Defendant Monsanto's new soybean and cotton seeds are genetically modified (“GM”) to resist the herbicides dicamba and glyphosate, the latter being the main ingredient in Defendant Monsanto's most prized herbicide product, Roundup.

12. Generally, GM seeds help farmers combat problematic weeds that have evolved to resist certain herbicides.

13. But when Defendant Monsanto distributed and sold its GM soybean and cotton seeds to farmers in Southeast Missouri – particularly in the four (4) county area of Dunklin, New Madrid, Stoddard, and Pemiscot Counties – Defendant Monsanto did so without releasing a corresponding herbicide for use as a complete crop system with those GM soybean and cotton seeds.

14. Monsanto's own website identifies the Xtend products as a “crop system” and identifies both the seeds (Xtend) and the herbicides (VaporGrip) that should be used in conjunction with the seeds. But Monsanto sold the seeds before the Environmental Protection Agency (“EPA”) approved the herbicides for market.

15. In fact, at all times relevant to this Complaint, there was not a single dicamba product registered for in-crop use with Defendant Monsanto's new GM soybean and cotton products.

16. Any in-crop use of dicamba on the seeds was a violation of federal and state law.

17. The result of Defendant Monsanto's greed and experimentation in releasing its defective Xtend crop system has resulted in nothing but an economic and ecological disaster for the citizens of Southeast Missouri, especially farmers.

18. As farmers, including Plaintiff Bader, have learned, older formulations of dicamba are not compatible with Defendant Monsanto's new GM soybean and cotton seeds.

19. The use of old dicamba over-the-top, i.e., or once the seed is in the ground until it is harvested, was never approved by the EPA for in-crop use with these new GM seeds.

20. The dicamba-based herbicides that Defendant Monsanto has designed for use on its Xtend cotton and soybeans are called VaporGrip.

21. Defendant Monsanto claims VaporGrip will have a lower volatility formulation that will minimize, though not entirely eliminate, drift – a term used to denote the airborne movement of herbicide spray particles to non-target or neighboring spray sites many miles away.

22. Defendant Monsanto did not sell, distribute, or release VaporGrip in 2015 or 2016, as the herbicide label for VaporGrip had not received approval from the EPA.

23. On November 9, 2016, well past the 2016 growing season, Monsanto received regulatory approval from the EPA, albeit conditionally for only two (2) years, for one (1) of its VaporGrip products, an herbicide called XtendiMax with VaporGrip Technology ("XtendiMax").

24. The EPA may register pesticides conditionally when there are outstanding data requirements or under other circumstances. During this conditional registration, if Monsanto does not comply with the conditions, the EPA may cancel the registration.

25. The other VaporGrip herbicide remains unapproved, e.g., Roundup Xtend with VaporGrip Technology, an allegedly low-volatility herbicide premix of dicamba and Roundup.

26. Monsanto's proposed herbicides may not solve the dicamba problem. Concerns for the safety and efficacy of these herbicides have resulted in calls for more research before they are approved. Efforts are underway to ban the use of these dicamba herbicides in several states.

27. Farmers in Southeast Missouri have been victimized by Defendant Monsanto's release of a defective, incomplete crop system into the market.

28. Farmers who purchase and grow Defendant Monsanto's GM cotton and soybean seeds were left with the unenviable choice of either allowing their Xtend crops to be destroyed by weed overgrowth or to use the only dicamba that is currently on the market – old dicamba – to spray on their Xtend crops.

29. With a seed that is designed to resist dicamba, it is reasonably foreseeable – indeed, it was inevitable – that farmers would apply the old, highly volatile, and drift-prone dicamba to their dicamba-resistant soybeans and cotton.

30. Dicamba is highly volatile and is prone to drift. When dicamba drifts onto surrounding crops and vegetation that have not been genetically modified to withstand the herbicide, dicamba damages the surrounding non-GM crops.

31. Volatilization occurs when dicamba is applied to a crop but then evaporates and moves in the air. Calm and windless environments that might minimize drift, ironically, only increase the potential for volatilization.

32. Defendant Monsanto violated standard industry practice and legal standards by releasing their new GM soybean and cotton seeds without an existing, approved herbicide or a corresponding herbicide on the market.

33. Southeast Missouri is a unique farming environment. The same geography and weather that makes Southeast Missouri a heaven for cotton, soybean, and peach producers, among many other types of crops, also makes the area, the bootheel in particular, especially vulnerable to herbicide drift.

34. Yet despite this knowledge, Defendant Monsanto not only sold its Xtend cotton and soybean seeds in Southeast Missouri, but Defendant Monsanto specifically targeted Southeast Missouri as a primary focal point of sale for these new, dangerous and defective seeds.

35. There have been nearly 200 pesticide drift complaints in the State of Missouri since Defendant Monsanto launched this defective crop system for soybeans and cotton in 2015.

36. Plaintiff Bader Farms' peach trees and other crops are not resistant to dicamba or Roundup, and its peach trees and other crops have been decimated by dicamba damage due to farmers and applicators in Southeast Missouri and Arkansas who sprayed dicamba over-the-top of their Xtend seeds and crops.

### **ALLEGATIONS COMMON TO ALL COUNTS**

#### **A. Plaintiff Bader Farms and Plaintiff Bader**

37. Plaintiff Bader Farms is a family-owned, five thousand (5,000) acre farming operation located in Campbell, Missouri – Dunklin County, squarely within Southeast Missouri and the epicenter of the dicamba drift complaints.

38. Plaintiff Bader is a peach farmer and an owner of Plaintiff Bader Farms.

39. Plaintiff Bader Farms is owned by Plaintiff Bill Bader and Denise Bader who both reside in Campbell, Missouri.

40. Plaintiff Bader and Denise Bader started in the peach business in 1986 as a small, one hundred and fifty (150) acre operation.

41. In 1987, Plaintiff Bader and Denise Bader formed Plaintiff Bader Farms, a Missouri corporation. Over the years, the Baders have built their farm into the largest peach producing operation in Missouri.

42. Today, the Bader's children, sons Cody and Levi, and daughter Breana, also operate the family farm throughout the year. Additional members of the Bader family – uncles, aunts, cousins, etc. – participate at harvest time.

43. Plaintiff Bader Farms has a significant agricultural footprint in Southeast Missouri, particularly in the bootheel with over 5,000 acres of land and nearly 110,000 peach trees. Of the 5,000 acres, one thousand (1,000) acres are devoted to peach production where thirty (30) varieties of peaches are grown.

44. Plaintiff Bader Farms accounts for more than half of Missouri's peach harvest.

45. Plaintiff Bader Farms' typical peach harvest produces five million (5,000,000) to six million (6,000,000) pounds of peaches per year.

46. Unlike other forms of crops and agriculture, peach production requires a lengthy investment of time in order for the trees to yield crops.

47. Plaintiff Bader Farms, like all peach producers, must purchase infant peach trees from its vendor. Those infant trees are planted with no expectation or hope of them producing viable crops for many years after they are planted.

48. It takes five (5) years for these peach trees to grow into mature trees such that they will produce peaches that can be harvested and sold on the market.

49. Under normal circumstances, these commercial peach trees have a life expectancy of fifteen (15) to twenty (20) years.

50. Besides the 30 varieties of peaches grown on its orchards, Plaintiff Bader Farms also grows and sells corn, soybeans, alfalfa hay, wheat, nectarines, cantaloupe, watermelons, blackberries, strawberries, apples, tomatoes, pecans, sweet corn, and has various timber trees.

51. Plaintiff Bader Farms sells its peaches to several major grocery chains in the Midwest, as well as to smaller grocers and road-side stands throughout Missouri.

52. Plaintiff Bader Farms also sells directly to customers at its farm. During the peach season, which is from April to October, Plaintiff Bader Farms is open seven (7) days per week. Other produce, nuts, and peach smoker wood are available for sale at the farm as well.

53. Plaintiff Bader Farms does an average of \$4.3 million in sales per year.

54. From June until the end of August, which is peak harvest season, Plaintiff Bader Farms employs upwards of 110 workers, making Plaintiff Bader Farms an indispensable and valuable Southeast Missouri employer.

55. As a result of Plaintiff Bader Farms' excellence in its work with agricultural commodities and the local community, Governor Jay Nixon, in November, 2014, recognized and honored Plaintiff Bader, Denise Bader, and Plaintiff Bader Farms with the Governor's Award for Agricultural Achievement.

56. Plaintiff Bader Farms is an important and vital part of Missouri's agricultural community and has a substantial impact on Southeast Missouri's economy.



**B. Defendant Monsanto**

57. Defendant Monsanto, a global agrochemical and agricultural biotechnology corporation headquartered in St. Louis, Missouri, was one of the first companies to apply biotechnology industry models to agriculture, and is most widely known for being the leading producer of genetically modified (“GM”) seeds and herbicides such as Roundup, among other agricultural changes and biotechnological trait products.

**C. A Brief History of Roundup**

58. In the 1960s, Defendant Monsanto was still not a major player in the agricultural industry and was widely known as a major producer of dioxin-laced Agent Orange.

59. In 1970, that all changed when Defendant Monsanto discovered the chemical properties of glyphosate, currently the company’s flagship herbicide, and began marketing it in products in 1974.

60. Glyphosate is the main ingredient in Roundup, and is a non-selective herbicide used to kill weeds that commonly compete with the growing of crops.

61. A non-selective herbicide tries to kill most plants while a selective herbicide is designed to kill specific types of plants, usually grasses or broad leaf weeds.

62. For more than forty (40) years, Roundup has been manufactured, sold, and distributed by Defendant Monsanto to farmers all over the world. Roundup is registered in 130 countries and is approved for use on over 100 crops.

63. Because Defendant Monsanto’s Roundup products are ubiquitous, Roundup has become a household name. Roundup is the most heavily-used agricultural chemical in the history of the world.

64. The success of Roundup is key to Defendant Monsanto's dominance in the seed and herbicide marketplace.

65. From the outset, Defendant Monsanto marketed Roundup as a safe herbicide for widespread commercial and consumer use, deemed to pose no unreasonable risk of harm to the environment or human health.

66. Defendant Monsanto's marketing claims regarding Roundup's safety have not been without contention and in recent years have come under fire. In March, 2015, the World Health Organization announced findings that the herbicide glyphosate is "probably carcinogenic to humans."

