

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BRIAN WARREN, and WARREN FARMS	)	COMPLAINT
	)	AND DEMAND FOR JURY
Plaintiffs,	)	TRIAL
	)	
v.	)	
	)	Case No: 3:17-cv-973
MONSANTO COMPANY, BASF CORPORATION,	)	
BASF SE, E.I. DUPONT DE NEMOURS AND	)	
COMPANY, and PIONEER HI-BRED	)	
INTERNATIONAL INC.	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Brian Warren, individually, and on behalf of Warren Farms, complaining against Defendants, Monsanto Company (“Monsanto”); BASF Corporation and BASF SE (together, “BASF”); and E.I. duPont De Nemours and Company and Pioneer Hi-Bred International, Inc. (together, “Dupont”) states as follows:

**NATURE OF THE CASE**

1. This case involves the auxin herbicide dicamba, which is manufactured, sold, distributed and promoted under the brand names Xtendimax, Engenia, and Fexapan by Defendants Monsanto, BASF, and DuPont, respectively.

2. Defendants misrepresented that their formulations of dicamba—Xtendimax, Engenia, and Fexapan—could be used safely without causing harm to others through off target movement.

3. Dicamba is a highly volatile herbicide that was discovered in 1958 by BASF, and marketed under various trade names including Banvel, Marksman, and Clarity.

4. Due to its volatility, propensity to move off target, and ability to cause serious injury to non-target plants, dicamba was only used as a pre-planting or post-harvest burndown herbicide prior to November 2016, and was not approved to be used for in-crop or over the top crop applications. To move off target means that the active ingredient in dicamba moves from its intended location to a location(s) where the crops are not genetically modified to be resistant to the active ingredients in dicamba.

5. Since introduction of genetically modified seeds designed to be resistant to the active ingredient in Roundup in 1996, over-reliance on Monsanto's Roundup as a primary weed control herbicide created an environment in which Roundup resistant weeds flourished and proliferated across the United States.

6. To retain its stranglehold on the seed and herbicide markets despite the decreasing efficacy of Roundup, and the impending loss of its patent protections for Roundup Ready seeds, Monsanto created new strains of soybean and cotton that were resistant to dicamba—an older, more toxic, and more uncontrollable herbicide. Monsanto branded these dicamba resistant crops as Xtend varieties.

7. Monsanto thereafter collaborated with BASF & DuPont to develop new formulations of dicamba that could be marketed for in-crop uses and over the top crop applications on Xtend soybeans and cotton.

8. Defendants marketed these formulations as revolutionary break-throughs that minimized volatility, and could be used safely without risk of causing harm to non-Xtend crops.

9. In actuality, Xtendimax, Engenia, and Fexapan are not appreciably less volatile than prior formulations of dicamba, and have caused serious harm to crops throughout the United States.

10. Defendants sold these formulations of dicamba despite knowing that severe and widespread injuries would result, because Defendants understood that such injuries would force farmers to defensively plant Xtend crops in future growing seasons and thereby increase the market for Xtendimax, Engenia, and Fexapan and Monsanto's Xtend soybean and cotton seeds.

11. As a result of Defendants' greed, recklessness, and callous disregard of the rights of American farmers, thousands of farmers' livelihoods have been jeopardized, and millions of acres of crops have been destroyed.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. The parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because, inter alia, a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in, and because the Defendants transact business in, this district.

### **PARTIES**

14. Plaintiff Brian Warren, d/b/a Warren Farms, is a farmer residing and doing business in Broughton, IL.

15. Defendant Monsanto Company is a corporation organized and existing under the laws of the State of Delaware and maintains its principle place of business at 800 North Lindbergh Blvd., St. Louis, Missouri 63167.

16. Defendant BASF Corporation is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 100 Park Avenue,

Florham Park, New Jersey 07932. BASF Corporation is the affiliate, subsidiary, distributor, and North American agent for Defendant BASF SE, a German company.

17. Defendant E.I. duPont de Nemours and Company is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 974 Centre Rd., Wilmington, Delaware 19805

18. Defendant Pioneer Hi-Bred International, Inc., d/b/a Dupont Pioneer, is a corporation organized under the laws of the State of Iowa and maintains its principal place of business at 7000 NW 62<sup>nd</sup> Avenue, Johnston, Iowa 50131. Pioneer Hi-Bred International, Inc. is an affiliate, subsidiary, distributor, and agent of Defendant E.I. duPont de Nemours and Company.

19. In 2005, Monsanto began engineering and developing crops that were resistant to dicamba, and would be branded as Xtend varieties. Dicamba resistant Xtend Cotton and Soybeans are manufactured and marketed by Monsanto.

20. In January 2009, Monsanto entered into a joint licensing agreement with BASF, the inventor of dicamba and manufacturer of several dicamba products, to jointly develop and test new formulations of dicamba for use in dicamba resistant Xtend crops.

21. BASF and Monsanto entered into an additional agreement in March 2011 in which the companies granted each other reciprocal licenses, and BASF agreed to supply formulated dicamba herbicide products to Monsanto.

22. The dicamba formulations Xtendimax, which would be marketed and sold by Monsanto, and Engenia, which would be marketed and sold by BASF, were developed through and are manufactured pursuant to the agreements referenced in paragraphs 20 and 21 above, between Monsanto and BASF.

23. In March 2013, Monsanto entered into a licensing agreement with Dupont and its subsidiary Pioneer Hi-Bred International, Inc. to allow for the use and sale of dicamba resistant Xtend soybeans.

24. In June 2016, Monsanto entered into a multi-year agreement to supply Dupont with dicamba formulations developed and manufactured pursuant to Monsanto's joint licensing agreement with BASF. The dicamba supplied to Dupont by Monsanto through the agreement referenced in paragraph 23 above, is sold by Dupont as Fexapan.

25. At all relevant times, Monsanto, BASF, and Dupont, were engaged in the business of researching, licensing, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing, marketing, labeling, promoting, packaging and advertising for sale or selling Xtendimax, Engenia, and Fexapan for use by farmers.

26. At all relevant times, Monsanto and BASF manufactured Xtendimax, Engenia, and Fexapan.

27. At all relevant times, Monsanto sold, distributed and promoted Xtendimax, and seed for Xtend varieties of cotton and soybeans.

28. At all relevant times, BASF sold, distributed and promoted Engenia.

29. At all relevant times, Dupont sold, distributed and promoted Fexapan, and seed for Xtend varieties of soybeans.

### **FACTUAL ALLEGATIONS**

30. Dicamba (3,6-dichloro-o-anisic acid) is a non-selective auxin herbicide that mimics plant growth hormones; it is highly toxic and highly mobile.

31. Dicamba was first marketed for commercial applications by BASF in 1964, under the name Banvel. BASF introduced several other dicamba brands throughout the years, including Marksman in 1986 and Clarity in 1992.

