

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

J&P FARM; §
JOSEPH C. PILAND; §
GALLATINE FARMS, LLC; §
KISSMAN FARMS; §
OLSOVSKY FARMS, J.V.; §
SCHWARTZ BROTHERS; §
THOMPSON LAND & CATTLE CO.; §
A. M. GREENE TRUST; §
C&C FARMS LTD; §
DAN CARTEL; §
D&D FARMS, LTD; §
GREENE MOUND LAKE §
RANCH, LLC; §
JOHN D. STEPAN TRUST; §
KREUSLER & SON; §
OSBORN TRUST; §
RUST & RUST; §
SAPPINGTON FARMS; §
T.D. FARMS; §
JOSEPHINE O. KIRK; and §
KATHRYN R. ANDERSON, §

CIVIL ACTION NO.: 4:15-cv-283

JURY REQUESTED

PLAINTIFFS

v.

SYNGENTA CORPORATION; §
SYNGENTA CROP PROTECTION §
LLC; and §
SYNGENTA SEEDS, INC., §

DEFENDANTS

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiffs J&P Farm, Joseph C. Piland, Gallatine Farms, LLC, Kissman Farms, Olsovsky Farms, J.V., Schwartz Brothers, Thompson Land and Cattle Company, A. M. Greene Trust,

C&C Farms, Ltd., Dan Carthel, D&D Farms Ltd., Green Mound Lake Ranch, LLC, John D. Stephan Trust, Kreuzler & Son, Osborn Trust, Rust & Rust, Sappington Farms, T.D. Farms, Josephine O. Kirk, and Kathryn R. Anderson (collectively, “Plaintiffs”) file this Original Complaint against Defendants Syngenta Corporation, Syngenta Crop Protection, LLC, and Syngenta Seeds, Inc., (collectively, “Syngenta” or “Defendants”), and respectfully show the Court as follows:

NATURE OF THE CASE

1. This is a case on behalf of United States corn producers against Syngenta for Syngenta’s negligent and unlawful marketing and release of the genetically engineered corn trait, MIR 162 (“Agrisure Viptera” and “Agrisure Duracade”), into the United States corn market before MIR 162 was approved by China—thereby tainting United States corn, misrepresenting its approval by China, causing United States corn to be embargoed by China, and damaging United States corn producers in the process.

PARTIES

2. Plaintiffs are citizens of the State of Texas, residing in Lamar County, Denton County, Harris County, Lubbock County, Tom Green County, Armstrong County, Hansford County, Bexar County, Comal County, Travis County, Jackson County, Cameron County, Brazoria, County, and Galveston County, Texas. At all relevant times, Plaintiffs were engaged in the business of planting, growing, harvesting, gathering, distributing, and/or selling corn within the State of Texas. Plaintiffs’ income results from the sale of corn at the publicly-determined market price. Plaintiffs have been (and continue to be) damaged by (i) Syngenta’s release of Viptera and Duracade MIR 162 corn and corn seed into the United States corn seed supply, which destroyed the export market for United States corn to China and other countries, thereby depressing the prices for all domestic corn, (ii) Syngenta’s materially misleading

statements and/or failure to disclose the truth relating to the approval status of MIR162 in China and the impact the lack of approval would have on United States corn prices; and (ii) Syngenta's widespread contamination of the United States corn and corn seed supply with MIR162, which has foreclosed (and will continue to foreclose) the United States corn export market to China—thereby directly and/or proximately resulting in substantially lower corn prices per bushel in the United States market.

3. Defendant Syngenta Corporation is a Delaware corporation, with its principal place of business at 3411 Silverside Road, #100, Wilmington, Delaware, 19810. At all relevant times, Syngenta Corporation conducted (and continues to conduct) business in the Eastern District of Texas, and derives substantial profits from its sales in Texas and the Eastern District of Texas. Syngenta Corporation may be served with Summons and a copy of Plaintiffs' Original Complaint by serving its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 by service on the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711.