#### **D. The Rise of Genetically Modified Seeds**

67. An important factor in Defendant Monsanto's and Roundup's ascension during the 1990's was the development and launch of genetically modified corn and soybean seeds in 1996, sold under the brand name Roundup Ready. Because Roundup Ready seeds are genetically modified to resist glyphosate, farmers could use Roundup to kill unwanted weeds without damaging their genetically modified crops.

68. By the year 2000, Roundup Ready seeds were planted on more than 80 million acres worldwide and nearly 70% of American soybeans were planted from Roundup Ready seeds.

69. As the sales for Roundup Ready seeds proliferated, the sales for Roundup soared, accounting for almost \$2.8 billion dollars in 2000.

70. As of 2015, Defendant Monsanto was the largest seed herbicide supplier in the world with over \$11.8 billion in yearly sales and market valuation of \$55.7 billion.

### **E. The Emergence of Super Weeds**

71. The agriculture industry's over-reliance on glyphosate-tolerant crops, the constant spraying of Roundup and glyphosate led to naturally-evolved resistance to Roundup, causing the emergence of so-called "super weeds."

72. Weed resistance is not a novel problem in Missouri. The first weed resistance was discovered in Missouri in 1992. Waterhemp, one of the most common weeds in the Midwest and a species of pigweed (or amaranth), was found to be resistant to herbicides in Missouri in 1994.

73. Throughout the 1990s and the following two decades, ever increasing weed species in Missouri have shown resistance to herbicides such as glyphosate.

74. Ecologists call this the "pesticide treadmill," where weeds evolve to resist the chemicals designed to destroy them, forcing farmers to apply ever-higher doses or use a different pesticide. This also forces herbicide producers to invent new herbicides to kill the super weeds or reinvent new uses for older, more dangerous herbicides.

75. As a direct result, as of 2015, over 70 million acres of land in the United States contain Roundup-resistant weeds.

76. In the U.S., where approximately ninety percent (90%) or more of all cotton, soybean, and corn crops consist of GM, glyphosate-tolerant varieties, the acreage of farmland overrun with glyphosate-resistant weeds has almost doubled between 2010 and 2012, from 32.6 million acres to 61.2 million acres.

77. With the introduction of glyphosate-tolerant crops, the pattern of weed control has also changed from predominantly pre-plant applications of herbicides to mostly post-plant and in-season application practices. This transformation has made herbicide drift and volatilization major concerns to crop producers of all kinds.

78. This dramatic increase has occurred because Roundup and glyphosate-resistant crop systems are relatively inexpensive and simple for farmers to use.

79. In Missouri, super weeds are rampant, particularly in Southeast Missouri where palmer amaranth and waterhemp are significant problems.

80. As correctly stated by Dr. Tom Barber, a University of Arkansas weed scientist, 2016 has been one of the worst years for Palmer amaranth in recent memory.

81. Despite the causal link between Defendant Monsanto's Roundup products and the pervasive super weeds, Defendant Monsanto has done nothing to address this agricultural tsunami, but rather has continued to reap billions of dollars in profits from it.

#### **F. Dicamba's Role**

82. Dicamba was discovered in 1958 and has been on the market since 1967, first sold under the brand, Banvel.

83. Dicamba is a broad-spectrum, synthetic auxin herbicide that kills broad-leafed weeds, as opposed to eradicating plants in the grass family.

84. Dicamba kills weeds before and after they sprout by increasing a plant's growth rate so the plant outgrows its nutrient supply and dies.

85. Dicamba is therefore extremely toxic to virtually all broadleaf plants (plants that are not grasses), such as fruits, nuts, vegetables, and especially toxic to cotton and soybeans.

86. Another major dangerous constraint on dicamba use is its propensity to drift and volatilize, hence causing injury to other crops.

87. Dicamba is used very little in American agriculture. According to data reported by Defendant Monsanto, just 3.8 million pounds were applied to 25.3 million acres in 2011,

representing just 0.9% of total agricultural herbicide use of 442 million pounds, and 6.5% of total cropland area of 390 million acres in 2012.

88. Dicamba continues to be sold under a variety of older and existing brands, including Clarity, Diablo, Distinct, Marksman, Oracle, Status, Vanquish, and other generic names.

89. As early as 2005, Defendant Monsanto sought to prolong the usefulness of its Roundup crop systems and revived dicamba, the active ingredient in VaporGrip, and began diligently developing a new crop system featuring dicamba to combat the super weed epidemic.

90. Defendant Monsanto admits it has invested over \$1 billion producing its new dicamba formula – not including nearly another \$1 billion in upgrading a dicamba manufacturing plant in Luling, Louisiana.

91. With the failure of Defendant Monsanto's Roundup Ready corn, soy, and cotton seeds to battle the increasing infestation of super weeds resistant to glyphosate in Southeast Missouri – and stepping away from its bread-and-butter Roundup products in the wake of the WHO linking glyphosate to cancer – Defendant Monsanto chose to release its new dicamba technology, i.e., Xtend soybeans and cotton, to renew not only the company's stranglehold on the market for weed control products, but for the future as well.

92. Defendant Monsanto is counting on rapid adoption of its Xtend crops to boost earnings in its seed and pesticide units. Defendant Monsanto sold about 3 million acres of Xtend cotton and 1 million acres of Xtend soybeans in 2016, with expectations for Xtend soybeans to rise to 15 million acres in 2017 and 55 million acres by 2019. As dicamba-resistance is added to other crops, the Xtend technology may eventually cover 250 million acres.

93. With all the dicamba sprayed on Xtend crops in Southeast Missouri since 2015, soybean and cotton farmers who are not yet growing Xtend soybeans or cotton will be forced to

purchase and grow Xtend products by the 2017 growing season or else risk widespread destruction to their crops and the possibility of losing their livelihoods.

94. As accurately stated by Dr. Tom Barber, discussing how farmers may be forced to purchase Xtend soybeans to protect themselves, “They’re afraid that they’re not going to be able to grow what they want to grow. They’re afraid that they’re going to be forced to go with that technology.” See <http://www.npr.org/sections/thesalt/2016/08/01/487809643/crime-in-the-fields-how-monsanto-and-scofflaw-farmers-hurt-soybeans-in-arkansas> (last visited Jan. 22, 2017).

95. In early 2009, Defendant Monsanto partnered with BASF, a German chemical company and the largest chemical producer in the world, and agreed to a joint licensing agreement to accelerate the development of dicamba-based weed control products.

96. In the U.S., BASF Corporation, headquartered in Florham Park, New Jersey, is a subsidiary of BASF SE (“BASF”), and manufactures several dicamba herbicides, including Banvel, Clarity, Distinct, Marksman, Status, and a new forthcoming product, Eugenia.

97. Defendant Monsanto and BASF also have an established research and development collaboration to develop technologies for farmers – yet both companies intend to individually launch their own dicamba-based crop systems and herbicides.

#### **G. Defendant Monsanto Brings Dicamba to Market**

98. In April 2010, Defendant Monsanto made its first submission to the EPA to register dicamba for a new use of the herbicide with genetically modified soybeans.

99. In July 2010, Defendant Monsanto announced it had recently completed regulatory submission to the U.S. Department of Agriculture to deregulate its dicamba-tolerant soybeans.

According to Defendant Monsanto’s announcement:

Dicamba is an ideal tank-mixing partner for Roundup® agricultural herbicides for both pre-plant and post-emergence weed control . . . Dicamba is an economical

herbicide that provides excellent control for a wide spectrum of broadleaf weeds and ideally complements Roundup agricultural herbicides to provide another step change in soybean weed control. This new technology would provide soybean farmers another low-cost weed management solution through the use of glyphosate, dicamba, or combinations of both.

100. In November 2010, Defendant Monsanto and BASF stated they recently completed field testing of the dicamba-based herbicides. In tests, the dicamba herbicides were applied over-the-top to Defendant Monsanto's Xtend products at Defendant Monsanto's research facility in Monmouth, Illinois.

101. By 2012, weed scientists, agronomic crop growers, and specialty crop growers began warning both consumers and growers alike of dicamba-resistant crops, including dicamba's propensity to drift onto sensitive, neighboring crops and how dicamba will accelerate the evolution of super weeds.

102. Also in 2012, Defendant Monsanto submitted its petition to the EPA to register dicamba for in-crop use with cotton.

103. In 2013, Defendant Monsanto submitted its application to deregulate dicamba for use with genetically modified cotton.

104. In June 2014, BASF announced plans to boost production of its dicamba weed-killers by fifty (50) percent to keep pace with anticipated demand should Defendant Monsanto receive regulatory approval to sell its new GMO soybean and cotton products.

105. Six months later, in January 2015, BASF's plan paid off when the U.S. Department of Agriculture ("USDA") announced its decision (after a five-year investigation) to deregulate Defendant Monsanto's dicamba-tolerant crop technology for soybeans and cotton, authorizing the crops for unrestricted commercial planting.

106. In April 2016, Defendant Monsanto announced plans for a \$975 million expansion of its chemical manufacturing facility in Luling, Louisiana. The Luling facility will produce dicamba for its Xtend crop systems with expectations to supply more than a third (1/3) of the eventual market demand for dicamba-based products. The plant is expected to open between 2019 and 2021.

107. On December 21, 2016, BASF secured EPA approval for its dicamba herbicide, Engenia, for use on dicamba-tolerant soybeans and cotton. Engenia will be available for the 2017 growing season.

#### **H. The Sale and Distribution of Xtend Cotton Seeds in 2015**

108. Not once, but for two (2) straight years, Defendant Monsanto's intentional, reckless, and negligent behavior has caused great financial harm to Plaintiff Bader Farms and Plaintiff Bader on account of Defendant Monsanto's irresponsible and premature release of its Xtend crops on the market. The first instance occurred in 2015 when Defendant Monsanto released its Xtend cotton or Bollgard II Xtend cotton seeds.

109. In or around January 2015, Defendant Monsanto began the distribution and sale of its Xtend cotton in a limited commercial introduction in the United States.

110. The Xtend cotton was introduced in the states of Missouri, Arkansas, and Tennessee, and was particularly targeted at Southeast Missouri's cotton country, i.e., the top four (4) cotton producing counties in Missouri: Dunklin County (where Plaintiff Bader Farms is located), Stoddard County, New Madrid County, and Pemiscot County.

111. Through its distribution channel, Defendant Monsanto distributed and sold Xtend crops throughout Southeast Missouri to its national distributors, wholesalers, retailers, and other regional and local representatives and agriculture dealers and partners.