32. Dicamba, including the brands mentioned above, has traditionally been used for control of annual, simple perennial, and creeping perennial broadleaves in non-crop situations, such as pre-planting and post-harvest burndown applications, and in grass crops such as corn, small grains, sorghum, turf, pastures, sodded roadsides, and rangeland.

33. Injury to off-target vegetation is a major problem associated with dicamba, and until recently, dicamba was not approved or used for in crop applications, or over the top crop spraying, due to its high volatility.

34. Volatility, also known as vapor drift, refers to the ability of an herbicide to vaporize and mix freely with air. This occurs when an herbicide changes from a solid or liquid into a gaseous state and moves off the target area.

35. When a volatile herbicide vaporizes, the herbicide vapor can travel long distances over long periods of time, and cause damage to non-target plants several miles away over the span of many days.

36. Volatility is a characteristic of the formulation of an herbicide and its active ingredient—not all herbicides are sufficiently volatile to cause plant injury from vapor drift.

37. Certain conditions, such as temperature, humidity, and mixture with additional herbicides can exacerbate the volatility of any given herbicide.

38. Specifically, the volatility of dicamba greatly increases in high temperatures, low humidity, or when it is mixed with Roundup or glyphosate.

39. Glyphosate is a non-volatile EPSP synthase inhibitor herbicide manufactured and marketed by Monsanto under the brand name Roundup since 1974.

40. In 1996, Monsanto began marketing seeds for crops that were genetically modified to be resistant to Roundup. These seeds were branded as Roundup Ready, and include soybean and cotton crops.

41. The availability of Roundup Ready crops allowed farmers to apply Roundup post-emergence, to control weeds during the growing season, without fear of harming their crops.

42. Roundup and Roundup Ready crops, including soybean and cotton, quickly dominated the seed and herbicide markets due to the effectiveness of Roundup for weed control, the flexibility of postemergence use, and the ease of using Roundup on Roundup Ready crops.

43. By 2008, over 90% of the soybeans acres planted in the United States were Roundup Ready, and the use of glyphosate in soybeans crops had increased by 14-fold. Large increases in the use of Roundup, and the number of acres of Roundup Ready varieties planted, were seen in many other crops as well, including cotton, corn, canola, alfalfa, and sugarbeet.

44. Widespread adoption of Roundup Ready traits across a variety of crops, and the use of large volumes of Roundup over the course of several consecutive growing seasons, created conditions in which weeds that could survive glyphosate would flourish with little competition. These weeds are commonly referred to as being Roundup or glyphosate resistant.

45. The first Roundup resistant weed was identified in a soybean field in Delaware in 2000.

46. In short order, multiple weeds developed Roundup-resistant mutations, including horseweed, marestalk, pigweed, palmer amaranth, spiny amaranth, waterhemp, ragweeds, kochia, ryegrass, Lamb's Quarters, bluegrass, Russian-thistle, and Johnsongrass.

47. These weeds aggressively proliferated in the absence of natural competition or other types of weed control. By 2015, over 90 million acres of American farmland were infested with Roundup resistant weeds.

48. This posed serious challenges to farmers accustomed to planting Roundup Ready crops, who began to turn to alternative weed control systems, crops sold by Monsanto's competitors, and use herbicides other than Roundup. According to a 2013 survey by BASF, 76% of growers had changed their weed management program due to glyphosate resistant weeds.

49. Coinciding with the declining efficacy of Roundup was Monsanto's impending loss of patent protections for its Roundup product systems—Monsanto lost patent exclusivity for glyphosate beginning in 2000, and would lose patent exclusivity for the first generation of Roundup Ready seeds for crops, including soybeans and cotton, in 2015.

50. Monsanto responded by signing an exclusive licensing agreement with the University of Nebraska, Lincoln to obtain the exclusive benefit of research being performed by its crop scientists on dicamba resistance. Monsanto furthered the development of dicamba tolerant crops by licensing enabling technology from Syngenta in May 2008.

51. Monsanto intended to create new commercially available products that would be more efficacious than, and could replace, Roundup Ready products, which would soon be coming off patent and could be sold generically by Monsanto's competitors.

52. Dicamba is extremely toxic to the broadleaf weeds that developed immunity to glyphosate; it is also extremely toxic to commercially valuable broadleaf crops such as soybean, cotton, and canola.



53. While all dicots are sensitive to dicamba in general, certain crops including soybean, tomato, tobacco, and fruit are extraordinarily sensitive to dicamba, and can suffer severe injury at very low volumes of exposure.

54. Depending on rates of exposure, soybean, tomato, tobacco and fruit crops can suffer major, or even total, yield losses after exposure to dicamba. Additionally, exposure can cause lingering damages that can affect seed development, reduce seed quality, and limit the vitality of a plant's progeny.

55. Dicamba is also highly volatile, meaning that it is an herbicide that is not easily controlled and has a high likelihood of vaporizing and moving away from the area of application as a gaseous form.

56. Dicamba can volatilize days after application, travel considerable distances, and cause injuries to plants several miles away.

57. The volatility of dicamba has been well known and studied for decades. Because of dicamba's volatility, and its extremely harmful effects on valuable non-target crops, the use of dicamba was limited to pre-planting and post-harvest burndown applications prior to 2016.

58. A burndown application is used to clear an area of weeds and other residual pests prior to planting or after harvesting. Burndown applications are common in the early spring and late fall.

59. Dicamba could not be, and was not, applied to planted crops after their emergence because it would damage the crops on which it was sprayed, and damage non-target crops in the vicinity after volatilizing.

60. As a result, dicamba was little used in American agriculture. From 1990-2008, dicamba accounted for between 0.5-1.6% of all herbicides applications in the U.S.

61. Despite the very limited use of dicamba, it was still responsible for considerable amount of damage to non-target crops. In surveys of State pesticide regulators conducted from 1996-1998 and 2002-2004, dicamba was responsible for the third most reports of off-target crop injuries among all herbicides.

62. Because dicamba was only used as a burndown herbicide, these off-target injuries were mostly sustained during cooler parts of the year.

63. Dicamba causes injuries that are unique, distinctive, and easily distinguishable from other more common types of crop damage. Dicamba can cause cupping, curling, strapping, discoloration, leaf elongation, wrinkling, stunting, trumpeting, and twisting of exposed plants, among other symptoms.

64. Dicamba damage is most often diagnosed visually, as the symptoms are distinctive, and chemical residue testing has limited ability to confirm or rule out the presence of dicamba after injuries have visually manifested.

65. In January 2009, Monsanto announced that it had entered into a joint licensing agreement with BASF under which Monsanto and BASF agreed to jointly research, design, develop, test, manufacture and market formulations of dicamba that could be used on Monsanto's dicamba resistant Xtend soybeans and cotton.