4. Defendant Syngenta Crop Protection, LLC, is a Delaware limited liability company, with its principal place of business at 410 Swing Road, Greensboro, North Carolina, 27409. At all relevant times, Syngenta Crop Protection, LLC conducted (and continues to conduct) business in the Eastern District of Texas, and derives substantial profits from its sales in Texas and the Eastern District of Texas. Syngenta Crop Protection, LLC may be served with Summons and a copy of Plaintiffs' Original Complaint by serving its registered agent for service of process, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

5. Defendant Syngenta Seeds, Inc. is a Delaware corporation with its principal place of business at 7500 Olson Memorial Highway, Golden Valley, Minnesota, 55427. At all relevant times, Syngenta Seeds, Inc. conducted (and continues to conduct) business in the Eastern District of Texas, and derives substantial profits from its sales in Texas and the Eastern District of Texas.

Syngenta Seeds, Inc. may be served with Summons and a copy of Plaintiffs' Original Complaint by serving its registered agent for service of process, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over Plaintiffs' Lanham Act claims pursuant to 28 U.S.C. § 1331 (federal question). This Court also has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §1332(a) because this action, which has a controversy in excess of \$75,000, exclusive of interests and costs, is between citizens of different states. This Court also has subject matter jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendants because at all relevant times, Defendants regularly and systematically conducted business within the State of Texas and the Eastern District of Texas, including the marketing and sale of Viptera, Duracade, and other corn-related products to farmers, and continue to do so.

8. Venue is proper in the Eastern District of Texas, pursuant to 28 U.S.C. § 1391(b) and (c), because at all relevant times, Defendants resided, were located, could be found, and marketed, sold, or otherwise disseminated Viptera, Duracade, and other corn-related products within the Eastern District of Texas (and continue to do so).

FACTS

I. Introduction.

9. Corn production is crucial to the United States and Texas economies. The United States is ranked first in the world in total corn production, and exports a significant amount of its production.

10. The United States corn marketing system is commodity-based. Corn grown and

traded by Plaintiffs is harvested, gathered, commingled, consolidated, and shipped from thousands of farms to local, regional, and terminal distribution centers (commonly known as silos and elevators). From there, the corn is often consolidated from smaller to larger regional distribution centers, and eventually transported by exporters to foreign countries. In order to maintain the stability of the corn marketing and distribution system, it is vital that the United States corn supply and exports maintain the highest standards of purity and integrity, and be approved by all foreign market buyers.

11. Syngenta, among other things, is in the business of developing and selling, in interstate commerce, corn seed that includes certain genetically engineered traits. After development, Syngenta licenses its genetically-engineered corn seed to seed manufacturers, including Syngenta's subsidiaries, who sell the seed to farmers.

12. In 2009, Syngenta released the genetically engineered corn trait, MIR162, into the United States market. Its first generation of MIR162 corn was known as "Agrisure Viptera" ("Viptera"). The second generation of Syngenta's MIR162 corn, "Agrisure Duracade" ("Duracade"), was released, sold, and distributed for planting in 2014.

13. Agrisure varieties were genetically engineered to protect corn against damage from insects, such as the corn borer and corn rootworm. Syngenta submitted the corn trait to the Chinese government for approval in March 2010, but it was not approved by the Chinese government until late 2014. Viptera, which was introduced in late 2014, has yet to be approved by the Chinese government.

14. China's growing population and middle class have created a significant demand for United States products. China, long a key importer of other United States crops, is now a major corn buyer as well. According to the United States Department of Agriculture ("USDA"), China purchased an estimated 5.0 million tons of United States corn in 2012-2013, up from 47,000 tons in 2008, making China the third largest export market for United States corn. China

was on track to meet or exceed these numbers in 2013-2014.

15. However, since Agrisure corn was not approved by the Chinese government until late 2014, and Viptera corn has not yet been approved, as of November 2013, China has continually and systematically refused shipments of United States corn when it detects traces of MIR162 in the shipments. China eventually banned all imports of United States corn, and certain other countries joined China in the embargo.

