29th JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO: 79219

DIVISION: DIV. D
JUDGE
M. LAUREN LEMMON

ARCHER DANIELS MIDLAND COMPANY

VERSUS

SYNGENTA CORPORATION,
SYNGENTA SEEDS, INC.,
AND SYNGENTA CROP PROTECTION, LLC

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ST. CHARLES PARISH
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PETITION FOR DAMAGES

NOW COMES plaintiff, Archer Daniels Midland Company ("ADM" or "Plaintiff"), through undersigned counsel, and for its Petition against Syngenta Corporation, Syngenta Seeds, Inc. and Syngenta Crop Protection, LLC (collectively "Syngenta" or "Defendants"), avers as follows on information and belief:

SUMMARY OF THIS ACTION

1. This lawsuit arises from improper actions by Syngenta that have adversely affected the export market for corn grown in the United States and caused damages to ADM in particular.

2. As further described below, Syngenta elected to sell certain genetically modified organism ("GMO") corn seeds in the United States without undertaking reasonable "stewardship" practices adequately designed to ensure that its genetically modified corn did not taint or become commingled with the rest of the U.S. corn supply. Syngenta was aware of the need for such stewardship practices to guard against the potential rejection of U.S. corn in export markets that had not granted regulatory approval to Syngenta's GMO corn. In fact, when seeking "nonregulated status" from the U.S. Department of Agriculture ("USDA") for its GMO corn, Syngenta itself had pledged that it would implement and enforce the necessary stewardship practices—precisely to avoid a situation where export markets that had not granted GMO approvals might reject U.S. corn due to tainting or commingling of approved corn with unapproved varieties.

3. Syngenta did not undertake reasonable and necessary stewardship practices, however. Instead, after receiving the requested "nonregulated status" from the USDA, it proceeded to sell and commercialize its genetically modified corn seeds with virtually no stewardship requirements or other reasonable stewardship practices put in place. The results have been predictable and entirely foreseeable. Syngenta's GMO corn has become intermixed with the rest of the U.S. corn supply. That, in turn, has resulted in China, which has never granted regulatory approval to Syngenta's GMO corn but is one of the largest export markets for corn, rejecting the vast majority of U.S. corn shipments because of the intermixed presence of Syngenta's GMO corn. These rejections have resulted in very substantial losses to U.S. exporters who have had their shipments to China turned away, including tens of millions of dollars in damages to ADM.

INTRODUCTION

4. American farmers in Louisiana and elsewhere grow corn on more than 400,000 farms, across more than 85 million acres of farmland. Farmers typically sell their corn at local grain elevators, many of which are owned and operated by grain-handling companies such as plaintiff ADM.

5. ADM is a 112 year-old agricultural products company that over the years has developed an extensive network of grain elevators, transportation resources (such as rail cars, trucks, barges, ships, and terminals), and processing facilities. ADM buys corn and many other crops at its elevators and elsewhere; stores and aggregates the crops; processes some of the crops into agricultural products; transports the crops by truck, rail, river, and ocean; and sells the crops and agricultural products to customers in the United States and around the world. When ADM exports crops and other agricultural products out of the United States, the majority of its shipments depart from one of the four grain terminals located in Louisiana, either after being transported via rail or down the Mississippi River via barge to the export grain terminals that ADM owns and operates in Louisiana, or after being purchased from third-party barges delivered to ADM at Louisiana port terminals.

6. Until recently, China had been a significant purchaser of U.S.-grown corn, and ADM sold and exported substantial volumes of U.S. corn to China. China is now the second largest consumer of corn in the world, and in recent years had become an important and growing

export market for U.S. corn. Approximately two-thirds of ADM's exports of U.S. corn to China were exported from Louisiana.

7. China has not, however, provided regulatory approval for the importation of certain types of genetically modified corn. In particular, China has never granted regulatory approval for the importation of corn containing a genetically modified trait known as "MIR162." That genetic trait was developed and is patented by Syngenta. Syngenta, in turn, sells or exclusively controls the sale of corn seed containing MIR162 ("MIR162 corn"). On information and belief, Syngenta has been aware at all relevant times that China has not granted regulatory approval for the importation of MIR162 corn.

8. The MIR162 trait was introduced into the U.S. corn market by Syngenta in 2010 by selling genetically-modified seeds with this trait to farmers.