66. The companies conducted joint testing of dicamba formulations at Monsanto and BASF research locations, including but not limited to Monsanto's research facility in Monmouth, Illinois.

67. The herbicides that would come to be known as Xtendimax, Engenia and Fexapan were results of the joint research, design and testing by Monsanto and BASF pursuant to their joint licensing agreement.

68. Pursuant to agreement between Monsanto and BASF, Monsanto would market and sell Xtendimax for use during the 2017 growing season, while BASF would market and sell Engenia for use during the 2017 growing season.

69. Monsanto supplied and licensed the herbicide Fexapan to Dupont under a July 2016 agreement. Pursuant to agreement between Monsanto and Dupont, Dupont would market and sell Fexapan during the 2017 growing season.

70. In March 2013, in the midst of settling pending antitrust claims filed against it by Dupont, Monsanto also agreed to license dicamba resistant soybean seed technology to Dupont.

71. The dicamba resistant soybean seed sold by Monsanto and Dupont, and the dicamba resistant cotton seed sold by Monsanto, would be branded, marketed, and sold as Xtend varieties.

72. Both the United States Department of Agriculture (USDA) and Environmental Protection Agency (EPA) expressed significant concerns about the risks that may be created by the introduction of dicamba resistant crops and increased usage of dicamba.

73. Specifically, EPA expressed concerns “related to a potential increase in usage of dicamba products and the proposed changes in the timing of applications. In general, there is also a potential for increased susceptibility of late season plants to direct impact from off-site transport”. The agency warned in March 2011 that “applications during a warmer time (i.e. post-emergence) may increase off-site transport (via volatility) during a time when many plants have leafed out...Therefore, a post-emergence application may increase the likelihood of effects to non-target plants”.

74. USDA stated that use of dicamba over a longer season “could increase exposure of dicamba-sensitive plants at growth stages later in the season”, and that “the potential for undesired volatilization or drift of applied dicamba onto organic crops is as high possibility”.

75. As a result, both agencies delayed approval of the products they regulated. EPA, which regulates pesticides, delayed registration of Xtendimax and Engenia, and required multiple additional submissions before approval was reached.

76. Similarly, USDA delayed approval of Xtend variety soybean and cotton, and required Monsanto to make multiple revisions to its petitions for determination of nonregulated status of its dicamba resistant varieties.

77. Neither Monsanto, BASF, or Dupont provided the EPA with the results of rigorous, independent testing or analysis on the volatility of their products in real world applications, or on how dangerous their products would be to off-target crops. Monsanto expressly forbade independent testing of Xtendimax by the Arkansas Plant Board because the results might jeopardize approval by the EPA.

78. Indeed, even upon approving these formulations for use, EPA cautioned that “Several formulations of dicamba are intended to reduce volatilization of dicamba in the first few days after application, but the ability of these formulations to delay the formation of the volatile dicamba acid, under a range of environmental conditions, is not well understood”.

79. Likewise, Dr. Kevin Bradley at the University of Missouri commented that “we really can’t tell you anything about the volatility or its potential volatility, because we have not been able to do that research, and that’s really unfortunate”.

80. Nevertheless, Monsanto, BASF, and Dupont all advertised their new dicamba formulations as “low-volatility” herbicides that could be used safely and without fear of off-target movement.

81. Monsanto advertised its VaporGrip technology, which is featured in both Xtendimax and Fexapan, as “A Revolutionary Breakthrough” that “provides growers and applicators confidence in on-target application of dicamba”.

82. Xtendimax was advertised as 90% less volatile than Clarity, and exponentially less volatile than Banvel.

83. BASF informed retailers, distributors, consultants, purchasers and applicators that “the potential for dicamba volatility is low”, that “the Engenia herbicide formulation was developed to further minimize secondary loss due to volatilization”.

84. BASF bragged that the volatility concerns about dicamba had been addressed, “so the herbicide remains in place”. Engenia was advertised as 70% less volatile than Clarity, which itself was 70% less volatile than Banvel.

85. Dupont promised that Fexapan offered “better weed management with less worry about dicamba volatility” and touted that VaporGrip technology prevents the formation of “the volatile form of dicamba in the spray droplet” and minimizes off-target movement after spraying.

86. These and similar statements were repeated by Defendants to customers and agricultural professionals through a variety of media, personal contacts, and sales presentations.

87. However, the veracity of these statements was never demonstrated to regulators or independent researchers.

88. Aaron Hager, at the University of Illinois, stated in March 2017 that “We never evaluated whether or not these formulations are, in fact, lower-volatility formulations. We have no data to demonstrate if, in fact, it’s lower volatility”.

89. Further, neither Monsanto, BASF, nor Dupont ever released evidence that their formulations of dicamba would not volatilize under the real-life conditions in which they were intended to be used.

90. In fact, in the conditions in which they are intended to be used, Xtendimax, Engenia, and Fexapan, are not appreciably less volatile than older formulations of dicamba, such as Banvel or Clarity.

91. In lieu of properly researching, designing, and testing their products to ensure they were safe prior to marketing them, Monsanto, BASF, and Dupont used American farmers as real-life guinea pigs during the 2017 growing season.

92. Monsanto estimates that 20 million acres of Xtend variety soybeans, and 5 million acres of Xtend variety cotton were planted during the 2017 crop year.

93. Monsanto, BASF, and Dupont knew their formulations of dicamba would be used on those vast acreages, and knew that non-Xtend crops within the vicinity would be placed at risk if their dicamba products moved off target.

94. Monsanto, BASF, and Dupont knew that their formulations of dicamba, and dicamba generally, is more likely to volatilize and move off target during higher temperatures, lower humidity, or when mixed with glyphosate—precisely the conditions in which Xtendimax, Engenia, and Fexapan were intended to be used.

95. Despite that knowledge, Monsanto, BASF, and Dupont never warned growers or applicators of the likelihood that their dicamba products would volatilize and injure their neighbors' crops when used for in-crop applications.

96. Monsanto, BASF, and Dupont knew that temperature inversions, which are common in soybean and cotton growing regions during summer months, create a high potential for off-target movement of dicamba.

97. A temperature inversion occurs when temperatures near the soil are cooler than the air above. This phenomenon is common in the Mid-south and Midwest of the U.S. during clear summer nights.

98. When a temperature inversion occurs, dicamba particles on or near the surface are suspended into the atmosphere and can travel for miles in a concentrated cloud.

99. While the labels for Xtendimax, Engenia, and Fexapan warn that applications should not be made during a temperature inversion, neither Monsanto, BASF, or Dupont warned growers or applicators of the likelihood that temperature inversions would cause large amounts of off target movement in dicamba applications that were made hours or days prior to the development of a temperature inversion.

100. Instead of warning about the severe risks of off-target movement of dicamba through volatility and temperature inversion, the defendants maintained that off-target movement of their products would most likely occur from spray drift. Spray drift occurs when small droplets move to nontarget vegetation during application without ever landing on the target site.