16. While only a very small percentage of United States corn farmers plant MIR162 corn, the level of MIR162 corn planted is too high to ensure that any shipment of United States corn will not be contaminated with trace amounts of MIR162 after the corn has been commingled and consolidated for export.

17. As a result of China's prohibition of MIR162 corn, even in trace, low-level amounts, and Syngenta's decision to continue marketing MIR162 to United States corn farmers, the vast majority of United States corn has been effectively excluded from what was previously the third-largest export market for United States corn—thereby causing United States corn producers to incur significant damages as corn prices have dropped from the loss of the China export market.

18. During this time, Syngenta misled farmers, grain elevators, grain exporters, and the general public into believing that Chinese regulatory approval of MIR162 corn was imminent, and the lack of Chinese approval would not impact corn prices.

19. Syngenta's decision to bring Viptera to the market—with full knowledge that it had not been approved by China and with no knowledge regarding if and/or when it would be approved—crippled the 2013-2014 corn export market to China, thereby damaging Plaintiffs in the process. Syngenta knew, or should have known, that releasing Viptera would lead to the contamination of United States corn shipments, and preclude United States corn from foreign export markets, such as China, which had not approved the MIR162 corn trait.

20. Syngenta's decision to release Duracade, its second generation MIR162 corn hybrid, before either Duracade or Viptera was approved by China further evidences Syngenta's intentional and/or reckless disregard of United States corn producers, their interests, and the widespread harm Syngenta has inflicted (and will continue to inflict) on Plaintiffs and the United States corn markets as a direct and/or proximate result of its wrongful actions.

II. United States corn cultivation and exports.

21. Known as maize throughout the world, and corn in the United States, corn is an annual plant with separate male and female flowers on each plant that requires human intervention for its seed dispersal and propagation. Corn is predominantly a wind-pollinated outcrossing species. Transgenes in crops have the potential to move between sexually compatible populations; more so in corn because it is a wind-pollinated plant with separate male and female flower bearing structures.

22. Corn is used in the production of, among other things, animal feeds, human food, vegetable oil, high fructose corn syrups, starch, and biofuels. Corn also has a multitude of industrial uses.

23. Although there are several types of corn grown in the United States, field corn, sweet corn, and popcorn predominate. Field corn (also known as dent corn or simply, corn) is the most popular type, and is planted on the majority of United States corn acreage.

24. Corn is the largest crop grown in the United States in terms of both volume and value. The United States is ranked first in the world for corn production, accounting for nearly 41% of the global corn produced.

25. Corn grown for grain purposes accounts for almost one-quarter of the harvested crop acres in the United States, totaling more than 85 million harvested acres in 2012.

26. Corn is grown on more than 400,000 farms in the United States. Although not

exclusively grown in the Midwest, the upper Midwest region of the United States has an ideal combination of temperature, rainfall, and soil type for corn production. Thus, for example, the leading corn producing states, Illinois, Iowa, Minnesota, and Nebraska, together accounted for more than half of the United States corn production in 2012. These states, combined with Indiana, Ohio, Wisconsin, Missouri, Kansas, and South Dakota, annually account for over three fourths of the total United States corn production.

27. The United States corn marketing system is predominantly commodity-based, which means that corn from thousands of farmers is gathered, commingled, and shipped through local, regional, and terminal grain elevators. Elevators and other corn storage and transportation facilities are generally not equipped to test and segregate differing corn varieties due to the cost associated with such a time consuming process.

28. The United States exports approximately 20% of the annual domestic corn production to other countries. In 2012, China was the third largest export market for United States corn, behind Japan and Mexico, importing 203 million bushels of United States corn.

III. The development of Viptera.

29. Syngenta developed the MIR162 corn trait to resist and eliminate crop damage caused by corn earworm (*Helicoverpa zea*), fall armyworm (*Spodoptera frugiperda*), black cutworm (*Agrotis ipsilon*), and western bean cutworm (*Striacosta albicosta*) larvae.