9. Before Syngenta could sell MIR162 seeds to U.S. farmers, it had to receive various regulatory determinations, including a determination from USDA that MIR162 corn would not be considered a "plant pest" and would not have a significant impact on various environmental and socioeconomic issues. In its application to USDA for "nonregulated status," Syngenta said it would implement and enforce mandatory "stewardship programs" that would (i) keep MIR162 corn separated from non-MIR162 corn (referred to here as "regular corn") and (ii) ensure that only regular corn would be "channeled" for distribution to export markets. Syngenta further explicitly assured USDA that, as a result of these stewardship programs, there would be no effect on the U.S. corn export market.

10. In April 2010, the USDA proceeded to grant the requested "nonregulated status" for MIR162 corn. Thereafter, Syngenta began selling genetically-modified seeds with this trait to U.S. farmers.

11. Syngenta's acknowledgments to USDA that a robust stewardship program was important in order to keep MIR162 corn segregated and avoid potential harm to the corn export market were consistent with industry practice. In similar circumstances, seed companies have worked closely with farmers and grain handlers such as ADM to implement stewardship programs that keep one form of a crop separated from a second form of a crop. It is common knowledge in the industry that achieving such separation requires, among many other things, advance planning and coordination with different market participants at each stage of the

growing and distribution chain, so that they can put in place procedures and facilities designed to maintain separation.

12. Syngenta did none of this. Instead, despite its written acknowledgement to USDA that a stewardship program was important in order to avoid harm to the export market, despite the industry practice of engaging in such programs in similar circumstances, and despite the clear foreseeability that harm would result if Syngenta did not implement a reasonable stewardship program, Syngenta took no significant actions to implement a reasonable stewardship program for MIR162 corn. Yet Syngenta controlled, directly and through its agents, the manner in which MIR162 seed was dispersed throughout the U.S. corn market, including the obligations placed upon the purchasers of MIR162 seeds and the conditions and timing under which such dispersal would occur.

13. Syngenta's failure to engage in reasonable stewardship programs for MIR162 corn has resulted in the MIR162 trait tainting much of the regular corn crop in the United States, a wholly foreseeable result. The regular corn crop has been tainted as a result of both cross-pollination (in which wind blows pollen containing the MIR162 trait onto fields in which regular corn is planted, thereby spreading the trait to the regular corn) and commingling (in which MIR162 corn or its residue is combined with – rather than "channeled" away from – regular corn at grain elevators and elsewhere in the distribution chain).

14. Once it became apparent to participants in the U.S. corn market that Syngenta was selling MIR162 seed without a reasonable stewardship program, Syngenta was explicitly warned that its actions (and omissions) were causing substantial harm to the ability of U.S. exporters to sell U.S. corn to the important and growing Chinese market. Yet even in the face of these explicit warnings, Syngenta did not implement a reasonable stewardship program and continued to sell MIR162 seed without the reasonable protections provided by a stewardship program. On information and belief, Syngenta's revenue from the sale of MIR162 seed was approximately $875 million in 2013 alone.

THE PARTIES

15. ADM is a Delaware corporation with corporate headquarters in Chicago, Illinois and its principal place of business in Decatur, Illinois. ADM has an extensive network of grain elevators and grain handling and processing facilities (including country elevators, rail terminals, river terminals, corn plants and port elevators) and transportation assets (including trucks, rail

cars, barges, and ocean-going vessels) throughout the United States that it uses to buy, store, clean, process, and transport agricultural commodities, including corn. ADM purchases corn throughout the supply chain, including purchases made directly from farmers. ADM transports significant amounts of corn down the Mississippi River to Louisiana. Once it arrives in Louisiana, the vast majority of ADM's corn and other grain products are sold in the international export market. Approximately 60% of the grain exported by ADM from the United States is shipped from Louisiana. Approximately two-thirds of ADM's shipments of corn to China have been exported from Louisiana.

16. Syngenta Corporation is a corporation organized under the laws of Delaware with its principal place of business at 3411 Silverside Road #100, Wilmington, Delaware 19810-4812. Syngenta Corporation is a large agricultural biotechnology company operating in the crop protection, seeds, and lawn/garden markets. Syngenta Corporation, directly and through its agents, subsidiaries and licensees, develops, produces, and sells a wide range of products, including genetically modified corn seeds containing the MIR162 trait under the brand names "Viptera" and "Duracade" (which also contains other genetically-modified traits). Syngenta Corporation does business in Louisiana, including selling or controlling the sale of Viptera and Duracade to Louisiana farmers, either directly or through its agents, subsidiaries and licensees. Syngenta Corporation may be served in Louisiana through its registered agent, CT Corporation System, 5615 Corporate Boulevard, Ste. 400B, Baton Rouge, Louisiana 70808.