101. Crop damage from spray drift is easily distinguishable from damages sustained due to volatility or temperature inversions. Whereas fields affected by spray drift exhibit a pattern of more severe damage in areas closer to the application site that taper off at further

distances, off-target movement through volatility and temperature inversions cause large uniform damage patterns across entire fields.

102. While there are steps that can be taken to minimize spray drift, applicators have no way of controlling movement through volatility. Dicamba's propensity to volatilize and travel great distances is a characteristic of the herbicide itself, and cannot be effectively mitigated by applicators.

103. Likewise, besides avoiding dicamba applications during temperature inversions, applicators have no way to control movement through temperature inversions in applications made prior to the development of a temperature inversion.

104. Further, while certain methods of application can reduce the potential for spray drift, spray drift is an inevitable result of the intended and reasonably anticipated uses of dicamba.

105. The introduction of dicamba resistant crops by Monsanto and Dupont, and the sale of dicamba for post-emergence uses by Monsanto, BASF, and Dupont, led to unprecedented volumes of dicamba applications during 2017.

106. Farmers purchased and used defendants' products reasonably and in good faith, with the expectation that the defendants' representations about Xtendimax, Engenia, and Fexapan were truthful.

107. Farmers purchased and used Xtend variety crops, Xtendimax, Engenia, and Fexapan, with the expectation that these products could be used safely during the 2017 growing season, and would provide additional weed control options without risk of harm to non-target crops.



108. However, Xtendimax, Engenia, and Fexapan are inherently unsafe, and cannot be used in post-emergence applications without unreasonable risk of harm to other crops.

109. As a result of defendants' failure to properly design herbicides that were not inherently unsafe, failure to conduct rigorous testing of those herbicides, failure to warn of the risks inherent in the use of those herbicides, and deceitfulness regarding the inherent dangers of those herbicides, enormous amounts of damage have been unleashed on American agriculture.

110. Millions of acres of American farmland have been damaged by off-target movement of dicamba and thousands of farmers' livelihoods have been placed in jeopardy.

111. Not coincidentally, the farmers now reaping the whirlwind of the Defendants' recklessness and callous disregard are farmers who purchased products sold by the Defendants' competitors.

112. While those who purchased Xtend variety soybeans and cotton sold by Monsanto and Dupont were immunized from damage caused by off-target movement of dicamba, farmers who purchased competing products, including but not limited to Bayer LibertyLink varieties, generic Roundup Resistant varieties, and non-GMO varieties, were placed at enormous risk of suffering severe crop injuries and significant yield losses.

113. Despite their shock and disgust with the defendants' conduct, many farmers who have been devastated by off target movement of defendants' dicamba products must now seriously consider purchasing and planting dicamba resistant crops from defendants' in the future, in order to protect their crops from being ruined in future growing seasons. Many others who have avoided harm this year are contemplating the same after witnessing the widespread damage caused by defendants' dicamba products.

114. This damage and anxiety is intentional, and part of defendants' scheme to dominate farmers and monopolize the soybean and cotton seed markets, as well as the market for in-crop herbicides.

115. Defendant Monsanto released its Xtend variety soybean and cotton in 2015, the very year that it lost patent protections for Roundup Ready soybean and cotton seed.

116. Monsanto began marketing Xtend varieties even though no formulations of dicamba had been approved for in-crop uses, and there were few benefits to Xtend varieties other than their dicamba resistance.

117. Monsanto understood that this would lead to off-label, over the top applications of older dicamba formulations on its Xtend products, and in fact encouraged those applications.

118. As a result, off-label applications were made in 2015, which resulted in significant amounts of off-target dicamba damages.

119. This in turn led to larger sales and planting of Xtend varieties in 2016, by farmers afraid of potential dicamba damage and who were assured that non-volatile formulations of dicamba would be available for the growing season.

120. While only approximately 500,000 acres of Xtend varieties were planted in 2015, over 3 million acres were planted in 2016.

121. Monsanto understood and reasonably anticipated that large amounts of off-label over the top applications of older dicamba formulations would occur on these acres if new formulations of dicamba were not approved for use during the 2016 growing season; indeed, it encouraged such uses.

122. This is precisely what occurred, leading to even larger and unprecedented amounts of dicamba damages in 2016. Hundreds of thousands of acres of crops were damaged by off target dicamba that year, and exposed crops sustained major yield losses.

123. Fear of potential damage from off-target dicamba was a major driver of sales for Xtend crops leading up to the 2017 growing season. Many farmers purchased these products after being personally damaged and suffering significant yield losses by off-target dicamba movement in prior growing seasons. Many others purchased Xtend crops because they personally knew farmers who had been damaged by off target dicamba movement, and did not want to share their fate.

124. This fear benefitted Monsanto, who owns exclusive benefits of dicamba resistance, and its licensee Dupont, by increasing sales of Xtend products.

125. In turn, the increased planted acreage of Xtend products benefitted BASF, and further benefitted Monsanto, and Dupont, by increasing the market for their dicamba products Xtendimax, Engenia, and Fexapan.

126. As a result, 25 million acres of Xtend variety crops were planted during the 2017 growing season.

127. While the introduction of supposedly safer dicamba products in 2017 was marketed by the Defendants as a solution to the off target dicamba damages of the 2015 and 2016 growing season, the damages from dicamba in 2017 have been exponentially worse.

128. As of the filing of this complaint, there have been thousands of complaints of dicamba damage across dozens of States, and millions of acres of American crops have been devastated.

129. This would not be possible if Xtendimax, Engenia, or Fexapan were safer than previous versions of dicamba in any appreciable way. Instead, Defendants sold these products knowing that harm would result from the intended and reasonably anticipated uses of their products, and that serious widespread damage would be inevitable.

130. Perversely, it was in the Defendants' interests to do so. The more farmers who are devastated by Xtendimax, Engenia, and Fexapan this year, the more farmers who will defensively buy and plant Xtend variety crops next year in order to protect themselves from being damaged by those inherently uncontrollable herbicides. This in turn increases the market for Xtendimax, Engenia, and Fexapan, as there are more planted acres upon which those herbicides can be used.

131. This vicious and self-reinforcing cycle is a crucial aspect of the Defendants' scheme to dominate farmers and monopolize the seed and herbicide markets.

132. In effect, the Defendants' conduct presents farmers with two alternatives: either purchase Defendants' Xtend crops or risk egregious and unreasonable harm to your crops and livelihood.

133. The Defendants' shocking and oppressive strategy of harming potential customers in order to coerce their purchasing decisions would be bad enough on its own. It is made worse by Defendants' knowledge that their products have limited and temporary usefulness.

134. The sole purpose of Xtend crops, Xtendimax, Engenia, and Fexapan is to provide a new herbicide option to help farmers control weeds that have grown immune to Roundup and glyphosate.