30. This insect resistance in MIR162 is provided by a bacterial gene called Vip3Aa20 (Vip = Vegetative insecticidal protein). The MIR162 corn also contains manA gene from *E. coli* encoding the enzyme phosphomannose isomerase (“PMI”), which was used as a selectable marker during transformant selection. The manA gene expression confers no other benefit to the regenerated transformed corn plant.

31. The family of Vip3Aa proteins, in which Vip3Aa20 belongs, is produced by the

bacterium *Bacillus thuringiensis* (“Bt”), a toxin that kills insects. In the corn-biotechnology industry, corn manipulated in this fashion is commonly referred to as “Bt corn.”

32. Viptera’s insecticidal protection is provided by the Vip3A protein, which binds to the insect and forms pores, killing the insect before further crop damage occurs. The specific genetic material inserted into the genome of Viptera corn allows the corn to produce certain proteins, including Cry1Ab, mCry3A, and Vip3A, which have insecticidal properties that, according to Syngenta, control “more insects than any other trait stack on the market.”

33. As a bio-engineered product, Viptera corn was subject to United States regulatory approval prior to cultivation and sale. In April 2010, Syngenta announced the USDA had deregulated the Viptera trait. Syngenta’s press release stated that the Viptera trait “has demonstrated unsurpassed multi-pest control of 14 yield-and quality-robbing insects.”

34. Following its approval in spring 2010, Syngenta made the decision to release Viptera corn commercially for the 2011 growing season through product names such as Agrisure Viptera 3110 & 3111. The seed was sold through its seed partners Golden Harvest®, Garst®, NK®, and additional independent retailers. Although the USDA had deregulated the trait, Syngenta released Viptera corn into the market even though it lacked regulatory approval from certain key import markets such as China, Japan, and the European Union.

35. Viptera corn is protected by patents, giving Syngenta the right to exclude others from selling products with the Viptera MIR 162 corn traits. Syngenta thus is motivated to maximize its period of exclusivity when no other seller can sell Viptera. Syngenta pushed its product on farmers prior to import approval from China to enhance its profit margin before other competitors could sell the product.

36. In September 2014, Syngenta announced 52 new corn hybrids for the 2015 growing season in the United States. The Agrisure Viptera trait is featured in 23 of the new hybrids, and the Agrisure Duracade trait is incorporated into 18 of the new hybrids. Syngenta

has promoted these hybrids by representing that they “protect corn crops” and offer “the latest corn rootworm technology.” Syngenta marketed these hybrids to farmers before China approved Viptera and certainly before China approved Duracade.

37. China maintains a zero-tolerance policy regarding the importation of corn containing MIR162 traits. Having barely approved Viptera and not yet approved Duracade, this means that any detection of MIR162 traits in a corn shipment to China could result in the rejection of the entire shipment. Syngenta had knowledge of China’s zero-tolerance policy prior to the commercialization and release of both Viptera and Duracade corn seed.

IV. Syngenta’s contamination of the United States corn supply.

38. After Viptera received United States regulatory approval, Syngenta offered farmers a “side-by-side program,” which encouraged farmers to plant Viptera corn adjacent to other corn seed.

39. Syngenta encouraged the side-by-side planting process despite the known contamination risks in doing so. Syngenta knew that commingling different varieties of corn is a risk during the planting, harvesting, drying, storage, and transportation process. Once released, a corn variety will generally contaminate the broader corn supply.

40. By promoting the side-by-side program, Syngenta helped spread the amount of MIR162 traits appearing in the United States corn supply, thereby putting corn exports to countries that had not approved the traits (such as China) at risk.

41. Syngenta also knew, or should have known, that commingling would result in China rejecting United States corn shipments.

42. Corn replicates itself by cross-pollination. Corn pollen has been demonstrated to drift considerable distances and cross-breed with corn from other plants. Some studies have found that cross-pollination cannot be eliminated, even at a distance of one-third of a mile. The resulting cross-pollinated corn will have traits from the pollen-donating plant.

43. In 2003, for example, corn farmers who did not plant StarLink seed that suffered economic losses due to depressed corn prices following the StarLink recall settled a class- action lawsuit against Aventis for over \$100 million. Thus, as a leader in the field of corn biotechnology, Syngenta understood the effects of contamination by cross-pollination at the time it released the Viptera corn seed in 2011.