17. Syngenta Seeds, Inc. is a wholly owned subsidiary of Syngenta Corporation. Syngenta Seeds, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 11055 Wayzata Boulevard, Minnetonka, Minnesota 55305-1526. Syngenta Seeds, Inc. is involved, directly and through its agents, subsidiaries and licensees, with the research, sale and production of various seed products within the high value commercial sectors of field crops (including corn, oilseeds, cereals and sugar beet) and vegetables. Syngenta Seeds, Inc.'s products include genetically modified seeds such as Viptera and Duracade. Syngenta Seeds, Inc. does business in Louisiana, including selling or controlling the sale of Viptera and Duracade to Louisiana farmers, either directly or through its agents, subsidiaries and licensees. Syngenta Seeds, Inc. may be served in Louisiana through its registered agent, CT Corporation System, 5615 Corporate Boulevard, Ste. 400B, Baton Rouge, Louisiana 70808.

18. Syngenta Crop Protection, LLC is a limited liability company organized and operating under the laws of Delaware, with its principal place of business at 410 South Swing Road, Greensboro, North Carolina 27409-2012. Upon information and belief, Syngenta Crop Protection, LLC is a wholly owned subsidiary of Syngenta Seeds, Inc. Syngenta Crop Protection, LLC, directly and through its agents, subsidiaries and licensees, manufactures and distributes crop protection products, including insecticides and seed care products for corn. Syngenta Crop Protection, LLC has a major crop protection manufacturing location in St. Gabriel, Louisiana. Syngenta Crop Protection, LLC may be served in Louisiana through its registered agent, CT Corporation System, 5615 Corporate Boulevard, Ste. 400B, Baton Rouge, Louisiana 70808.

19. Upon information and belief, the Defendants acted in concert and as agents and on behalf of one another in connection with the actions and events that are the subject of this Complaint.

JURISDICTION AND VENUE

20. As a court of general jurisdiction, this Court has original jurisdiction to adjudicate the claims set forth in this Petition. *See* La. Const. art. V § 16.

21. This Court has personal jurisdiction over each of the Syngenta defendants pursuant to Louisiana's long-arm statute. *See* La. Rev. Stat. Ann. § 13:3201. All of the Syngenta defendants transact business in Louisiana and Syngenta Crop Protection LLC has a major manufacturing site in St. Gabriel, Louisiana. On information and belief, each of the Syngenta defendants has, directly and/or indirectly through its agents, subsidiaries and licensees, regularly advertised, offered to sell, sold, contracted to supply, supplied and/or distributed Viptera and other products in Louisiana. Furthermore, through its actions, the Syngenta defendants have caused damage to ADM in Louisiana. And each of the Syngenta defendants have purposefully availed themselves of Louisiana's benefits and protections.

22. ADM's two largest export grain terminals and elevators are the Ama and Destrehan facilities, which it owns. Both of these facilities are located in St. Charles Parish. ADM sustained damages in St. Charles Parish, among other places, due to Syngenta's wrongful conduct. For that reason, among others, venue is therefore proper pursuant to La. Rev. Stat. Ann. § 13:3203 and La. Code Civ. Proc. Ann. Art 74.

FACTUAL BACKGROUND

I. The U.S. Corn Export Market and the China Corn Import Market

23. Every year, approximately 20% of the corn grown in the United States is exported throughout the world, to be used for human consumption, animal feed, various agricultural products or other uses. In 2013, the United States exported approximately 18.3 million metric tons of corn, making it one of the world's top exporting nations.

24. After the United States, China is the world's second largest consumer of corn. In 2013, China consumed approximately 24.5% of the world's corn.

25. China's growing population and burgeoning middle class have created a significant demand for corn and corn products. Over the past few years, China has turned to the international market to purchase sufficient corn to meet its national demand. The emergence of China as a major corn import market has been forecast within the agriculture industry since the 1990s.

26. During the 2011-2012 season, according to the National Corn Growers Association ("NCGA"), China purchased approximately 203 million bushels of corn from the United States, making China the third largest purchaser of exported U.S. corn, and accounting for approximately 13% of the total U.S. corn export market.