135. However, some weeds have already developed dicamba resistance, and research indicates that many of the same weeds that have grown resistant to glyphosate can, and likely will, grow resistant to dicamba within several growing seasons.

136. As a result, even widespread adoption of Xtend crop systems will provide only temporary relief from difficult to control weed populations.

137. Defendants' greed is such that they are willing to cause severe and widespread harm to American farmers to coerce them into paying a premium for products which will provide with few, limited, and temporary benefits.

### **CASE SPECIFIC ALLEGATIONS**

138. Plaintiffs Brian Warren and Warren Farms grow soybeans and pumpkins on 1500 acres of farmland in Brouhgton, IL.

139. In June and July 2017, plaintiff observed significant dicamba injuries on his crops, including, but not limited to cupping, curling, strapping, discoloration, leaf elongation, wrinkling, stunting, trumpeting, or twisting of exposed plants. The damage was observed on hundreds of acres.

140. Numerous farmers within the vicinity of plaintiff purchased and planted seed for Xtend variety soybean and cotton, and applied Xtendimax, Engenia, and Fexapan to their Xtend variety crops.

141. These same farmers, within the vicinity of plaintiff, applied Xtendimax, Engenia, and Fexpan in the manner intended by, and reasonably anticipated by, Monsanto, BASF, and Dupont.

142. Xtendimax, Engenia, and Fexapan moved off target from application sites and onto plaintiff's crops and property after applications made in the manner intended by, and

reasonably anticipated by, Monsanto, BASF, and Dupont, due to the inherent characteristics of the herbicides.

143. As a result, plaintiffs' crops were exposed to dicamba, suffered significant injuries, and sustained a loss of yield.

144. As a further result of exposure to dicamba, plaintiff will sustain loss of seed and progeny in future growing seasons.

### **CLAIMS FOR RELIEF**

#### **COUNT I** **STRICT LIABILITY—DEFECTIVE DESIGN**

145. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

146. Xtendimax, Engenia, and Fexapan are defective in design or formulation in that they are not reasonably fit, suitable, or safe for their intended purpose, they cannot be used safely without causing severe risk of harm to others' crops, and their foreseeable risks exceed the benefits associated with their design and formulation.

147. The design of each Xtendimax, Engenia, and Fexapan was defective and unsafe in that each causes severe crop injuries as a result of volatility and off target movement, including but not limited to movement through volatility, temperature inversion, and spray drift.

148. This design defect made these herbicides unreasonably dangerous, yet Defendants knowingly introduced these herbicides into the market.

149. These herbicides as manufactured by Defendants remained unchanged and were in the same condition at the time of the injuries herein alleged.

150. As a direct and proximate cause of Defendants' manufacture, sale and promotion of the defectively designed herbicides, Plaintiffs sustained serious injury to his crops.

151. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages.

152. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proven at trial, together with interests, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

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

153. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

154. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into the stream of commerce the dicamba herbicides Xtendimax, Engenia, and Fexapan, in the course of the same, directly advertised or marketed the products to the EPA, agricultural professionals, and consumers and therefore had a duty to warn of the risks associated with the use of dicamba products.

155. The dicamba products manufactured and/or supplied by Defendants were defective due to inadequate warnings or instructions because Defendants knew or should have known that the products created significant risks of harm to non-Xtend crops, and they failed to adequately warn consumers, regulators, and innocent bystanders of such risks.

156. Monsanto, BASF, and Dupont all failed to adequately warn consumers, regulators, and innocent bystanders that Xtendimax, Engenia, and Fexapan could cause severe crop injuries through volatility, temperature inversions, and spray drift.

157. Monsanto, BASF, and Dupont all failed to adequately warn consumers, regulators, and innocent bystanders that Xtendimax, Engenia, and Fexapan would volatilize in high heat, low humidity, or when mixed with glyphosate.

158. Monsanto, BASF, and Dupont all failed to adequately warn consumers, regulators, and innocent bystanders that Xtendimax, Engenia, and Fexapan would move off target through temperature inversions hours and days after application.

159. Xtendimax, Engenia, and Fexapan were defective due to inadequate post-marketing warnings or instructions because, even though Defendants knew or should have known of the risk of severe crop injuries from the use of their products, Defendants failed to provide an adequate warning to consumers or innocent bystanders, knowing the products could cause serious injury.

160. Defendants failed to perform or otherwise facilitate adequate testing; failed to reveal and/or concealed testing and research data; and selectively and misleadingly revealed and/or analyzed testing and research data.

161. As a direct and proximate result of the reasonably anticipated use of Xtendimax, Engenia, and Fexapan, as manufactured, designed, sold, supplied, marketed and/or introduced into the stream of commerce by Defendants, Plaintiffs suffered serious crop injury, harm, damages, economic and non-economic loss and will continue to suffer such harm, damages and losses in the future.



162. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages.

163. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

**COUNT III**  
**NEGLIGENCE**

164. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

165. At all relevant times, Defendants had a duty to properly manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, label, package, distribute, prepare for use, sell, and adequately warn of the risks and dangers of Xtendimax, Engenia, and Fexapan.

166. Defendants had a duty to exercise reasonable care in the advertising and sale of Xtendimax, Engenia, and Fexapan, including a duty to warn consumers, agricultural professionals, and innocent bystanders of the dangers associated with dicamba products that were known or should have been known to Defendants at time of the sale of Xtendimax, Engenia, and Fexapan.

167. At all times material hereto, Defendants had actual knowledge, or in the alternative, should have known through the exercise of reasonable and prudent care, of the

hazards and dangers of dicamba products to cause serious crop injury through volatility, temperature inversion, and spray drift.

168. Defendants had a duty of care when they educated and informed consumers and agricultural professionals about their dicamba formulations and Xtend crop systems and provided information to consumers and agricultural professionals about supposedly “low volatility” dicamba formulations.

169. Defendants had a duty to disclose to consumers and agricultural professionals the likelihood of crop injuries through the off-target movement of Xtendimax, Engenia, and Fexapan.

170. At all times herein mentioned, Defendants breached their duty of care by negligently and carelessly manufacturing, designing, formulating, distributing, compounding, producing, processing, assembling, inspecting, distributing, marketing, labeling, packaging, preparing for use and selling Xtendimax, Engenia, and Fexapan, and failing to adequately test and warn of the risks and dangers of dicamba as described herein.

171. Despite the fact that Defendants knew or should have known that Xtendimax, Engenia, and Fexapan caused unreasonable, dangerous off target crop injuries, Defendants continued to market these products when there were safer alternative weed control methods.

172. At all times material hereto, Defendants misbranded Xtendimax, Engenia, and Fexapan on an ongoing and continuous basis, and failed to warn agricultural professionals, consumers, and innocent bystanders that these formulations were not in fact “low volatility”.