112. Through Defendant Monsanto's distributors, wholesalers, and retailers, Xtend crops were distributed and sold to end-use customers, farmers, industrial users, and government agencies (such as highway departments) in Southeast Missouri.

113. Xtend cotton is genetically modified to allegedly tolerate exposure to the herbicides dicamba, glyphosate, and glufosinate.

114. This genetic modification allows farmers to plant Xtend cotton and apply those herbicides to the plant without causing injury to their crop, thereby combating super weeds and producing a higher crop yield.

115. The distribution and sale of Defendant Monsanto's Xtend cotton seeds in 2015, however, was botched from the start, violated standard industry practice, and ushered in a wave of reckless experimentation in the farming community of Southeast Missouri.

116. According to researchers at the University of Missouri and the University of Arkansas, it is completely contrary to standard industry practice to release a new seed without the simultaneous availability of a corresponding herbicide – whether that corresponding herbicide already exists or is a new product.

117. As correctly stated by Dr. Bob Scott, a weed specialist at the University of Arkansas Extension, stated in the *Delta Farm Press*, "It's an odd situation because we can't recall a technology like this being released without a corresponding herbicide. We had Roundup Ready, LibertyLink – none released without a herbicide."

118. GM products such as Defendant Monsanto's are meant to be sold as a system.

119. Here, the system is both the Xtend seeds and an accompanying, newly formulated dicamba herbicide called VaporGrip.

120. However, Defendant Monsanto sold only one (1) part of the system – the Xtend seeds – and failed to provide the VaporGrip herbicide, which makes the Xtend cotton and soybean seeds defective. Moreover, Defendant Monsanto’s greed means its Xtend crops, as marketed, are defective, dangerous, and destructive.

121. Thus, farmers in Southeast Missouri who purchased Xtend cotton in 2015 (and again in 2016, including Defendant Monsanto’s Xtend soybeans in 2016) did not have a complete package of products. In other words, farmers were only sold half of a product system needed for the Xtend seeds to be used safely and effectively.

122. VaporGrip is indispensable to the system because without VaporGrip, as it has a lower volatility than old dicamba products, resulting in a higher propensity to evaporate and drift, the Xtend seeds are inherently defective and dangerous.

123. Further, it is a violation of federal and state law to spray an herbicide off-label, i.e., make an in-crop application of any old dicamba herbicide on Xtend cotton or soybeans.

124. Sworn testimony before the Arkansas State Plant Board has established that Monsanto’s representatives made a practice of directing farmers who purchased the Xtend seeds to illegally spray dicamba to their Xtend crops to protect their crops. The Plant Board then sanctioned the farmers who Monsanto directed to illegally spray dicamba on its Xtend crops. *See* <http://www.arkansasmatters.com/news/local-news/working-4-you-illegal-chemical-use-damages-soybeans-threat-of-spread-outside-ag/521534160> (last visited Jan. 23, 2017).

125. Further, Monsanto directed farmers to spray dicamba on the Xtend crops. In sworn testimony before the Arkansas State Plant Board, Donald E. Masters, a Missouri farmer who has farmland in Missouri and Arkansas, testified that a Monsanto representative told farmers, including Mr. Masters, to spray dicamba on the Xtend crops.

126. Donald Masters also made a statement to the Missouri Department of Agriculture Plant Industries Division. In that statement, Mr. Masters admitted he illegally sprayed dicamba over portions of his cotton fields in Arbyrd, Missouri, in May 2015. The bulk of Donald Masters' farm is located in Dunklin County, Missouri, the same county where Bader Farms is located.

127. At all times relevant to this petition, there was no existing or current dicamba product approved for in-crop use on Xtend soybeans or cotton. In fact, such a product was not approved until November 9, 2016, nearly two (2) years after Defendant Monsanto willfully and negligently released its Xtend seeds into the market.

128. Because VaporGrip was not available for use with the Xtend crop system until November 9, 2016, it was reasonably foreseeable that farmers who grow Xtend seeds would be forced to choose either to apply old dicamba on crops designed to resist dicamba and kill off super weeds or watch their Xtend crops fail.

129. Thus, during the 2015 growing season in Southeast Missouri and neighboring Arkansas, farmers improperly used and illegally sprayed older, more volatile, brand name and generic versions of dicamba on Xtend cotton that were not compatible, approved, or labeled for use with the Xtend cotton seeds.

130. Further, farmers, such as Plaintiff Bader Farms, who do not have Xtend crops have no way to protect themselves from farmers who grow Defendant Monsanto's Xtend crops and then spray old dicamba herbicides in order to protect their crops. But for Defendant Monsanto's tortious actions, these harms would not have occurred.

131. And in 2015, Defendant Monsanto pushed its Xtend seeds onto the market in Southeast Missouri with full knowledge that there was no corresponding herbicide available for in-crop use, that it is foreseeable that farmers will spray old dicamba on a seed designed to resist

it, that old dicamba is volatile and will drift, and that the Xtend seeds will eventually dominate the market, and that the farming community in Southeast Missouri will suffer massive destruction to their crops.

132. Further, Defendant Monsanto's marketing and advertising materials for its Xtend products influenced and induced farmers in Southeast Missouri to purchase a defective, incomplete Xtend cotton crop system.

133. Defendant Monsanto tested its Xtend soybeans in 2015 with at least one Missouri farmer, Jim Moore in Lafayette County, in the western half of the State of Missouri – almost four hundred (400) miles away from Campbell, Missouri where Plaintiff Bader Farms is located.

134. Due to its overwhelming greed, Defendant Monsanto also rushed its Xtend cotton seeds onto the market, in a limited commercial introduction in Southeast Missouri to entice farmers to buy their Xtend cotton and soybeans in the future.

#### **I. Dicamba Damage to Plaintiffs in 2015**

135. In 2015, the farmers and commercial applicators who sprayed dicamba illegally were exponentially larger than the year before. In 2014, of the ninety (90) pesticide drift complaints made to the Missouri Department of Agriculture ("MDA"), only three (3) complaints were dicamba related.

136. In 2015, there were twenty-seven (27) dicamba-related pesticide complaints made to the MDA out of ninety-seven (97) total pesticide drift complaints.

137. One (1) of those 27 dicamba drift complaints, however, was made by Plaintiff Bader on behalf of Plaintiff Bader Farms.

138. In April 2015, Plaintiff Bader first began to notice signs of dicamba damage on his farm. The dicamba damage to Plaintiff Bader Farms in 2015 from farmers spraying dicamba on

their Xtend crops was extensive – damaging more than 7,000 peach trees, about forty percent (40%) of his crop, a \$1.5 million gross loss of sales.

139. On April 16, 2015, due to Plaintiff Bader’s increasing concern for the safety of his peach trees and his livelihood, Plaintiff Bader filed a pesticide complaint with the MDA, alleging a pesticide application drifted and damaged a peach orchard on his property.

140. An additional complaint similar to Plaintiff Bader’s was filed by Ms. Judy Weaver of the Missouri Department of Natural Resource, alleging a pesticide application drifted and damaged trees in Morris State Park – less than a mile away from Plaintiff Bader Farms.

141. Also on April 16, 2015, Plaintiff Bader Farms enlisted A&L Analytical Laboratories in Memphis, Tennessee to conduct leaf and fruit testing done on its peach trees.

142. The results of the tests performed by A&L Analytical Laboratories confirmed detectable amounts of glyphosate and 2,4-D.

143. Additionally, on the very same day that Plaintiff Bader Farms pulled leaves from its peach trees for analysis, Austin Hake, a Pesticide Use Investigator with the Missouri State Plant Board pulled leaves from peach trees at multiple locations on Plaintiff Bader Farms’ property for testing.

144. The results of those tests done by the Missouri State Plant Board on tree foliage of Plaintiff Bader Farms’ peach trees in the southeast and southwestern corners of the property confirmed large amounts of dicamba, 2,4-D, and glyphosate.

145. Plaintiff Bader also filed an insurance claim with Old Republic Insurance Company due to the chemical damage done to his crops in 2015.

146. Old Republic Insurance Company pulled leaves from Plaintiff Bader Farms' peach trees for testing in late April 2015. The results of those tests confirmed detectable amounts of dicamba and 2,4-D.

147. To protect Plaintiff Bader Farms, Plaintiff Bader also fought aggressively to save 150 acres of peach trees that showed symptoms of drift damage. He treated the trees with micronutrients and spent \$200,000.00 in an effort to return them to good health.

148. In early August 2015, Plaintiff Bader contacted Defendant Monsanto by telephone and spoke to a customer service representative.

149. During the call, Plaintiff Bader complained to Defendant Monsanto about the damage being done by dicamba drift from illegal, off-label, over-the-top spraying on Defendant Monsanto's Xtend cotton.

150. Plaintiff Bader asked Defendant Monsanto to come out and visit his property and look the damage. Defendant Monsanto replied that they did not have the manpower to investigate Plaintiff Bader's complaint. Defendant Monsanto also stated there is no way that dicamba will carry or drift with Roundup in it. Defendant Monsanto told Plaintiff Bader that a field representative, Mr. Darrell Stalling, would contact Plaintiff Bader soon.

151. In early August 2015, Darrell Stalling contacted Plaintiff Bader by telephone. During their conversation, Plaintiff Bader asked Mr. Stalling to come see the damage at Plaintiff Bader Farms. Mr. Stalling never came by.

152. On October 23, 2015, Plaintiff Bader and Judy Weaver received a response to their pesticide complaints from the MDA.

153. In the response, MDA stated that it believed a violation of the Missouri Pesticide Use Act had occurred, and determined from its investigation, specifically that Mr. James Long of

Hampton Aviation in Dudley, Missouri, applied herbicides as a burndown application to Mr. Cody Levert's 75-acre field located south of State Highway J and east of County Road 233 in Dunklin County, Missouri – an area less than 1.5 miles from Plaintiff Bader Farms. The MDA stated that James Long used a registered pesticide inconsistent with label directions, restrictions and precautions found on relevant pesticide labels pursuant to Sections 281.101.1 and 281.101.2(1) of Missouri Revised Statutes.

154. Also on October 23, 2015, James Long received a warning from the MDA notifying him there was reason to believe that he used a pesticide inconsistent with label directions, restrictions and precautions.