44. In its “Agrisure Traits Stewardship Guide,” Syngenta further recognized that cross- pollination is a “normal occurrence in corn production,” and achieving 100 percent of purity of seed or grain is impossible in any corn production system.

V. The grain elevators’ refusal of Viptera corn.

45. After the 2011 planting season, Bunge North America, Inc. (“Bunge”), a grain elevator and handler based in St. Louis, Missouri, posted signs and distributed materials stating that Viptera corn would not be accepted during the 2011 harvest season. Bunge cited the lack of Chinese import approval as its reason for not accepting Viptera corn.

46. In response, Syngenta sued Bunge in federal court, *Syngenta Seeds, Inc. v. Bunge North America, Inc.*, No. C11-4074-MWB (N.D. Iowa), seeking to enjoin Bunge from refusing to accept Viptera corn.

47. Bunge argued that its decision not to accept Viptera corn was consistent with the North American Export Grain Association’s policy to advocate that technology providers receive all major international approvals for a trait prior to seed sales. Bunge argued that Syngenta’s actions had put a major export market for United States corn (China) at risk.

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

The remanded action is pending.

49. Other grain handlers, including Archer Daniels Midland, Cargill, also refused to accept Viptera corn because preventing commingling is essentially impossible.

VI. China rejects United States corn shipments.

50. China was the seventh largest corn import market for the 2009-2010 crop year with widespread predictions that it would move into the top five by 2011-2012. By 2013-2014, China had moved to the No. 3 export market for United States corn. The United States/China corn trade declined drastically in January 2014, however, as a result of the MIR 162 detection.

51. On or about November 2013, Chinese regulatory officials began rejecting cargo shipments of United States corn after they tested positive for the trace presence of Viptera corn.

52. On December 24, 2013, the China General Administration of Quality Supervision, Inspection and Quarantine issued a warning notification strengthening the inspection and supervision for the import of genetically modified feed materials because the Shanghai Chinese Inspection and Quarantine Service had detected MIR162. The notification stated that all batches of corn would now be tested at Chinese ports for MIR162, and any cargo that tested positive would be returned or destroyed.

53. After this notification, all United States corn exports were put at risk.

54. The decision to test corn exports at Chinese ports caused some Chinese customers to refuse to honor their contracts to purchase United States corn, injecting a great deal of uncertainty into the market.

55. Since November 2013, Chinese imports for United States corn have decreased dramatically. As a result, domestic corn prices also have fallen dramatically.

56. China strengthened its policy regarding MIR162 again in July 2014 after an increasing number of U.S. corn shipments began testing positive. The policy change was made

at a time when China was projected to import a record high 7.0 million tons of United States corn according to the USDA.

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

VII. Syngenta’s misrepresentations regarding the corn export market, genetically modified corn, and the status of China’s MIR 162 approval.

58. Syngenta has repeatedly attempted to downplay and misrepresent the significance of the export market for corn on United States corn prices, China’s key role in the United States corn export market, and the timing of Chinese approval of MIR162—with the intent to encourage United States corn farmers to buy and plant MIR 162 corn.

59. For example, Syngenta published a “fact sheet” on its website about Viptera called “Plant with Confidence,” which is directed at corn farmers and contains misrepresentations about United States corn exports.

60. In order to convince United States corn farmers that the loss of key export markets was unimportant, Syngenta’s “Plant with Confidence” marketing materials state that “in the last five years, on average, only about 13 percent of U.S. corn has been exported.” Syngenta also claims “the vast majority of corn produced in the U.S. is used domestically.”

61. The USDA Economic Research Service, however, has reported that approximately 20 percent of United States corn is exported to other countries and touts the United States as “a major player in the world corn trade market.”

62. Syngenta’s “Plant with Confidence” fact sheet also downplays the importance of China as an export market for United States corn. The fact sheet states that China has imported,

on average, a little more than half of one percent (0.5%) of all United States corn produced in the past five years. Syngenta's fact sheet also states that "traditional major markets are legally able to accept Agrisure Viptera grain," which implies that China is not a traditional major market.