173. Defendants failed to disclose to regulators, agricultural professions, consumers, and innocent bystanders the known risks of off-target movement.

174. As marketed and promoted to agricultural professions, consumers, and innocent bystanders, Defendants failed to warn that Xtendimax, Engenia, and Fexapan caused off target crop injuries through volatility, temperature inversion, and spray drift.

175. Defendants knew or should have known that innocent bystanders such as Plaintiffs would foreseeably suffer injuries as a result of Defendants failure to exercise ordinary care as described above.

176. Defendants' negligence was a proximate cause of the Plaintiffs' injuries, harm and economic losses which Plaintiffs suffered, and will continue to suffer, as described and prayed for herein.

177. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn, or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages.

178. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

**COUNT IV**  
**CONTINUING NUISANCE**

179. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

180. Defendants' conduct has created a nuisance by causing widespread damage due to post-emergence applications of Xtendimax, Engenia, and Fexapan on Xtend crops.

181. The widespread and significant off target movement of Xtendimax, Engenia, and Fexapan constitutes an unreasonable and substantial interference with rights common to the general public.

182. This unreasonable interference was and is imposed on the Plaintiffs. It arises from Defendants' manufacturing, designing, formulating, distributing, compounding, producing, processing, assembling, inspecting, distributing, marketing, labeling, packaging, preparing for use and selling Xtendimax, Engenia, and Fexapan, and failing to adequately test and warn of the risks and dangers of dicamba as described herein.

183. Specifically, Defendants market Xtendimax, Engenia, and Fexapan with the knowledge that these herbicides are prone to volatilize, move off target through temperature inversions, and move off target through spray drift, and will do so despite all mitigation efforts available to applicators.

184. Defendants introduced these products into the stream of commerce with the knowledge that their herbicides were highly toxic to non-Xtend crops, and would cause severe damage to farmers who purchased and planted crops sold by Defendants' competitors.

185. Defendants have unreasonably interfered with the Plaintiffs' right to grow and raise crops of their choosing, free of damage and toxic interference from Defendants' dicamba products.

186. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn, or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages and injunctive relief.

187. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees, injunctive relief, and all such other relief as the Court deems proper.

**COUNT V**  
**NEGLIGENT MISREPRESENTATION**

188. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

189. From the time Xtendimax, Engenia, and Fexapan were first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, Defendants failed to disclose material facts regarding the safety and efficacy of these products. Defendants made misrepresentations to Plaintiffs, farmers within the vicinity of Plaintiffs, regulators, agricultural professionals, and the general public, including but not limited to the misrepresentation that Xtendimax, Engenia, and Fexapan were "low volatility", and that on target applications could be assured. At all relevant times, Defendants conducted sales and marketing campaigns to promote the sale of dicamba products and dicamba resistant crops and willfully deceived Plaintiffs, farmers within the vicinity of Plaintiffs, agricultural professional and the general public as to the risks of off target crop injuries and the consequences of in-crop dicamba applications.

190. Defendants had a duty to provide Plaintiffs, farmers within the vicinity of Plaintiffs, and agricultural professionals with true and accurate information and warnings of any known risks and harmful consequences of the herbicides they marketed, distributed, and sold.

191. Defendants made the foregoing representations without any reasonable grounds for believing them to be true. These representations were made directly by Defendants and authorized agents of Defendants, and in publications and other written materials directed to

agricultural professionals, consumers, and the general public, with the intention of inducing reliance and the purchase of their products.

192. Defendants knew or should have known, based on prior experience, studies, and knowledge of the safety risks associated with dicamba that their representations regarding Xtendimax, Engenia, and Fexapan were false, and that they had a duty to disclose the dangers associated with the intended and reasonably anticipated uses of the herbicides.

193. The representations by the Defendants were in fact false, in that dicamba cannot be used safely for post emergence applications, and that Xtendimax, Engenia, and Fexapan have a serious propensity to cause serious crop injuries to off target non-Xtend crops, including but not limited to those suffered by Plaintiffs.

194. Farmers within the vicinity of the Plaintiffs and the agricultural community justifiably relied on Defendants' misrepresentations and nondisclosures to Plaintiffs' detriment. Specifically, farmers within the vicinity of the Plaintiffs relied upon representations that Xtendimax, Engenia, and Fexapan were low volatility herbicides, would remain on target, and would not cause injury to non-target crops.

195. In reliance on the misrepresentations by the Defendants, farmers within the vicinity of Plaintiffs were induced to purchase and use Xtendimax, Engenia, and Fexapan, which in turn caused harm to Plaintiffs. The reliance was justified because such misrepresentations were made and conducted by individuals and entities that were in a position to know the true facts.

196. As a direct and proximate result of the foregoing negligent misrepresentations by Defendants, Plaintiffs suffered injuries and damages as alleged herein.

197. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages.

198. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

**COUNT VIII**  
**FRAUDULENT MISREPRESENTATION**

199. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

200. From the time Xtendimax, Engenia, and Fexapan were first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, Defendants made fraudulent misrepresentations of material facts regarding the safety and efficacy of these products. Defendants made misrepresentations to Plaintiffs, farmers within the vicinity of Plaintiffs, regulators, agricultural professionals, and the general public, including but not limited to the misrepresentation that Xtendimax, Engenia, and Fexapan were "low volatility", and that on target applications could be assured. At all relevant times, Defendants conducted sales and marketing campaigns to promote the sale of dicamba products and Xtend crops and willfully deceived Plaintiffs, farmers within the vicinity of Plaintiffs, agricultural professionals and the general public as to the risks of off target crop injuries and the consequences of in-crop dicamba applications.

201. Defendants knew that their representations were false, yet they willfully, wantonly, and recklessly disregarded their obligation to provide truthful representations regarding the safety and risks of Xtendimax, Engenia, and Fexapan to Plaintiffs and other American farmers, including those within the vicinity of Plaintiffs.

202. The misrepresentations were made by the Defendants with the intent that American farmers, including Plaintiffs and farmers within the vicinity of Plaintiffs, would rely upon them.

203. Defendants' representations were made with the intent of defrauding and deceiving Plaintiffs and other American farmers to induce and encourage the sale of Xtend crops, Xtendimax, Engenia, and Fexapan.

204. Plaintiffs and farmers within the vicinity of Plaintiffs relied upon these representations, used Xtendimax, Engenia, and Fexapan in the manner intended and reasonably anticipated by Defendants and thereby caused injury to Plaintiffs through off target movement.

205. As a foreseeable, direct, and proximate consequence of Defendants' actions, omissions, and misrepresentations, Plaintiffs suffered significant crop injuries, yield loss, and loss of seed and progeny.

206. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages.



207. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

**COUNT VII**  
**FRAUDULENT CONCEALMENT**

208. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

209. At all relevant times, Defendants knew that Xtendimax, Engenia, and Fexapan were defective and unreasonably unsafe for their intended purposes, and intentionally and willfully failed to disclose and/or suppressed information regarding the true nature of the risks of using these herbicides.