155. As a result, Plaintiff Bader Farms' insurance company, Old Republic, denied liability.

156. On December 10, 2015, Plaintiff Bader attended an annual watermelon meeting in Kennett, Missouri. The meeting covered timely topics for agriculture growers. Darryl Slade from the MDA was present at the meeting to discuss details regarding 2,4-D and dicamba injuries to crops. Mr. Slade also discussed how a farmer can file a complaint and how the MDA conducts investigations on pesticide misuse.

157. For Defendant Monsanto in 2015, their limited introduction of Xtend cotton worked. According to a February, 2016 press release, Defendant Monsanto boasted that demand for their Xtend soybeans (for sale in 2016) has been strong, highly anticipated by farms, and there have been "significant pre-orders from farmers."

158. Damage to Plaintiff Bader Farms from Defendant Monsanto's irresponsible, negligent, and premature release of its Xtend crops on the market continued and was compounded in 2016.

**J. The Sale and Distribution of Xtend Soybean Seeds in 2016**

159. In or around January 2016 Defendant Monsanto began the distribution and sale of its Xtend soybeans in the U.S., including in Missouri, especially in Southeast Missouri, with expectations to corner the soybean market.

160. As soybeans are the second most widely-grown crop in the United States after corn, Defendant Monsanto's ability to dominate the soybean market will result in massive financial gain.

161. In 2015, the State of Missouri ranked eighth (8th) in top soybean producing states.

162. In addition to cotton, the top four (4) soybean producing counties were also located in Southeast Missouri: 1) Stoddard County; 2) New Madrid County; 3) Pemiscot County; and 4) Dunklin County.

163. Additionally, according to Defendant Monsanto, dicamba is used on less than one percent (1%) of U.S. soybean acres, nationally. However, in Arkansas and Southeast Missouri, dicamba is used on over twelve percent (12.6%) of soybean acres and that accounts for the majority of dicamba-treated soybeans in the U.S. (78%).

164. It is a particular class of super weeds (glyphosate-resistant marestail, etc.) found in Southeast Missouri that makes this part of the country not only cotton country and a soybean hub, but also dicamba country.

165. Defendant Monsanto's Xtend soybeans are sold under the brand name Roundup Ready 2 Xtend.

166. Xtend soybeans are genetically modified to allegedly tolerate exposure to the herbicides dicamba and glyphosate, also known as Roundup.

167. Xtend soybeans facilitate a wider application window (at planting and in-crop) of dicamba and offer growers an expanded use of dicamba in soybean production.



168. Upon information and belief, Defendant Monsanto estimates Xtend soybeans were planted across approximately two (2) million acres of farmland in 2016.

169. In order to entice farmers to purchase Xtend seeds, Defendant Monsanto lowered the price of its Xtend soybeans allegedly to offset the lack of herbicide availability, but also as a means to ensure that the Xtend seeds flooded the market.

170. Ashley Berthold, a district sales manager for Asgrow, a seed brand distributed by Defendant Monsanto, stated that four hundred (400) units of Xtend soybeans were planted across Missouri in 2016.

171. Defendant Monsanto, at all times, was motivated by greed and a desire to make its Xtend products the dominant seed on the market.

172. The distribution and sale of Defendant Monsanto's Xtend soybean and cotton seeds in 2016 in Southeast Missouri violated standard industry practice and created a destructive wave of crop death via reckless experimentation in Southeast Missouri.

173. Farmers who purchased Xtend soybeans in 2016 did not have access to its corresponding herbicide, VaporGrip, as it still had not been approved for use, and thus, these farmers did not possess the full Xtend crop system for growing purposes.

174. On February 3, 2016, Defendant Monsanto announced its commercial launch plans for their Xtend soybeans after the GM seed received import approval from China. But Chinese import approval did not impact or expedite VaporGrip's regulatory approval by the EPA or the prospect of Defendant Monsanto release the entire Xtend crop system.

175. Kim Magin, Director of Industry Affairs for Defendant Monsanto, stated to the *Delta Farm Press* on April 15, 2016, that, "[O]ur best guess is having dicamba formulations ready for growers is unlikely for this year. We have our fingers crossed that the approval will come as

quickly as possible so growers, without further delay, will be able to use this new tool in soybean and cotton production in 2017.”

176. However, Defendant Monsanto never told farmers not to plant Xtend crops and never warned farmers, commercial applicators, regulators, the Missouri legislature, Congress, or third parties who might be harmed about the dangers of dicamba drift.

177. Monsanto also sold its Xtend soybeans and cotton seeds direct to larger commercial farms.

178. In May 2016, grain elevators and companies in the U.S. planned to reject Defendant Monsanto’s Xtend soybeans because Defendant Monsanto had not secured import approval from the European Union (“EU”). Also, Defendant Monsanto was criticized by grain trade associations for its unacceptable and troubling actions with respect to Xtend soybeans.

179. Other worries about Xtend soybeans surfaced in May 2016 when oilseed advisors recommended against planting Defendant Monsanto’s Xtend soybeans until the company received import approval from the EU.

180. In response, Defendant Monsanto allowed farmers to trade or cancel orders for Xtend soybeans with certain charges waived.

181. Even with the numerous issues and concerns surrounding its Xtend crop system in 2016, Defendant Monsanto proceeded with a full commercial launch of their Xtend soybeans and Xtend cotton.

182. With Defendant Monsanto hurrying its Xtend seeds onto a broader market with full knowledge that there was no corresponding herbicide available for in-crop use, it was completely foreseeable and inevitable that farmers would spray old dicamba on a seed designed to resist it, that old dicamba was volatile and it would drift, that the Xtend seeds will eventually dominate the

market, and that the farming community in Southeast Missouri would suffer destruction to their crops.

183. In comparison, Syngenta AG, a global Swiss agribusiness that produces agrochemicals and seeds and who licensed the Xtend technology behaved responsibly by refusing to sell any soybeans containing the dicamba-trait in 2016. Syngenta AG will sell their Xtend seeds in 2017.

184. Further, Dupont Pioneer (“Pioneer”) – an international seed company located in Johnston, Iowa – released its dicamba soybeans but later asked its dealers to send their seeds back.

185. Thus, during the 2016 growing season in Southeast Missouri, farmers predictably used and illegally sprayed older, more volatile, brand name and generic versions of dicamba on Xtend soybeans and cotton that were not compatible, approved, or labeled for use with the Xtend seeds.

186. Further, Defendant Monsanto’s marketing and advertising materials for Xtend soybeans influenced and induced farmers in Southeast Missouri to purchase the Xtend soybean crop system.

187. As of June 2016, with the comment period for the EPA’s proposed dicamba label closing on May 31, the EPA failed to approved VaporGrip for the 2016 growing season.

188. In July 2016, Defendant Monsanto received import approval from the EU.

189. The overall, alleged advantage of Monsanto’s Xtend soybeans, however, has been met with skepticism in the agricultural community. 2016 test trials by weed extension programs at the University of Minnesota and the University of Wisconsin did not find any significant yield increase for Monsanto’s Xtend soybeans. In field trials, Xtend soybeans tended to yield a bushel or two (2) lower on average. See <http://blog-crop-news.extension.umn.edu/2016/10/u-of-m-se->

[minnesota-dicamba-tolerant.html](http://minnesota-dicamba-tolerant.html) (last visited Jan. 18, 2017); <http://ipcm.wisc.edu/blog/2016/11/new-traits-dont-automatically-translate-to-highest-yield/> (last visited Jan. 18, 2017).

190. These scientific results stand in stark contrast to statements made by Miriam Paris, Monsanto's U.S. Soybean Marketing Manager, in July 2016, where she claimed that the higher yield potential for Xtend soybeans factored into the company's decision to commercialize the seeds in 2016, despite the absence of an approved dicamba-based herbicide for use in-crop at that time. Ms. Paris stated the Xtend soybeans allegedly offer a two and a half (2½) to seven (7) bushel-per-acre yield advantage above Roundup Ready 2 Yield varieties.

191. Also in 2016, Monsanto ran an advertisement for its Roundup Ready 2 Xtend soybeans with their Asgrow seed brand. The advertisement claims, "The Fields Was Spotless," and provides a quote from Steve Minner, a corn and soybean farmer in Morley, Missouri, who states in the advertisement: "I was able to spray dicamba on my Asgrow Roundup Ready 2 Xtend production acres this season and the field was spotless. I can't wait for dicamba to receive regulatory approvals to help control tough pigweed."

192. In fact, in August 2016, the EPA issued a Compliance Advisory due to the unusually high number of reports of crop damage related to the misuse of herbicides containing dicamba. See <https://www.epa.gov/compliance/compliance-advisory-high-number-complaints-related-alleged-misuse-dicamba-raises-concerns> (last visited Jan. 18, 2017).

193. As accurately stated by Dr. Larry Steckel, a weed extension specialist at the University of Tennessee, the weather and growing conditions in the Mid-South, which includes Southeast Missouri, created the perfect storm for dicamba injury to crops.

194. And as correctly stated by Dr. Ford Baldwin, an independent weed consultant and former weed scientist at the University of Arkansas, to DTN/The Progressive Farmer in July 2016

upon commenting on reports of off-target and off-label dicamba use, “It looks like a bomb went off in some parts of the South.”

195. The full consequences of Monsanto’s actions will not be known until several months into 2017, but regulatory officials in several of the affected states cite a ballpark figure of 200,000 affected acres of various crops, produce, and ornamentals in Arkansas, Tennessee, and Missouri, thus far.

**K. Dicamba Damage to Plaintiffs in 2016**

196. Despite the problems of dicamba drift in 2015, the 2016 growing season had the appearance of a bumper peach crop for Plaintiff Bader Farms – a crop yielding an unusually productive harvest.

197. This bumper peach crop should have reached upwards of 120,000 bushels.

198. In 2009, Plaintiff Bader Farms planted an additional 60,000 new peach trees on its property. These new trees should have been at the peak of their prime production years for harvest in 2016.

199. However, because of the excessive destruction that occurred in the 2016 growing season in Southeast Missouri from the illegal spraying of dicamba on Monsanto’s Xtend crops, including in Dunklin County where Plaintiff Bader Farms is located, Plaintiff Bader Farms’ hopes for a bumper crop were dashed.

200. During the 2016 growing season, the MDA received over 144 formal complaints of pesticide drift, alleging damage across more than 40,000 acres to soybeans, peaches, tomatoes, watermelons, cantaloupe, rice, purple-hull peas, peanuts, cotton and alfalfa, as well as to residential gardens, trees, and shrubs.