II. Syngenta's Actions Prior to Its Commercial Sales of MIR162 Seed

27. In 2007, Syngenta began seeking U.S. regulatory rulings necessary to enable it to sell MIR162 corn commercially in the United States. MIR162 is a genetically engineered corn trait developed by Syngenta to make corn resistant to feeding damage caused by ground insects, including corn earworm, black cutworm and western bean cutworm. Prior to receiving the necessary regulatory ruling from USDA, the MIR162 corn line was considered a "regulated" article by USDA because it contained gene sequences from plant pathogens.

A. Syngenta's Assurances to USDA That It Would Implement Reasonable Stewardship Actions for MIR162 Corn

28. The United States Department of Agriculture has promulgated regulations in 7 CFR part 340 that regulate the introduction (including release into the environment, interstate movement or importation) of certain organisms and products altered through genetic engineering. These regulations prohibit the introduction into commerce of such genetically modified organisms absent certain determinations made by the Animal and Plant Health Inspection Service ("APHIS"), an agency of USDA .

29. On August 31, 2007, Syngenta submitted a Petition for Determination of Nonregulated Status for Insect-Resistant MIR162 Maize ("MIR162 Petition" or "Petition") for review by APHIS, in accordance with 7 CFR § 340.6. At the time, MIR162 was a genetically modified trait subject that could not be commercialized absent being granted "nonregulated status" by APHIS and USDA.

30. In its Petition, Syngenta directly addressed the effect that granting "nonregulated status" for MIR162 would have on the U.S. export market. In a section of the MIR162 Petition entitled "Effects on the Export Market," Syngenta told USDA that "there should be no effects on the U.S. maize export market" from granting nonregulated status to MIR162 corn.

31. In support of this claim, Syngenta assured USDA that it would implement a robust, mandatory stewardship program that would keep MIR162 corn out of export markets. Specifically, Syngenta promised that it would implement "a product stewardship program," with the applicable requirements and practices "set out in detail in a stewardship agreement" which would be mandatory for farmers: "Growers will not have a choice whether to follow these [stewardship] procedures ... ; they will be contractually bound to follow the procedures, by means of the stewardship agreement."

32. Syngenta also promised that it would implement a robust compliance program to provide objective assurances that the farmers were actually following these practices: "[Farmers'] compliance will be monitored and enforced according to a fully documented compliance program." In addition, Syngenta said in its Petition that it would take specific steps to ensure that farmers were educated about its stewardship program: "Syngenta will communicate these requirements to growers using a wide-ranging grower education campaign."

33. Syngenta further assured USDA that these stewardship program procedures "are not hypothetical," and acknowledged that Syngenta was "obligated" to implement this "specific and detailed stewardship program."

34. Syngenta specified some of the stewardship practices that would be included in their mandatory program, including a practice that would be specifically designed to protect the U.S. corn export market from the precise situation that has occurred here: "Syngenta's stewardship agreements with growers will include a term requiring growers to divert this product away from export markets (*i.e.* channeling) where the grain has not yet received regulatory approval for import." Syngenta further assured USDA that such "channeling" stewardship

practices were well established and had proven successful in keeping different specialty forms of maize separated from each other:

> The ability to channel particular types of maize for particular uses, such as the export market, is demonstrated by the continuing success of the specialty maize market. Use of identity preservation measures has enabled growers to maintain a wide variety of specialized maize products, including white food maize, waxy maize, hard endosperm maize, high oil maize, nutritionally enhanced maize, high extractable starch maize, nonGMO maize, and organic maize. Channeling programs are well established for separating each of these maize varieties. As set out above, these practices have continued successfully long after the introduction of numerous varieties of transgenic maize.

(internal citation omitted).

35. The Identity Preservation ("IP") programs to which Syngenta referred are well-established programs within the agriculture industry to keep specialized products from being tainted (either via cross-pollination or commingling) by products with materially different characteristics. IP programs are typically implemented in advance through binding contracts with the farmers that cultivate the specialized products. Common IP program measures to prevent tainting of a particular type of crop typically include the following requirements: locking grain bins containing the specialized products; cleaning conveyer belts, combines and warehouses used to transport or store the specialized product; using specifically-designated facilities (or portions of facilities) and transportation containers or vessels for the specialized product; running entirely different types of crops through the machinery between the specialized products and the generic products to minimize the risk of commingling; and tracing the presence of the specialized product throughout the supply system.