210. Defendants fraudulently concealed information with respect to the volatility of Xtendimax, Engenia, and Fexapan, the likelihood that off target movement would occur through temperature inversions and spray drift, the likelihood of severe crop injuries due to off target movement of their herbicides, and that their herbicides were not safer than alternative weed control methods.

211. Defendants were under a duty to Plaintiffs, and to farmers within the vicinity of Plaintiffs, to disclose and warn of the defective and dangerous nature of Xtendimax, Engenia, and Fexapan, because Defendants had sole access to material facts concerning, and unique and special expertise regarding, the dangers and unreasonable risks of these herbicides.

212. Defendants knowingly made false claims about the volatility of Xtendimax, Engenia, and Fexapan and omitted important information about the safety and qualities of these herbicides in the documents and marketing materials Defendants provided to farmers within the Plaintiffs' vicinity and the agricultural community.

213. As designers, manufacturers, sellers, promoters, and/or distributors of Xtendimax, Engenia, and Fexapan, Defendants had unique knowledge and special expertise regarding these herbicides. That knowledge placed Defendants in a position of superiority and influence over Plaintiff and farmers within Plaintiffs' vicinity who purchased Defendants' products. As such, Plaintiffs and farmers within Plaintiffs' vicinity reasonably placed their trust and confidence in Defendants and in information disseminated by Defendants.

214. The facts concealed or not disclosed by Defendants to Plaintiffs and farmers within the vicinity of Plaintiffs were material facts that a reasonable person would have considered to be important in deciding whether or not to purchase and use Xtend crops, Xtendimax, Engenia, and Fexapan.

215. The concealment and/or nondisclosure of information by Defendants about the severity of the risks caused by Xtendimax, Engenia, and Fexapan was intentional, and the representations made by Defendants were known by them to be false.

216. The concealment of information and misrepresentations about Xtendimax, Engenia, and Fexapan were made by Defendants with the intent that American farmers, including those within the vicinity of Plaintiffs, rely upon them and purchase their products.

217. Plaintiffs and farmers within Plaintiffs' vicinity reasonably relied on Defendants' representations and were unaware of the substantial risk posed by Xtendimax, Engenia, and Fexapan.

218. Had Defendants not concealed or suppressed information regarding the severity of the risks of Xtendimax, Engenia, and Fexapan, farmers within the vicinity of the Plaintiff would not have purchased and used these herbicides.

219. Defendants, by concealment or other action, intentionally prevented Plaintiffs and farmers within vicinity of the Plaintiffs from acquiring material information regarding the dangers of Xtendimax, Engenia, and Fexapan, thereby preventing Plaintiffs and farmers within vicinity of Plaintiffs from discovering the truth. As such, Defendants are liable for fraudulent concealment.

220. As a foreseeable, direct, and proximate consequence of Defendants' actions, omissions and misrepresentations, Plaintiffs suffered significant crop injuries, yield loss, and loss of seed and progeny.

221. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages.

222. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper

**COUNT VIII**  
**FRAUD**

223. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

224. Through a sophisticated and well-orchestrated marketing campaign, Defendants set out to convince the public that Xtendimax, Engenia, and Fexapan were low volatility herbicides that could be used safely without egregious risk of harm to non-Xtend crops, and then purposefully deceived agricultural professionals, farmers within the vicinity of the plaintiff, and

the general public that dicamba could be used safely for post-emergence applications. Defendants did this through marketing and advertising materials that purposefully misrepresented the characteristics of their herbicides and skewed scientific data.

225. Defendants, from the time they first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed dicamba products, and up to the present, knew that their products could cause significant amounts of off-target injuries through volatility, temperature inversion, and spray drift, yet Defendants willfully deceived Plaintiffs by concealing from them, farmers within Plaintiffs' vicinity, and the general public, of the true facts concerning Xtendimax, Engenia, and Fexapan, which Defendants had a duty to disclose.

226. At all times herein mentioned, Defendants conducted sales and marketing campaigns to promote the sale of Xtend crops, Xtendimax, Engenia, and Fexapan, and willfully deceived Plaintiffs, farmers within the vicinity of Plaintiffs, agricultural professionals and the general public as to the significant risks and consequences of using these products. Defendants knew of the foregoing, that dicamba products are not safe, fit and effective for in crop applications, that using dicamba products is injurious to non-Xtend crops within several miles of the application site, and that dicamba products have a serious propensity to cause severe injuries to farmers' crops who purchased competing products, including but not limited to the injuries Plaintiffs suffered.

227. Defendants knowingly, falsely, deceptively, and inaccurately described their herbicides as "low volatility" with the intent to deceive agricultural professionals into purchasing and using their products, to inadvertently hurt their neighbors' crops, and thereby drive increasing demand for Xtend crops, Xtendimax, Engenia, and Fexapan.

228. Defendants knowingly, falsely, deceptively, and inaccurately misstated the volatility of their dicamba products to agricultural professionals. There were no rigorous, independent, or properly conducted tests of real-world intended and reasonably foreseeable uses to support post-emergence usage of dicamba products.

229. Defendants knowingly, falsely, deceptively and inaccurately designated their herbicides as low volatility with the intent to confuse and deceive consumers and agricultural professionals, and to foster the belief by consumers and agricultural professionals, including Plaintiffs, that dicamba could be used safely for post-emergence uses without unreasonably risk of injury to non-Xtend crops.

230. Defendants concealed and suppressed the true facts concerning Xtendimax, Engenia, and Fexapan, with the intent to defraud Plaintiffs and other American farmers, in that Defendants knew that Plaintiffs would not be safe from off-target dicamba injuries if they purchased competing products, and that farmers within the vicinity of Plaintiff would not have purchased and used dicamba products if they were aware of the true facts concerning these dangers.

231. Plaintiffs, and farmers within the vicinity of Plaintiffs, relied on the fraudulent and deceptive representations made by the Defendants to their detriment. Specifically, Plaintiffs relied on representations that Xtendimax, Engenia, and Fexapan were low volatility herbicides that could be used safely without risk of injury to non-target plants.

232. Farmers within the vicinity of Plaintiffs would not have applied Xtendimax, Engenia, and Fexapan had they been provided with adequate, true, accurate, and correct information by Defendants about the risks of off-target movement through volatility, temperature inversion, and spray drift.

233. During promotion of their dicamba herbicides, neither Defendants nor co-promoters warned agricultural professionals, including Plaintiff and Plaintiffs' neighbors, that Xtendimax, Engenia, and Fexapan were likely to volatilize and travel off site through temperature inversions and spray drift.

234. Farmers within the vicinity of Plaintiffs would not have purchased and applied Xtendimax, Engenia, and Fexapan had the Defendants informed the agricultural community of the likelihood that non-Xtend crops would be destroyed by the uncontrollable nature and toxicity of dicamba herbicides.