63. Syngenta's misrepresentations contradict the statistics reported by the USDA, which state that China serves as the third largest export market for United States corn. While historically (prior to 2008), China was not a significant importer of United States corn, Syngenta knew that by 2010, China was projected to be a top five importer.

64. In a January 2014 document, entitled "Agrisure Viptera & China Import Approval FAQs," Syngenta makes additional misrepresentations about China's lack of approval of Viptera, suggesting that China was avoiding approval of Viptera as a pretext to encourage consumption of domestic Chinese corn.

65. Further, and despite acknowledging that the earliest China might approve Agrisure Duracade corn would be March 2015, Syngenta proceeded with commercializing and selling Duracade corn.

66. Syngenta also knew the significant damage United States corn farmers would experience as a result of the rejection of corn by China, yet continued to downplay and misrepresent the importance of the lost China market.

67. For example, in the lawsuit Syngenta brought against Bunge, unrebutted evidence demonstrated that redirection costs for a rejected shipment of corn contaminated with the MIR162 trait could cost between \$4 million to \$20 million for a single shipment. *See Syngenta Seeds, Inc. v. Bunge North America, Inc.*, No. 5:11-cv-04074- MWB (N.D. Iowa Sept. 26, 2011) (ECF No. 42 at 12).

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

69. In Syngenta's 2011 Half Year Earnings Report, Mack remarked on the

importance of the Chinese market, stating that China “continues to have the greatest impact on world markets, with increasing imports not just of soybeans but also now of corn.” This is in stark contrast to what Syngenta was telling United States corn farmers.

70. Syngenta also repeatedly suggested that approval of MIR 162 corn by China would happen imminently when it did not.

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

72. Mack’s statement was publicized sufficiently to constitute promotion within the grain industry, dangerously impacting the corn market by encouraging (i) farmers to plant MIR 162 without worrying about their ability to sell the corn to grain elevators, (ii) grain elevators to accept and commingle MIR 162 corn with other corn, and (iii) exporters to purchase and ship MIR 162 corn knowing the shipments would be rejected by China.

73. In the *Bunge* litigation, Syngenta told the Court that it anticipated receiving Chinese approval of MIR 162 corn by March 2012. Unfortunately, that did not happen.

74. By 2014, Syngenta knew, or should have known, China was no closer to approving MIR 162 corn, especially as the time grew closer to the 2014 planting season. Mack stated during a conference call that “I think it is fair to say at this point in time that we don’t have – that we will not have any approval before the start of the season. That’s for sure.” But what Syngenta told to outside investors, it failed to disclose to United States corn farmers.

75. During Syngenta’s second quarter 2014 earnings conference call, Mack stated that the delayed approval of MIR 162 by China “is a regulatory matter in China as opposed to any regulatory matter with Syngenta. The delays coming out of China are such that people just aren’t really understanding right now even what the process is.”

76. This statement, and others, underscores the fact that Syngenta knew it was no closer to gaining import approval of MIR 162 corn from China. Still, Syngenta continues to sell MIR 162 corn seed, as well as launch new genetically-modified products, none of which have been approved by China, and continues to downplay the importance of the Chinese export market—all of which will continue to negatively impact the China market for United States corn.

77. Despite Syngenta's statements in 2014 expressing uncertainty to as when China would grant MIR 162 approval, Syngenta continued to mislead exporters into believing that MIR 162 corn would be accepted in China.

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

79. On its website, Syngenta offered a form entitled: "Request Form for Biosafety Certificates Issued by Chinese Ministry of Agriculture." The form represented that certificates for certain transgenic events were issued to Syngenta by the Chinese Ministry of Agriculture, one of which was MIR162 corn.

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

81. The form implied that if an exporter completed it, Syngenta would issue a Biosafety Certificate, which would allow the cargo to enter China. The form, however, was misleading because it did not state that MIR162 corn would be rejected. Syngenta's request form was a misleading promotional advertisement for Viptera corn within the seed industry because it improperly indicated that products containing MIR162 may be imported into China if

the form was completed correctly.