201. The vast majority of these pesticide drift complaints were made between June 22, 2016 and the first week of August 2016 and also all occurred within a four (4) county region in Southeast Missouri, specifically Dunklin, New Madrid, Pemiscot, and Stoddard Counties.

202. As accurately stated by MDA, yearly pesticide complaints are typically split evenly between farmers and commercial applicators. In 2016, however, the majority of pesticide complaints were against farmers.

203. On June 2, 2016, Plaintiff Bader contacted a member of the Missouri State Plant Board to inform the member that Plaintiff Bader knew and had heard about several area farmers who were out looking for old dicamba formulations to spray on their Xtend crops.

204. Upon information and belief, the old dicamba formulations sold to those same local farmers was sprayed initially on or about June 10, 2016.

205. Typically, it takes ten (10) to fourteen (14) days for symptoms of dicamba injury to reveal itself in crops and trees.

206. On or about June 21, 2016, Plaintiff Bader and Cody Bader saw the first signs of dicamba damage to their peach trees from dicamba sprayed on Xtend crops by other farmers. These signs include: the leaves on the tree curled and turned yellow, the peach fruit did not size properly and would not grow beyond the size of a quarter coin, and many peach trees began to die.

207. Upon information and belief, Plaintiff Bader Farms was hit with dicamba drift on at least four (4) separate occasions in 2016 from dicamba sprayed on Monsanto's Xtend crops by other farmers, roughly every ten (10) days beginning on June 21, 2016.

208. Week after week throughout June, July, and August 2016, Plaintiff Bader Farms' peach trees all across their orchards begin to die.

209. In response to the damage from pesticide drift, Plaintiff Bader Farms used expensive applications of micronutrients and fertilizer to nurse their injured peach trees back to health, but these remedial efforts proved futile as the dicamba drift continued and Plaintiff Bader Farms' crops continued to suffer irreparable damage.

210. Since 2015, Plaintiff Bader Farms has spent over \$200,000.00 to combat dicamba drift and revive damaged peach trees with micronutrients and fertilizer.

211. As of June 15, 2016, the damage from dicamba drift to Plaintiff Bader Farms had affected over seven hundred (700) acres of peach orchards with light to heavy damage from dicamba and pesticide drift, inclusive of over 20,000 injured peach trees.

212. The dicamba damage to Plaintiff Bader Farms also prevented Plaintiff Bader from harvesting fruit from roughly 8,000 to 10,000 peach trees in 2016.

213. In late June 2016, Plaintiff Bader called the MDA out of safety concern from his customers that numerous peach trees on his property looked sick. Clients and consumers also expressed concern as to whether the fruit was safe to eat.

214. On or about late June 2016, the MDA sent a local health team to Plaintiff Bader Farms, along with a group from the USDA, to pull pesticide test samples.

215. The MDA's analysis is not yet completed, but Plaintiff Bader Farms' peach fruit, peach trees, and the leaves on the trees show signs of dicamba damage.

216. In 2016, Plaintiff Bader Farms again had independent testing done on their peach trees. Overall, the tests reported that Roundup and 2,4-D had been detected, but not dicamba – although dicamba appeared in detectable levels in a testing sample.

**L. Plaintiff Bader's Complaints to Defendant Monsanto in 2016**

217. On or around July 5 or 6, 2016, as the damage to Plaintiff Bader Farms' peach trees and crops grew overwhelming, Plaintiff Bader once again telephoned Defendant Monsanto. This call was directed to a company representative.

218. During this call with Defendant Monsanto, Plaintiff Bader explained the numerous issues he had seen with dicamba drift since 2015. Plaintiff Bader informed Defendant Monsanto that other farmers were spraying dicamba over-the-top on Xtend soybeans and cotton and he complained that Defendant Monsanto was doing nothing to stop or deter the illegal spraying of dicamba.

219. Defendant Monsanto stated that it does not sell dicamba, that those farmers in question were spraying illegally, and that Defendant Monsanto does not have any dicamba chemical approved for use with their Xtend products. Defendant Monsanto's employee also told Plaintiff Bader that the telephone conversation was being recorded. Plaintiff Bader then told Defendant Monsanto that he thought Roundup was causing the problems.

220. A day or two later, on or around July 6 or 7, 2016, a lawyer for Defendant Monsanto called Plaintiff Bader. In the conversation, recorded by Defendant Monsanto's lawyer, the lawyer asked Plaintiff Bader if he had hired an attorney, to which Plaintiff Bader responded, "No."

221. Plaintiff Bader relayed the same information that he told the employee for Defendant Monsanto a few days earlier and expressed frustration that thousands of acres of Southeast Missouri farmland were being destroyed, yet Defendant Monsanto was unwilling to do anything about it. The lawyer told Plaintiff Bader that this call was being recorded.

222. On or around July 10 or 12, 2016, Plaintiff Bader spoke with the same lawyer for Defendant Monsanto that he spoke to on the July 6 or 7 call. The conversation went much like



Plaintiff Bader's prior conversations with Defendant Monsanto, except that he also informed Defendant Monsanto's attorney that the damage done to the field crops at Plaintiff Bader Farms will not be known until the Fall of 2016.

223. Plaintiff Bader further stated that farmers in and around Dunklin County were saying that ten (10) to fifteen (15) percent of their crops would be unable to be harvested. Plaintiff Bader said his own peach crop had been cut by at least forty (40) percent. Plaintiff Bader invited Defendant Monsanto's lawyer to come visit his farm and see the extensive damage for himself, or have someone sent on his behalf to witness the damage. The lawyer declined.

224. Another similar call between Defendant Monsanto's lawyer and Plaintiff Bader occurred on or about late July 2016, resulting in further inaction and denial of responsibility by Defendant Monsanto.

#### **M. Reaction to Dicamba Drift in Southeast Missouri**

225. There is a growing fear of what will happen to farmers in Southeast Missouri, including Plaintiffs, when Monsanto's XtendiMax is unleashed full-scale on the market because farmers and applicators spraying dicamba will increase exponentially.

226. Because of the widespread damage to crops in Southeast Missouri and Defendant Monsanto's inaction and near indifference to the damage it caused by putting its Xtend products on the market, a media firestorm began, causing negative publicity for Defendant Monsanto.

227. Several articles and news stories have been written about the extent of the dicamba damage to Plaintiff Bader Farms and Plaintiff Bader, with Plaintiff Bader calling on Defendant Monsanto to take full responsibility for the harm caused.

228. In light of the widespread damage and complaints by farmers, including Plaintiff Bader Farms, on July 29, 2016, the University of Missouri Extension held a Dicamba Crop Injury Forum to share and gather information on the dicamba damage.

229. The forum, held at the Fisher Delta Center in Portageville, Missouri, was organized in response to the devastation to Southeast Missouri's agricultural community, the mass outrage, and growing concern on behalf of farmers and local citizens, including Plaintiff Bader and Plaintiff Bader Farms. More than 130 people gathered at the forum, including Plaintiff Bader.

230. Throughout the summer of 2016, as evidence of crop damage caused by dicamba drift continued to escalate, concerns in and among the Southeast Missouri agricultural community did not abate. The evidence of dicamba drift damage was real and widespread, so much that federal and state governments were getting involved.

231. The EPA is continuing investigations throughout Southeast Missouri into the misuse and misapplication of dicamba on Xtend soybeans and cotton seeds.

**N. Special Missouri Hearing on Dicamba**

232. Then on August 31, 2016, the Missouri House Select Committee on Agriculture ("Committee on Agriculture") held a special hearing at the Fisher Delta Research Center in Portageville, Missouri in an effort to gather information and assess the problem and ramifications of dicamba and its effect on Missouri crops.

233. Members of the Committee on Agriculture in attendance at the special hearing were: Chairman Representative ("Rep.") Bill Reibolt, Rep. Tracy McCreery, Rep. Sonya Anderson, Rep. Mike Bernskoetter, Rep. J. Eggleston, Rep. Jay Houghton, Rep. Sue Meredith, Rep. Tommie Pierson, Rep. Craig Redmon, and Rep. Don Rone.

234. Also in attendance at the special hearing was Missouri Speaker of the House, Rep. Todd Richardson.

**O. Testimony of Defendant Monsanto**

235. Testimony at the special hearing began with Duane Simpson speaking on behalf of Defendant Monsanto. Mr. Simpson leads Monsanto's state and local government affairs team.

236. Mr. Simpson outlined the history of dicamba and Defendant Monsanto's efforts to gain EPA approval for its "cost-effective" VaporGrip.

237. Further, Mr. Simpson discussed causes of off-target dicamba movement, including spray drift, volatilization, and chemical contamination. He admitted that Defendant Monsanto identified spray drift as by far the number one, overwhelming cause of dicamba's off-target movement.

238. Mr. Simpson admitted Defendant Monsanto has undertaken several large-scale drift trials across the country to conduct research on dicamba drift.

239. Mr. Simpson admitted VaporGrip has a low volatility and numerous application restrictions.

240. Mr. Simpson admitted Defendant Monsanto's testing shows that VaporGrip will have two (2) percent of the relative volatility of older dicamba formulations.

241. Mr. Simpson admitted Defendant Monsanto plans to offer VaporGrip to farmers and applicators, but had not yet done so.

242. Mr. Simpson stated that Defendant Monsanto will not host its first academic symposium on its new dicamba products until the end of 2016.

243. Mr. Simpson also admitted:

- a) General training with dealers, applicators, and numerous farmers on Defendant Monsanto's VaporGrip and Xtend products cannot begin until the EPA releases a final label for VaporGrip;
- b) The critical time for herbicide training is in the fall – the same period of time when Defendant Monsanto hoped to have final label approval to begin their dicamba product training program;
- c) With the Xtend soybean seeds and cotton on the market for the last two years, Defendant Monsanto did not want to train specifically on how to use dicamba in-crop because it was illegal at the time;
- d) Defendant Monsanto has been waiting six and a half years for label approval, which is five (5) years beyond Defendant Monsanto's anticipation in seeing the label;
- e) The first and most important next step for Defendant Monsanto is to receive a label from the EPA; and
- f) Defendant Monsanto is concerned about the damage they have seen from "the alleged illegal misuse of pesticides."

244. According to Mr. Simpson, it was Defendant Monsanto's expectation that they "would have [VaporGrip] available" by Spring 2017.

245. "We can't sell the chemistry to retailers until the label is done," Mr. Simpson stated. "There is an urgency for training on the final label."