36. Although the goal in an IP program is typically to prevent the specialized product from being contaminated by the generic product, the measures utilized by the programs also accomplish the reverse effect of preventing the generic product from being contaminated by the specialized product.

37. On April 9, 2010, USDA granted nonregulated status to MIR162 corn based on its determination, as required by law, that MIR162 corn was "unlikely to pose a plant pest risk," and that MIR162 corn would have "no significant impact" on various environmental and socioeconomic issues, including the export market which USDA determined would remain "unchanged." USDA's "no significant impact" determinations were based on its "Final Environmental Assessment," issued March 2010, in which USDA explicitly addressed the issue of whether MIR162 corn would have a significant impact on the U.S. corn export market. In finding that it would not, USDA cited Syngenta's statements that it was going to engage in a

stewardship program which would include "channeling" of MIR162 corn to divert it away from export markets.

B. *Syngenta's Application for Import Approval in China*

38. To gain import approval from China, the developer of a genetically modified product has to go through a seven step application process. In March 2010, Syngenta submitted its initial application to the Chinese Ministry of Agriculture for approval to import Viptera.

39. To date, Syngenta has never received Chinese regulatory approval for MIR162.

III. Syngenta's Widespread Sale of MIR162 Seed and Failure to Implement Reasonable Stewardship Practices

A. *Syngenta's Commercialization of MIR162 Seed Without Foreign Approvals, Including China*

40. Following the USDA ruling in April 2010, Syngenta began selling MIR162 corn to farmers in a widespread fashion under the brand name Agrisure Viptera ("Viptera"). In 2014, Syngenta released Agrisure Duracade ("Duracade"), its second generation MIR162 corn hybrid. Duracade contained a new genetically modified trait (labeled "Event 5307") that was combined (or "stacked") with previously created genetically modified traits, including MIR162. Syngenta advertised, sold and distributed both Viptera and Duracade throughout the U.S. market, either directly or through seed companies that licensed the products from Syngenta.

41. At the time of Viptera's release, Syngenta had not received regulatory approval for MIR162 in China or the European Union.

42. In 2013, Syngenta's revenue from the sale of its corn products was $3.5 billion. Upon information and belief, Viptera corn constituted approximately 25% of Syngenta's corn product portfolio.

43. At the time of Duracade's release, Syngenta had still not received regulatory approval for MIR162 from China, nor had it received regulatory approval for Event 5307 from China or the European Union.

B. *Syngenta's Failure to Implement Reasonable Stewardship Actions*

44. Despite its knowledge that Viptera corn had not yet received regulatory approval from the Chinese government, and its statements to USDA that it intended to implement a mandatory stewardship program to prevent tainting of the general U.S. corn supply until export regulatory approvals were obtained, Syngenta failed to undertake any reasonable stewardship measures with respect to its sale of Viptera corn.

45. There are a variety of standard, reasonable stewardship measures that were available for Syngenta to implement. An implementation of these measures, or some combination thereof, by Syngenta would have prevented or substantially reduced the tainting of the general U.S. corn supply and the U.S. corn export supply chain with MIR162, both through cross-pollination and commingling. ADM's corn shipments to China would, in turn, not have been rejected as a result of being tainted by MIR162.

46. For example, the foundation for an effective stewardship program is typically a stewardship agreement between the seed manufacturer and the farmer that *requires* the farmer to take certain measures to prevent the cross-pollination and commingling of the new product with the general corn supply. Syngenta did not create, use or implement a mandatory stewardship agreement for use with farmers purchasing Viptera.

47. Syngenta could, for example, have required the farmers purchasing Viptera corn to enter into contracts that would require them to engage in methods of strategic planting in order to minimize the risk of cross-pollination. These methods include the planting of border rows—rows of unharvested crop that intercept stray pollen—or the use of natural barriers like trees and other vegetation to prevent the unintended spread of pollen. Syngenta also could have required its farmer customers to employ spatial isolation methods, whereby crops are planted at a certain distance from one another to prevent cross-pollination, or temporal isolation methods, whereby farmers stagger sowings of crops so they flower at different times. However, Syngenta did not require farmers, via stewardship agreements or otherwise, to utilize these well-known strategic methods to prevent cross-pollination by Viptera corn.