235. As a direct and proximate result of the Defendants' fraudulent and deceitful conduct, Plaintiffs suffered injuries and damages as alleged herein.

236. Defendants' conduct, as described above, was reckless. Defendants risk the livelihoods of American farmers, including Plaintiffs, with knowledge of the severe dangers of off target movement and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspected public. Defendants' reckless conduct warrants an award of punitive damages.

237. By reason of the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

**COUNT IX**  
**ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**  
*(815 Ill. Comp. Stat. 505/1 et seq.)*

238. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

239. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act when they failed to adequately warn consumers and the agricultural community of the safety risks associated with Xtendimax, Engenia, and Fexapan. As a direct result of Defendants' deceptive, unfair, unconscionable, and fraudulent conduct, Plaintiffs suffered and will continue to suffer economic loss, pecuniary loss, and other compensable injuries.

240. The actions and failure to act of Defendants, including the false and misleading representations and omissions of material facts regarding the safety and potential risks of dicamba products and the above described course of fraudulent conduct and fraudulent concealment constitute acts, uses or employment by Defendants of unconscionable commercial practices, deception, fraud, false pretenses, misrepresentations, and the knowing concealment, suppression or omission of material facts in connection with the sale of merchandise of Defendants in violation of the consumer protection statutes listed above.

241. The agricultural community and farmers within the vicinity of Plaintiffs relied upon Defendants' misrepresentations and omissions in determining whether to purchase and use Xtend crops, Xtendimax, Engenia, and Fexapan.

242. By reason of the unlawful acts engaged in by Defendants, Plaintiffs have suffered ascertainable loss and damages.

243. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered and will continue to suffer economic loss, pecuniary loss, and other compensable injuries.

244. By reason of the foregoing, Defendants are liable to Plaintiffs under the Illinois Consumer Fraud and Deceptive Business Practices Act for compensatory, statutory and punitive

damages to the extent available, in amounts to be proven at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

**COUNT X**  
**CIVIL CONSPIRACY**

245. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

246. Monsanto, BASF, and Dupont knowingly created a scenario in which post-emergence application of dicamba products would cause off-target movement and damage crops sold by their competitors, including Plaintiffs' crops, in order to fuel further sales of Xtend crops, Xtendimax, Engenia, and Fexapan.

247. The object of the unlawful conspiracy was the sale of Xtend crops, Xtendimax, Engenia, and Fexapan and the destruction of competing brands of soybeans, cotton, and primary weed control agents.

248. In furtherance of this conspiracy, Defendants unlawfully risk the livelihoods of American farmers, including Plaintiffs, with knowledge that farmers would suffer extensive damage if they refused to purchase Defendants' products.

249. As a direct and proximate result of this civil conspiracy by Defendants, Plaintiffs suffered injuries and damages as alleged herein.

250. By reason of the foregoing, Defendants are liable for compensatory and punitive damages, in amounts to be proved at trial, together with interest, costs of suit, attorneys' fees and all such other relief as the Court deems proper.

**COUNT XI**  
**PUNITIVE DAMAGES**



251. Plaintiffs incorporate by reference each and every paragraph set forth above as if fully set forth herein.

252. The acts, conduct, and omissions of Defendants, as alleged throughout this Complaint were willful and malicious. Defendants committed these acts with a conscious disregard for the livelihood of American farmers, including Plaintiffs, for the primary purpose of increasing Defendants' profits from the sale and distribution of Xtend crops, Xtendimax, Engenia, and Fexapan, and the secondary purpose of dominating American farmers and dictating their purchasing decisions. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish and make an example of Defendants.

253. Prior to the manufacturing, sale, and distribution of Xtendimax, Engenia, and Fexapan, Defendants knew that these products were in a defective condition as previously described herein and knew that those who did not plant Xtend crops would experience and did experience severe crop injuries, and significant anxiety resulting from the potential loss of their livelihood. Further, Defendants, through their officers, directors, managers, and agents, knew that these herbicides presented a substantial and unreasonable risk of harm to the public, including Plaintiffs, and as such, Defendants unreasonably subjected innocent bystanders to harm by introducing these herbicides into the stream of commerce.

254. Despite their knowledge, Defendants, acting through their officers, directors, and managing agents, for the purpose of enhancing Defendants' profits, knowingly and deliberately failed to remedy the known defects in Xtendimax, Engenia, and Fexapan, and failed to warn the public, including Plaintiffs, of the extreme risk of injury occasioned by said defects inherent in these herbicides. Defendants and their agents, officers, and directors intentionally proceeded with

the manufacturing, sale, and distribution and marketing of these herbicides knowing these actions would expose farmers to serious danger in order to advance Defendants' pecuniary interest and monetary profits.

255. Defendants' conduct was despicable and so contemptible that they would be looked down upon and despised by ordinary decent people, and was carried on by Defendants with willful and conscious disregard for the safety of Plaintiffs, entitling Plaintiffs to exemplary damages.

### **PRAYER FOR RELIEF**

WHEREFORE Plaintiffs pray for relief and judgment against each of the Defendants, as appropriate to each cause of action alleged, as follows:

- A. Entry of preliminary and permanent injunctions providing that Monsanto and Dupont shall be enjoined from selling, marketing, distributing, or otherwise disseminating Xtend crops;
- B. Entry of preliminary and permanent injunctions providing that Monsanto, BASF, and Dupont shall be enjoined from selling, marketing, distributing, or otherwise disseminating Xtendimax, Engenia, and Fexapan;
- C. Monetary damages including compensatory relief to which Plaintiffs are entitled according to proof at the time of trial;
- D. Punitive and exemplary damages in an amount within the jurisdiction of this Court and according to proof at the time of trial;
- E. Statutory damages in an amount within the jurisdiction of this Court and according to proof at the time of trial;
- F. Restitution, disgorgement of profits, and other equitable relief;

- G. Attorneys' fees;
- H. For costs of suit incurred herein;
- I. For pre-judgment interest as provided by law; and
- J. For such other and further relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs demand trial by jury of all claims so triable.

Respectfully submitted,

/s/ Ronald E. Osman \_\_\_\_\_  
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*(pro hac vice pending)*

***Attorneys for Plaintiffs***

Dated: September 11, 2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Brian Warren and Warren Farms

(b) County of Residence of First Listed Plaintiff Hamilton, IL (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) See attached

DEFENDANTS

Monsanto Company; BASF Corporation; BASF SE; E.I. duPont De Nemours and Company; Pioneer Hi-Bred International, Inc.

County of Residence of First Listed Defendant St. Louis, MO (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff and Defendant citizenship (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country) and incorporation status (Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332. Brief description of cause: Chemical damage to growing crops.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/11/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald E. Osman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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