#### **P. Testimony of Missouri Department of Agriculture**

246. Up next to testify at the special hearing was Judy Grundler, Director of the Plant Division with the MDA. Ms. Grundler stated her department began receiving complaints on June 22, 2016 in a four (4) county area in Southeast Missouri. Within this area, the MDA received over 140 pesticide/dicamba complaints, including a few dicamba complaints from Butler and Carroll Counties.

247. Ms. Grundler discussed the time and financial investments required to fully investigate a pesticide complaint, which can take months to investigate for each complaint and

requires certified laboratory testing. Ms. Grundler also remarked about the low civil penalty in the State of Missouri for violations of the Missouri Pesticide Use Act.

248. Ms. Grundler also stated that a different seed and herbicide company chose not to release their GM seeds in Missouri.

249. Further, Ms. Grundler stated that Defendant Monsanto released their Xtend seeds because Defendant Monsanto had import approval from China for soybeans in January 2016.

**Q. Testimony of Dr. Kevin Bradley**

250. Dr. Kevin Bradley also testified at the special hearing. Dr. Bradley is an Associate Professor at the University of Missouri in the Division of Plant Sciences. He has been a State Extension Weed Scientist for the past thirteen (13) years.

251. During his testimony, Dr. Bradley recalled the steady stream of pesticide complaints that came into the MDA in June 2016 – up to eight to ten calls per day.

252. Dr. Bradley also noted Defendant Monsanto has done research since 2006 on Xtend soybeans and there is a lot of data on the seed and its weed control capability.

253. However, Dr. Bradley testified there has been concern from “day one” about bringing a product to market that will be sprayed with dicamba. Tomatoes, tobacco, peach trees, and soybeans that are not dicamba resistant will be impacted.

254. And despite the application protections suggested by VaporGrip then-pending label, Dr. Bradley testified he is not confident those protections will work because not enough research has been done. “This new formulation is not going to solve everything,” he said.

255. Dr. Bradley stated, “We just experienced an experiment in Missouri, Arkansas, and Tennessee as to what could occur with dicamba once it gets out there on a larger basis.”

256. According to Dr. Bradley's testimony, by 2017, soybean farmers will have no choice but to plant Xtend soybeans simply to protect themselves. "Soybeans are incredibly sensitive to dicamba," he said. Farmers will effectively be left with only one soybean seed they can plant if they want to continue in the farming industry.

257. Dr. Bradley testified that research on VaporGrip has been done only from a weed control standpoint, i.e., whether it kill weeds and what are the proper spray applications. No university researcher to Dr. Bradley's knowledge has been allowed to evaluate VaporGrip for its volatility.

258. Dr. Bradley further expressed his frustrations with the limitations placed on university researchers by companies, like Defendant Monsanto, that want to protect their patents and technology. Because of this, Dr. Bradley and other independent researchers have not been able to test dicamba or study its impact.

259. Further, Dr. Bradley stated the new dicamba formulation will not stop drift. Drift can be reduced, but not eliminated.

260. With fifteen (15) years of historical wind speed data at his disposal, Dr. Bradley stated that the Missouri bootheel has one of the highest wind speeds on average in the entire state. Between ten o'clock (10:00) A.M. to three o'clock (3:00) P.M., the bootheel, according to Dr. Bradley, experiences wind speeds of twelve (12) to thirteen (13) miles per hour. Most herbicide labels do not allow spraying over ten (10) miles per hour, Dr. Bradley testified.

261. Dr. Bradley also explained the additional factor that temperature inversions play in dicamba/pesticide drift. Between the months of June and July in the Missouri bootheel, there are temperature inversions that last between eight (8) to ten (10) hours, mostly in the evenings and

overnight. The more humidity there is, the hotter the temperatures rise, more volatility occurs in these herbicides.

262. Dr. Bradley stated he has also spoken to a farmer who sprays pesticides at ten o'clock (10:00) at night, directly into a temperature inversion where the pesticide can literally move miles away.

263. Further, despite herbicide labels warning against spraying in a temperature inversion, whether or not farmers know what a temperature inversion is or what it means or looks like is an additional concern and an opportunity for more training and education.

264. Then Dr. Bradley discussed soybean loss in the Missouri bootheel. "Once soybeans flower and move past flowering," he said, "any dicamba injury will likely cause yield loss." Such yield loss could range from one percent (1%) to thirty percent (30%).

265. On soybeans, the tell-tale signs of dicamba damage include leaves cupping upward distinctively, twisted and distorted leaves, elongated stems with no leaves, flowers, or pods, and soybean pod tightening and abortion.

266. He testified that in peach trees, the tell-tale signs of dicamba damage include leaf twisting, leaf cupping, and leaf distortion, plus malformed fruit on the peach trees. Peach trees can also show excessive new growth where very light colored leaves sprout out of the tree two (2) feet to thirty (30) inches above the tree's canopy.

267. Finally, Dr. Bradley answered the ultimate question on the recent problem of dicamba drift in the bootheel: Is it normal practice for a GM seed to hit the market without an approved, corresponding herbicide? "No," Dr. Bradley testified. "Many have said and I would agree that is part of the problem," Dr. Bradley said. "We have a trait without [a] corresponding

herbicide to go with it. Allegedly, a certain number of farmers have said, ‘I’m gonna spray the old herbicide because I have this trait out here [in the fields] and you won’t give me the new stuff.’ ”

268. As of the special hearing, Dr. Bradley stated there have been twenty-eight (28) pesticide drift cases filed with the Arkansas Plant Board, less than the 125 pesticide drift cases filed in Missouri at the same point in time in 2016.

269. As accurately stated by Dr. Bradley to DTN/The Progressive Farmer, because some farmers do not like to turn in other farmers, approximately 100,000 acres of soybeans were damaged in Missouri alone in 2016.

#### **R. Testimony of Plaintiff Bader**

270. Plaintiff Bader, of Plaintiff Bader Farms, the largest peach grower in Missouri, also testified at the special hearing.

271. Plaintiff Bader discussed his battles and damage from dicamba and the illegal spraying, beginning in 2015 when Plaintiff Bader Farms was hit with drift that damaged about forty percent (40%) of his crop.

272. Plaintiff Bader stated that he contacted a member of the Missouri Plant Board on June 2, 2016 to tell them that several farmers were looking for dicamba. There was a lot of dicamba sold that started being applied on June 10, 2016.

273. “Everything was perfect until June 3, 4 – by the twenty-first we started seeing damage,” Plaintiff Bader told the Committee on Agriculture.

274. Plaintiff Bader also discussed his interactions with the MDA and how in late June 2016 Plaintiff Bader Farms received questions from clients and consumers about whether or not the peach fruit was safe to eat.



275. The MDA sent their health team to pull crop samples from Plaintiff Bader Farms, and the USDA did as well.

276. The USDA's test results showed that peach fruit put through the rinsing process at Plaintiff Bader Farms was ninety-nine percent (99%) safe to eat. "As a farmer," Plaintiff Bader said, "the number one priority is that all food is safe to eat."

277. Plaintiff Bader said that the off-label, off-target spraying came from various pesticides sprayed on crops during one hundred (100) degree weather and the dicamba volatilizes. Also, some of the dicamba was sprayed at pre-planting after wheat filled in and the weather was warm.

278. Plaintiff Bader also shared his grave concerns about the Xtend crop system – that some farmers planted Xtend crops and would not have sprayed dicamba over the top if those farmers did not have Xtend soybeans and cotton in the ground.

279. Plaintiff Bader told the Committee on Agriculture that he has spoken to Defendant Monsanto several different times about the damage to Plaintiff Bader Farms from pesticide drift and Defendant Monsanto replied that the drift problems are not because of Defendant Monsanto's actions. In short, Defendant Monsanto blames the farmers and takes no responsibility.

280. A small percentage of irresponsible farmers and commercial applicators are breaking the law by spraying dicamba illegally, Plaintiff Bader said.

281. Plaintiff Bader further stated that because Plaintiff Bader Farms is set geographically in a "dicamba magnet," near a ridge, Morris State Park, and a lot of timber, Plaintiff Bader Farms is extremely vulnerable to pesticide volatilization and drift.

282. Plaintiff Bader added that he was asked many times if his fruit was safe to eat. "You have to be honest with the public," he said.

283. Plaintiff Bader stated that the USDA would not give him an answer if his peaches showed any Roundup.

284. Plaintiff Bader also stated that the problem with dicamba and 2,4-D spraying is that the offending farmers are spraying Roundup with it, and when the dicamba volatilizes it is also carrying Roundup. He said he can attempt to get rid of 2,4-D and dicamba through aggressively treating his peach trees with micronutrients and fertilizer, but the Roundup stays in the tree for two to three years.

285. At Plaintiff Bader Farms, there is a cost of two thousand dollars (\$2,000.00) per acre to produce a peach crop, Plaintiff Bader said.

286. Plaintiff Bader also said the USDA tested three to four hundred pounds of peaches from his orchards.

287. In 2015, Plaintiff Bader Farms lost seven thousand (7,000) trees, and in 2016, as the date of the special meeting, Plaintiff Bader Farms will lose another twenty thousand (20,000) trees, Plaintiff Bader said.

#### **S. More Testimony from Southeast Missouri Farmers**

288. A number of other local farmers within the Missouri bootheel also testified before the Committee regarding their experiences and difficulties with dicamba and pesticide drift.

289. Ellis Sapp, a soybean farmer from East Prairie, Missouri, in Mississippi County, testified at the special meeting.

290. Mr. Sapp and his father together farm over 3,200 acres of soybeans. Every acre of their soybeans has been hit with pesticide drift, damaging about roughly 1,700 acres of soybeans.

291. Most of the Sapp's soybeans were hit early in the growing season with pesticide and dicamba drift, Mr. Sapp said. The Sapp's crops are planted near or around Xtend cotton fields.

292. Mr. Sapp testified that one of the reasons Defendant Monsanto put their Xtend seeds on the market was because farmers wanted the technology to increase their crop yields by six (6) to ten (10) more bushels per acre.

293. Mr. Sapp testified that this year he should be seeing a crop yield in his non-Xtend soybeans of seventy (70) to eighty (80) bushels per acre – but he estimates he will only get between twenty-five (25) and forty (40) bushels per acre in his soybeans due to damage from the dicamba drift. “It’s not good. I mean it’s pretty bad for some of us,” he said, adding some farmers will have to move.