82. Syngenta included MIR162 on this request form even though Syngenta knew that MIR162 was not approved for import into China. Syngenta did so driven by its economic interest to sell Viptera corn seed.

VIII. The economic impact of Syngenta's wrongful conduct.

83. As a direct and/or proximate result of Syngenta's above-described wrongful conduct, United States corn farmers, including Plaintiffs, have suffered (and will continue to suffer) staggering losses.

84. The National Grain and Feed Association ("NGFA") found that Chinese rejection of United States corn, which resulted solely from concerns that MIR162 had infiltrated the entire United States corn supply, lowered corn prices by at least 11 cents per bushel and resulted in a projected \$1.14 billion loss for the nine-month marketing year ending August 31, 2014.

85. Corn exports for the 2013-2014 marketing year totaled 46,867,700 metric tons, which was four percent (4%) less than the USDA's projection of 48,770,000 metric tons.

86. The NGFA called on Syngenta to stop selling the genetically modified MIR 162 corn varieties until they are approved for sale in major export markets, such as China.

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

88. Instead of complying with this request, Syngenta expanded its limited release of Duracade – a new type of genetically modified corn, which also is not yet approved in China. One NGFA official stated that this new gene is also likely to show up in exports, further exacerbating problems with China and other nations that have not approved it. “They’re being a bad actor here,” Max Fischer of NGFA said, referring to Syngenta. “They’re making \$40 million” selling the new corn varieties, “but it’s costing U.S. farmers \$1 billion.”

89. In addition to falling prices for corn, Plaintiffs have been damaged in other ways as a direct and/or proximate result of Syngenta’s wrongful actions. United States grain companies cannot put themselves at risk by having an unmarketable product when blended corn arrives at export terminals. Thus, United States grain companies have requested farmers to ensure that Viptera and Duracade corn traits are completely removed from their deliveries.

90. As a result, farmers, including Plaintiffs, must segregate different types of corn on their farms until the regulatory concerns are resolved. The National Corn Growers Association has urged farmers to recheck their seed plots or contract with a third party to verify that corn with unapproved traits, such as MIR162, have not infiltrated the overall corn export supply—which has required (and will continue to require) farmers to incur additional costs.

91. No matter how careful farmers are in separating their grain, such contamination still can happen in multiple ways, including accidental mixing and cross-pollination by bees or wind. Farmers also have been directed to thoroughly clean their grain legs, augers, grain carts, and any other equipment used to harvest corn containing the Viptera and Duracade traits.

92. Syngenta knew, or should have known, before it disseminated corn with the MIR162 genetic trait, that such cross-pollination could not be prevented despite farmers’ best efforts. Syngenta knew, or should have known, that the United States corn production and marketing chain is a commodity-based system that gathers, commingles, and ships corn from thousands of farms, and that widespread commingling of genetically modified corn with non-

genetically modified corn cannot be completely prevented. As a direct and/or proximate result of Syngenta's above-described wrongful conduct, United States corn farmers, including Plaintiffs, have suffered (and will continue to suffer) substantial economic damages and other actual injury and harm.

CLAIMS FOR RELIEF AND CAUSES OF ACTION

COUNT I

VIOLATION OF LANHAM ACT
(15 U.S.C. §1125(a))

93. The preceding factual statements and allegations are incorporated by reference.

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

(a) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which –

(b) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

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

96. Syngenta's above-described (i) statements and commentary made to the press, (ii) statements made on the Internet including, but not limited to, its "Plant With Confidence" fact sheet and its FAQs, and (iii) statements made during quarterly conference calls and incorporated into Syngenta's forms—all of which misrepresented that Viptera corn is or would imminently be

approved for import into China. Such statements were materially false statements that are, and continue to be, likely to cause confusion and mistake as to the nature, characteristics, and qualities of Viptera and/or Duracade corn.