48. Syngenta also could have required its farmer customers to undertake certain cleaning and maintenance steps to further ensure that Viptera corn was not inadvertently commingled with non-Viptera corn. For example, Syngenta could have entered into stewardship agreements with its farmers *requiring* that the farmers clean planting equipment and flush combines before they are used with Viptera corn and clean bin floors before storing Viptera corn in the bins. Syngenta also could have required farmers to keep separate and unique storage bins for Viptera and to maintain those storage bins locked to prevent escape of Viptera. But Syngenta did not require farmers, via stewardship agreements or otherwise, to utilize any these well-accepted methods to prevent commingling of Viptera corn.

49. In order to ensure compliance with stewardship agreements, Syngenta also could have implemented a regular auditing program whereby it would conduct spot checks and/or routine audits in order to ensure the required stewardship standards are being met. Stewardship auditing is commonly conducted at harvest time with inspectors present at both the farm and at the grain handling locations.

50. On information and belief, Syngenta failed to take these and other steps because imposing stewardship requirements would have made its MIR162 corn less attractive for farmers to purchase in light of the associated compliance costs necessary to ensure good stewardship. Instead, in order to maximize their own sales and profits at the predictable later expense of exporters, Syngenta chose not to impose any such mandatory stewardship requirements.

51. In addition to involving farmers in the stewardship process, Syngenta could have entered into agreements with certain pre-designated grain elevators and terminals providing that they would receive Viptera corn in segregated facilities but not export the corn or combine it with corn that was eligible for general export. (Indeed, in the absence of such separate facilities having been pre-established, it was virtually inevitable that MIR162 would find its way into the general corn supply.) Syngenta could have entered into contracts with these grain handlers to engage in routine cleaning and maintenance of their corn pits, conveyor belts, storage bins, rail cars, barges, and any other equipment used to process or transport the MIR162 corn. And, farmers growing Viptera corn could have been required, by their stewardship agreements, to deliver their corn crop to one of the pre-designated grain handlers in their local area. But none of this has been done either, even though these are the kinds of steps taken in the IP programs that Syngenta itself invoked as models.

52. Syngenta's failure to implement stewardship measures also constitutes a failure to conform with industry standards regarding the sale of a corn product that has yet to receive regulatory approval from the key export markets. Similarly situated companies have established stewardship programs in conjunction with the release of a new corn product that remains subject to regulatory approvals in major export jurisdictions, in order to minimize the risk that the new product could jeopardize the export markets to the countries where approval is pending. And industry trade associations, including the National Grain and Feed Association and the North American Export Grain Association, have roundly condemned Syngenta's for its failures.

C. *Syngenta's Anti-Stewardship Actions*

53. Not only did Syngenta fail to implement any significant stewardship measures to minimize the risk that Viptera corn would taint the U.S. corn export supply chain, it took affirmative actions that actually increased the likelihood that Viptera would, in fact, taint the export supply chain. For example, on information and belief, Syngenta has reportedly encouraged farmers purchasing Viptera to engage in side-by-side planting programs whereby they would plant rows of Viptera alongside rows of other corn seed, thus increasing the likelihood of cross-pollination.

54. For a period of time, Syngenta also led participants in the corn industry to believe that Viptera corn had received regulatory approval in China when, in fact, it had not. Until recently, Syngenta had a document entitled "Request Form for Biosafety Certificate(s) Issued by the Chinese Ministry of Agriculture" ("Syngenta Certificate Request Form") available on its website. The Syngenta Certificate Request Form stated that biosafety certificates had been issued to Syngenta by the Chinese Ministry of Agriculture for several transgenic events, including MIR162.

55. The Syngenta Certificate Request Form also stated that a biosafety certificate could be provided to an exporter in order to assist the exporter in obtaining authorization for shipments containing the listed transgenic events to China. In other words, despite the fact that Viptera corn is still awaiting Chinese regulatory approval, the form represented that an exporter could request a biosafety certificate that would permit the exporter to ship MIR162 corn to China.

56. Any participant in the corn industry who viewed this form on Syngenta's web site would have reasonably believed that MIR162 had been approved for export to China, and consequently would have been less likely to take steps to prevent the cross-pollination or commingling of Viptera in the U.S. corn export supply chain.

D. *Syngenta's Supplemental Release of Duracade*

57. In February 2013, Syngenta received a notice of determination from APHIS and USDA that Duracade corn had also been granted nonregulated status.