294. The next farmer who testified at the special meeting was Eddie Bowman from Dexter, Missouri, in Stoddard County.

295. Mr. Bowman grows forty (40) acres of cotton. This year, in 2016, he grew Xtend cotton. Mr. Bowman, who did not state whether or not he has used dicamba on his crop, testified he has chopped his cotton (removed weeds) three (3) times in 2016. Mr. Bowman’s neighbor behind him, however, who plants 640 acres of Xtend cotton has not chopped once, “So it’s pretty clear what he’s using.”

296. Mr. Bowmen also testified that he has suffered dicamba drift damage to 250 acres of soybeans, and that his yield will be low in 2016, with twenty (20) bushels per acre compared to seventy (70) bushels per acre that will be reaped by farmers who grow Xtend soybeans and spray their crops with dicamba.

297. The final farmer to testify at the special meeting was Joe Woolverton from Gideon, Missouri, in New Madrid County.

298. Mr. Woolverton grows 2,000 acres of soybeans. Every field that he grows has been damaged by pesticide drift.

299. Mr. Woolverton's testimony focused on bringing to the Committee's attention the weak laws and low fines for violations of the Missouri Pesticide Act. He stated there is nothing in the current law that will help him.

300. Mr. Woolverton testified further about the troubles in testing for dicamba, that the testing may not indicate detectable dicamba levels in the plant material tested, especially if it is not tested soon enough, but visible, tell-tale signs of dicamba damage can still be seen in the crops.

#### **T. Defendant Monsanto's Denials**

301. During and after the deluge of pesticide drift complaints to the MDA and the ravaging of Plaintiff Bader Farms to dicamba drift, Defendant Monsanto has consistently denied any wrongdoing for the negligent release of its Xtend crop systems in public statements.

302. On August 1, 2016, for example, Dan Urnikis, Industry Affairs Lead, and Kyel Richard, Product Communications Lead for Defendant Monsanto, were asked by a reporter from the *Delta Farm Press* about the premature sale and distribution of Xtend cotton and soybeans without a corresponding dicamba formulation. Dan Urnikis's answers evaded the question, as follows:

[A]t this time, there is no approved chemistry over-the-top for the Xtend crop system . . . We've been developing soybean varieties for several years in anticipation of a full regulatory approval. That process takes several years and we've had continued delays. Our best products continue to sit on the shelf . . . So, farmers tell us they'd prefer to try new varieties on their farm for small quantities in initial years to see which work on their farms the best. We chose to launch this year to allow growers to experience the industry-leading varieties of [Xtend] soybeans. They can plant with confidence this year in anticipation of the chemical approval for the 2017 growing season . . . We thought it important for growers to get the opportunity to experience the new technology while really understanding the requirements and expectations for farmers to follow the label when applying herbicides on their farms . . . Pending regulatory approval, next year we'll be out with a Roundup Ready cropping system that features the VaporGrip . . .

303. When asked by the *Delta Free Press* if Defendant Monsanto had a position on the growers who illegally sprayed dicamba off-label on their Xtend products, Urnikis stated, “We understand the EPA is investigating and Monsanto is supporting that work.”

304. To the same question, Kyel Richard replied, “The thing I want to underline is we, as a company, aren’t an enforcement agency . . . As a company, we can’t speculate on what action government officials will take – especially those who are investigating complaints of misuse . . . It’s very important to note that (Monsanto) doesn’t manufacture any dicamba products . . . it isn’t our (dicamba) products being used.”

305. On or about August 2, 2016, Philip Miller, Vice President of Global Regulatory Affairs for Defendant Monsanto, stated to *The Wall Street Journal* that Monsanto does not manufacture older versions of dicamba.

306. On or about August 3, 2016, Miriam Paris stated to *DTN Progressive Farmer*, “We’ve been developing Xtend soybeans for over a decade . . . At what point do we not bring forward these really strong genetics.”

307. Then on August 4, 2016, Defendant Monsanto released a statement by Miriam Paris titled, “Monsanto Statement on Reports Alleging Illegal Dicamba Use.” The statement included a familiar by now message, among other statements:

Earlier this year [2016], we introduced part of a new system for soybeans called Roundup Ready 2 Xtend,” where, “farmers were able to test out the new soybean seeds . . . Even without the ability to use dicamba this year, our new Roundup Ready 2 Xtend soybeans contain our latest and greatest germplasm, which can help farmers produce their best possible crop . . . Reports alleging that some applicators are illegally using dicamba are concerning . . . We remain very optimistic about the future of dicamba.

#### **U. Damage to Plaintiff Bader Farms in 2015**

308. The future for Plaintiff Bader Farms, however, does not appear so optimistic.

309. In 2015 alone, Plaintiff Bader Farms saw damage to more than 7,000 peach trees or about forty percent (40%) of its peach crop, a \$1.5 million gross loss of sales.

310. Since 2011, Plaintiff Bader Farms has seen the following yearly sales for all crops:

- a) 2011: \$5,235,664.00;
- b) 2012: \$3,742,875.00;
- c) 2013: \$5,009,348.00; and
- d) 2014: \$4,178,904.00.

311. In 2015, Plaintiff Bader Farms' total sales of \$3,574,567.00 were down roughly a million dollars from its 2011-2014 average of \$4,541,697.75.

312. Plaintiff Bader Farms' peach sales since 2011 have seen the following yearly totals:

- a) 2011: \$2,308,383.00;
- b) 2012: \$2,027,623.00;
- c) 2013: \$2,376,905.00; and
- d) 2014: \$2,428,505.00.

313. In 2015, Plaintiff Bader Farms' total peach sales of \$1,673,795.00 was a significant reduction from its 2011-2014 average of \$2,285,354.00.

314. To further underscore the dramatic decline in its peach sales, Plaintiff Bader Farms has raised its peach prices regularly since 2012. For example:

- a) In 2012, Plaintiff Bader Farms sold \$2,027,623.00 in peaches at a price of sixty cents (\$.60) per pound;
- b) In 2013, Plaintiff Bader Farms sold \$2,376,905.00 in peaches at a price of seventy cents (\$.70) per pound; and

c) In 2014, Plaintiff Bader Farms sold \$2,428,505.00 in peaches at a price of eighty cents (\$.80) per pound.

315. In 2015, Plaintiff Bader Farms doubled its usual ten cents (\$.10) yearly increase in peach prices to one dollar (\$1.00) per pound to recoup the monies lost due to the drift damage to the peach crop.

#### **V. Damage to Plaintiff Bader Farms in 2016**

316. In 2016, the damage to Plaintiff Bader Farms from dicamba drift increased dramatically. The totality of the loss will not be fully known until the end of 2016.

317. By November, 2016, Plaintiff Bader Farms estimates a loss of over 30,000 peach trees due to drift damage across hundreds of acres of its peach orchards.

318. Further, the damage to Plaintiff Bader Farm's crops is not limited to peach trees.

319. In 2016, Plaintiff Bader Farms' corn yield was thirty-eight (38) bushel per acre less than its average yield; its soybean yield was down at least ten percent (10%); it lost fifty (50) acres of alfalfa; and two hundred and fifty (250) acres of timber were lost.

320. As of August 31, 2016, Plaintiff Bader Farms has total sales of \$3,738,295, a reduction in comparison to a 2011-2014 average of \$4,541,697.75.

321. In 2016, Plaintiff Bader Farms' total peach sales of \$1,924,384.00 evidences another significant loss from a 2011-2015 average of \$2,163,042.00 – especially given that Plaintiff Bader Farms has had to again increase peach prices.

322. Also in 2016, Plaintiff Bader Farms has had at least seven (7) workers who experienced respiratory problems, including Plaintiff Bader, and all workers complained of worsening sinus and allergy symptoms.

323. In 2017, Plaintiff Bader Farms expects its financial losses to double.

324. By 2019, Plaintiff Bader Farms may be out of the peach business entirely.

325. Over the next six to seven years, Plaintiff Bader Farms expects to lose over one million (\$1,000,000.00) in revenue per year in damage to its crops due to dicamba and Roundup drift. Plaintiff Bader Farms has to give its injured and ruined peach trees time to come back from injury, mature, and heal.

326. To rebuild its losses in 2016 alone, Plaintiff Bader Farms will have to spend over one million dollars (\$1,000,000.00) to be put back in the same position it was at the beginning of 2016.

327. Plaintiff Bader expects he will be sixty-five (65) years old and at retirement age before he will see any return on Plaintiff Bader Farms' potential bumper crop in 2016.

328. The pride and reputation for quality peaches that Plaintiff Bader Farms has built over the years has also been decimated by Defendant Monsanto and dicamba and pesticide drift.

329. Demand for Plaintiff Bader Farms' peaches is extremely high. Due to the dicamba and pesticide drift damage, Plaintiff Bader Farms has suffered losses to the business due to a lack of supply of peaches from the injured or destroyed peach trees.

330. Further, Plaintiff Bader Farms had to turn away new business because Plaintiff Bader Farms struggled to supply their existing customer base with peaches and could not take on new business.

331. Also, many existing customers complained about the lack of peaches from Plaintiff Bader Farms. Some of these existing customers had bought peaches from Plaintiff Bader Farms for ten (10) to twenty (20) years and could no longer do so.

332. The on-site retail business at Plaintiff Bader Farms has also been down 15% to 20% in retail sales in 2016.



333. The ability of Plaintiff Bader Farms to remain financially viable and pay its bills is crushing the business financially.

**W. Damage to Plaintiff Bader**

334. As a direct result of Defendant Monsanto's greed and irresponsible behavior, Plaintiff Bader has experienced great frustration, sadness, anxiety, depression, distress, loss of time, and damage to his personal and professional reputation.

**COUNT I – STRICT LIABILITY – DESIGN DEFECT**

335. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

336. Defendant Monsanto designed, tested, developed, manufactured, marketed, distributed, and sold Xtend cotton and soybean seeds in the course of its ordinary business.

337. As described above, Xtend cotton and soybean seeds were in a defective condition, unreasonably dangerous when put to their reasonably anticipated use because no safe herbicide was marketed by Defendant Monsanto or any other company. Thus, the Xtend products were defective due to the lack of any safe herbicide and should not have been sold.

338. The Xtend cotton and soybean seeds were planted by farmers which was their reasonably anticipated use.

339. Plaintiffs were damaged as a direct result of such defective condition which existed when the product was sold.

340. At all times, Defendant Monsanto sold its Xtend cotton and soybean seeds and knew of the defective condition and danger of its Xtend cotton and soybean seeds.

341. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were

also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count I of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

**COUNT II – STRICT LIABILITY – FAILURE TO WARN**

342. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

343. Defendant Monsanto sold Xtend cotton and soybean seeds in the course of its ordinary business.

344. As described above, Xtend cotton and soybean seeds were unreasonably dangerous at the time of sale. The Xtend cotton and soybean seeds were unreasonably dangerous when put to their reasonably anticipated use without knowledge of purchasers and third parties of their defective condition because no safe herbicide was marketed by Defendant Monsanto or any other company.

345. Defendant Monsanto did not give an adequate warning to purchasers or third parties of the danger of these Xtend crops.

346. The Xtend cotton and soybean seeds were planted by farmers which was their reasonably anticipated use.

347. Plaintiffs were damaged as a direct result of the Xtend cotton and soybean seeds being sold without an adequate warning.

348. At all times, Defendant Monsanto sold its Xtend cotton and soybean seeds and knew of the danger of its Xtend cotton and soybean seeds.

349. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count II of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

### **COUNT III – NEGLIGENT DESIGN AND MARKETING**

350. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

351. Defendant Monsanto negligently designed and marketed the Xtend cotton and soybean seeds.

352. Defendant Monsanto designed and marketed Xtend cotton and soybean seeds in the course of its ordinary business.

353. As described above, Defendant Monsanto failed to use ordinary care in the design and marketing of Xtend cotton and soybean seeds because no safe herbicide was marketed by Defendant Monsanto or any other company. Thus, the Xtend products were defective due to the lack of any safe herbicide and no company exercising ordinary care would have designed or marketed such a product.

354. The Xtend cotton and soybean seeds were planted by farmers which was their reasonably anticipated use.

355. Plaintiffs were damaged as a direct result of such negligence in design and marketing.

356. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count III of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

#### **COUNT IV – NEGLIGENT FAILURE TO WARN**

357. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

358. Defendant Monsanto designed Xtend cotton and soybean seeds in the ordinary course of its business.

359. Defendant Monsanto sold Xtend cotton and soybean seeds in the course of its ordinary business.

360. As described above, Xtend cotton and soybean seeds were unreasonably dangerous at the time of sale. The Xtend products were unreasonably dangerous when put to their reasonably anticipated use without knowledge of purchasers and third parties of its defective condition because no safe herbicide was marketed by Defendant Monsanto or any other company.

361. Defendant Monsanto failed to use ordinary care by neglecting to provide an adequate warning of the danger of these Xtend products.

362. The seeds were planted by farmers which was their reasonably anticipated use.

363. Plaintiffs were damaged as a direct result of the Xtend cotton and soybean seeds being sold without an adequate warning.

364. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count IV of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

#### **COUNT V – NEGLIGENT TRAINING**

365. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

366. Defendant Monsanto sold its Xtend cotton and soybean seeds to farmers knowing that without a safe, approved herbicide alternative that there was a significant risk that farmers would use illegal herbicides to protect their crops.

367. Defendant Monsanto had a legal duty to innocent third parties, including Plaintiffs, to use ordinary care to protect them against the unreasonable risk of harm of the inevitable illegal spraying that would occur to protect crops grown from the Xtend cotton and soybean seeds.

368. Defendant Monsanto had a duty to provide training to purchasers commiserate with the substantial risk of illegal herbicides and the likelihood they would be used to protect crops grown from Xtend cotton and soybean seeds.

369. Defendant Monsanto failed to use ordinary care in the training of its purchasers to prevent illegal herbicide use and the resulting damage to third parties, including Plaintiffs.

370. In fact, Defendant Monsanto deliberately decided not to train its dealers, applicators, and farmers on its Xtend products until the EPA released a final label for VaporGrip.

371. Defendant Monsanto breached their legal duty to innocent third parties, including Plaintiffs, to use ordinary care to protect them against the unreasonable risk of harm.

372. Defendant Monsanto's negligence as described above proximately damaged Plaintiffs as described herein.

373. Plaintiffs have suffered damages to their person and property as described above.

374. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count V of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

**COUNT VI – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

375. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

376. Defendant Monsanto sold Xtend cotton and soybean seeds in the ordinary course of its business, and said seeds were purchased by farmers.

377. Defendant Monsanto's Xtend cotton and soybean seeds were not fit for their ordinary purposes. Specifically, the seeds could not be used in the ordinary course of farming in a safe manner without a corresponding herbicide.

378. Farmers used the Xtend cotton and soybean seeds for their ordinary purposes – planting and attempting to grow crops from their use.

379. Defendant Monsanto was aware that its products were not fit for use in ordinary purposes before any such seeds were sold and during the entire course of time in which the seeds have been on the market.

380. After Plaintiffs were made aware of their damages as a result of the Xtend cotton and soybean seeds, notice was given to Defendant Monsanto.

381. As a direct result of Defendant Monsanto's Xtend cotton and soybean seeds being unfit for the purposes for which they were sold, Plaintiffs were damaged as described above.

382. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count VI of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

**COUNT VII – FRAUDULENT CONCEALMENT**

383. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

384. Before Defendant Monsanto ever sold its Xtend cotton and soybean seeds, and during the entire time of such sale, Defendant Monsanto has known the risks to third parties of illegal herbicide spraying. Further, Defendant Monsanto was well aware that by selling these products, Defendant Monsanto was creating a situation where illegal spraying was not only likely, but inevitable. Further, Defendant Monsanto was well-aware of the catastrophic damages that would occur to third parties as a result of this inevitable illegal spraying.

385. Despite Defendant Monsanto's knowledge, it intentionally and maliciously chose to conceal these facts from farmers, federal and state regulatory bodies, farming associations, legislative bodies, the general public, and Plaintiffs.

386. The groups from which Defendant Monsanto concealed these facts were unaware of them.

387. This concealed information was material to all groups described above.

388. Defendant Monsanto knew of the described groups' ignorance of the truth and intentionally withheld the truth about its product and its risks.

389. Defendant Monsanto intended that the above groups should act in ignorance in carrying out their purchases, oversight responsibilities, and ordinary course of business.

390. The groups described above had a right to disclosure of these important facts.

391. As a direct result of Defendant Monsanto's concealment of these material facts, farmers purchased the product, regulatory and legislative bodies were unable to perform their task to protect the public, the public was kept in ignorance, and Plaintiffs were directly harmed in the manner herein described.



392. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count VII of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

#### **COUNT VIII – UNJUST ENRICHMENT**

393. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

394. As a direct result of its illegal, deceptive, and tortious actions, Defendant Monsanto has been enriched through its sale of Xtend cotton and soybean seeds.

395. By duping the public and cynically marketing a product it knew to be unsafe, Defendant Monsanto chose to enrich itself knowing such enrichment would result in the direct destruction of valuable property, including Plaintiffs'.

396. Defendant Monsanto illegally forced third parties, including Plaintiffs, to serve as an involuntary experimental testing ground for its new products. Defendant Monsanto thereby enriched itself by knowingly destroying the crops of innocent third parties, including Plaintiffs.

397. Upon information and belief, Defendant Monsanto has made millions of dollars thus far and anticipates profits of several billions of dollars from the sale of Xtend cotton and soybean seeds. This is a direct benefit to Defendant Monsanto of its tortious actions.

398. The acceptance and retention of these profits under these circumstances is unjust. It would be inequitable for this Court to allow Defendant Monsanto to retain the profits gained through the sale of Xtend cotton and soybean seeds under these circumstances.

399. Defendant Monsanto should be ordered to disgorge all unjust enrichment it has received to date and will receive for the next five (5) years from all sales of Xtend cotton and soybean seeds.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count VIII of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; (3) additionally, for disgorgement of profits that Defendant Monsanto has received to date and will receive for the next five (5) years from all sales of Xtend cotton and soybean seeds; and (4) for such further relief as the Court deems just and proper.

#### **COUNT IX – PUNITIVE DAMAGES**

400. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

401. At all times, Defendant Monsanto sold its Xtend cotton and soybean seeds and knew of the defective condition and danger of its Xtend cotton and soybean seeds.

402. At all times, Defendant Monsanto sold its Xtend cotton and soybean seeds and knew that without a safe, approved herbicide alternative there was a significant risk that farmers and applicators would use illegal herbicides to protect their crops.

403. The actions of Defendant Monsanto and the injuries inflicted against Plaintiffs as set forth herein show complete indifference to or conscious disregard for the safety of others, were

also reckless, intentional, knowing, malicious, and willful, and entitle Plaintiffs to a recovery of punitive damages against Defendant Monsanto in a fair and reasonable amount.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count IX of this Amended Complaint for (1) an award of such punitive damages as are fair and reasonable; and (2) for such further relief as the Court deems just and proper.

### **COUNT X – CIVIL CONSPIRACY**

404. Plaintiffs reallege all preceding paragraphs as if incorporated herein.

405. Defendant Monsanto, in a scheme to improperly market and expand the sales of its defective Xtend crop system, as described above in Counts I-IX, conspired with purchasers of its Xtend seeds for the purchasers to illegally spray dicamba on the Xtend seeds.

406. The object of the conspiracy was the unlawful marketing of Defendant Monsanto's defective Xtend crop system, the protection of its Xtend seeds and crops through the illegal spraying of dicamba-based herbicides on those seeds and crops, and a proliferation of its Xtend seeds through marketing to corner the market for GM soybeans and cotton such that farmers in Southeast Missouri would have no choice but to purchase Defendant Monsanto's Xtend crops or risk destruction to their non-dicamba tolerant crops.

407. Defendant Monsanto, through its agents and representatives, encouraged and directed its purchasers to illegally spray dicamba-based herbicides on the Xtend seeds to protect the seeds and crops.

408. Numerous purchasers of Defendant Monsanto's Xtend seeds did unlawfully spray dicamba-based herbicides on the Xtend seeds in furtherance of the conspiracy, including but not limited to hundreds of violations of state statutes and regulations governing pesticide use.

409. The unlawful actions of Defendant Monsanto and the purchasers of its Xtend seeds resulted in damages to Plaintiffs, and thereby Plaintiffs were harmed in the ways and manners described above.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment against Defendant Monsanto on Count X of this Amended Complaint for (1) an award of such compensatory and punitive damages as are fair and reasonable; (2) awarding Plaintiffs their costs, expenses, and reasonable attorney's fees incurred in this matter; and (3) for such further relief as the Court deems just and proper.

**A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE.**

Respectfully submitted,

By:       /s/ Billy R. Randles        
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