58. The following year, as Syngenta was preparing to sell Duracade corn for the 2014 planting season, industry stakeholders expressed concern about Syngenta's plans given that Duracade had not yet received regulatory approval in either China or the European Union.

59. In response to this outcry, Syngenta stated at a March 4, 2014 meeting regarding the launch of Duracade that it would "require" growers to sign stewardship agreements which would obligate them either to feed Duracade to livestock or poultry on the farm or deliver it to a grain handling facility not exporting corn to China or to the European Union, according to a March 7, 2014 newsletter published by the National Grain and Feed Association ("NGFA"). By contrast, no such stewardship programs were ever put in place in connection with the commercialization of Viptera.

60. Moreover, even as to Duracade, the stewardship steps Syngenta apparently pledged to take never actually materialized. Instead of imposing mandatory stewardship requirements on farmers purchasing Duracade, Syngenta ultimately instituted only a set of toothless "recommendations." Among the recommendations were the use of border rows, routine cleaning of equipment, harvesting Duracade corn separately from other corn, maintaining separate storage facilities for Duracade, and delivering Duracade to a pre-approved handler—all steps that should have been among those *required* with respect to both Duracade and Viptera but which were not, and which were never even recommended as to Viptera. Not surprisingly, in the absence of mandatory requirements and other steps necessary for an adequate stewardship program, Duracade too has caused the MIR162 trait to spread throughout the U.S. corn supply.

IV. Damages Caused by Syngenta's Conduct

A. *Tainting of U.S. Corn Export Supply Chain*

61. On information and belief, Viptera corn was planted on only about 3% of the acreage dedicated to corn cultivation in the U.S. However, that 3% of the acreage, which was allowed by Syngenta to be indiscriminately scattered throughout the United States has had far broader effects as the result of Syngenta's failure to implement reasonable stewardship practices.

Cross-Pollination

62. Corn is unique amongst major grain crops in that it is a monoecious plant with male and female flowers borne on separate parts of the plant. The corn tassel produces and sheds approximately 2-5 million pollen grains per plant. When the pollen reaches the ear shoot of another corn plant, cross-pollination occurs.

63. Corn depends on wind for cross-pollination. Corn pollen is very light and can be carried considerable distances by the wind. Crop isolation, border rows, use of different planting dates and hybrid maturity crops, and accounting for the prevailing wind direction are all actions that can be used to minimize the risk of cross-pollination. Research has indicated that cross-

pollination between corn fields could be limited to 1% or less on a whole field basis by enforcing a separation distance of 660 feet between corn fields. That same research has shown that cross-pollination between corn fields could be limited to .5% or less on a whole field basis by utilizing a separation distance of 984 feet between corn fields.

64. As a result of Syngenta's failure to implement reasonable stewardship actions, Viptera and Duracade corn has cross-pollinated with neighboring corn fields, including corn fields owned by farmers that did not purchase Viptera or Duracade, resulting in the tainting of those fields with MIR162 corn. When the unknowing farmers then sell their tainted corn at a grain elevator or otherwise, MIR162 inadvertently enters the grain supply system in an undifferentiated manner.

Commingling

65. Commingling of different types of corn, including the commingling of MIR162 corn with generic corn, can occur at nearly every stage of corn cultivation, including during planting, harvest, drying, storage, grain transport and grain aggregation, in the absence of adequate stewardship practices. It can be the result of MIR162 being indiscriminately mixed with generic corn or, for example, the result of residues commingling if the same equipment is used for the two types of corn without appropriate cleaning procedures being utilized. And commingling can occur at every stage of the aggregation and transportation process, including the aggregation of a farmer's crops with the crops of other members of an agricultural co-operative.

66. As a result of Syngenta's failure to implement reasonable stewardship actions, Viptera and Duracade corn has commingled with other corn throughout the U.S. corn supply, resulting in the widespread tainting of the U.S. corn export supply chain with MIR162.

Tainting of Corn in ADM's Possession

67. ADM owns and operates over 200 different facilities dedicated to the collection and aggregation of grains, including corn. A given ADM grain elevator might purchase and unload approximately 600 truckloads of grain from farmers in a given day—about one every three minutes—and aggregates the purchased grains for sale and transit.

68. Subsequent to the commercialization of Viptera and Duracade, ADM purchased corn from thousands of farmers and farmer cooperatives. Many of the individual farmers sold their corn to ADM without any knowledge that their crop was tainted by MIR162 due to cross-