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

98. Syngenta's representations also deceived and/or continue to deceive corn farmers, including Plaintiffs, and other consumers regarding the approval of their goods; to wit, Viptera and Duracade corn.

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

100. Syngenta also has used and/or continues to use the above-described false representations regarding the approval of Viptera and Duracade corn to capture business, increase sales, and enhance products.

101. Syngenta's statements were made as an advertisement for MIR 162 corn.

102. Syngenta's statements specifically refer to Viptera and Duracade corn.

103. Syngenta had an economic motivation for making its statements, as Syngenta was incentivized to sell its Viptera and Duracade corn products.

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

105. Syngenta's material and misleading statements and representations were widely

and sufficiently distributed to constitute promotion within the grain industry.

106. Syngenta's MIR 162 corn seed traveled (and continue to travel) in interstate commerce.

107. As a direct and/or proximate result of Syngenta's above-described material misrepresentations and wrongful conduct, Plaintiffs have suffered (and will continue to suffer) damages in the form of, *inter alia*, lost profits, increased expenses, loss of reputation, and other actual injury and harm.

108. Syngenta's above-described material misrepresentations and wrongful conduct constitute the use of false descriptions and false representations in interstate commerce in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

COUNT II

PUBLIC NUISANCE

109. The preceding factual statements and allegations are incorporated by reference.

110. By its above-described material misrepresentations and wrongful conduct, Syngenta has created a public nuisance by causing widespread contamination of the United States corn supply with the MIR162 trait—which constitutes an unreasonable and substantial interference with rights common to the general public, including Plaintiffs.

111. This unreasonable interference is imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Syngenta's testing, growing, storing, transporting, selling, disposing, or otherwise disseminating MIR 162 corn (i) without adequate precautions to prevent contamination of the United States corn and corn seed supplies, (ii) with the knowledge that MIR 162 corn would contaminate other corn, (iii) with the knowledge that such contamination would likely affect the United States corn and corn seed supplies, and/or (iv) with the knowledge that there was a substantial risk of contamination of corn and corn seed supplies earmarked for export—especially to China.

112. The interference is unreasonable in that it significantly interferes with the public health, public safety, public peace, public comfort, and/or the public convenience, and is of a continuing nature and produced a permanent or long-lasting effect.

113. As a direct and/or proximate result of Syngenta's above-described material misrepresentations and wrongful conduct, which constitutes an unreasonable and substantial interference with rights common to the general public, including Plaintiffs, Plaintiffs have suffered (and will continue to suffer) damages in the form of, *inter alia*, lost profits, increased expenses, loss of reputation, and other actual injury and harm.

114. Syngenta knew, or should have known, that its above-described material misrepresentations and wrongful conduct would naturally result in the damages, injury, and harm inflicted on Plaintiffs. Syngenta, nevertheless, continued to engage in such wrongful conduct in reckless disregard of, or conscious indifference, to the rights and interests of Plaintiffs and the consequences of its actions. Syngenta's above-described material misrepresentations and wrongful conduct constitute a public nuisance at Texas common law.

COUNT III

TRESPASS TO CHATTELS

115. The preceding factual statements and allegations are incorporated by reference.

116. Plaintiffs entered into contracts for the sale of corn.

117. As set forth above, by testing, growing, storing, transporting, selling, disposing, or otherwise disseminating MIR 162 corn, Syngenta has contaminated the United States corn supply.

118. The contamination of the United States corn supply by the MIR162 trait has negatively impaired the condition, quality, and/or value of the United States corn supply.

119. As a direct and/or proximate result of Syngenta's above-described material misrepresentations and wrongful conduct, Plaintiffs have suffered (and will continue to suffer)

damages in the form of, *inter alia*, lost profits, increased expenses, loss of reputation, and other actual injury and harm. Syngenta's above-described material misrepresentations and wrongful conduct constitute a trespass to chattels at Texas common law.

COUNT IV

NEGLIGENCE/GROSS NEGLIGENCE

120. The preceding factual statements and allegations are incorporated by reference.

121. With respect to testing, growing, storing, transporting, selling, disposing, or otherwise disseminating MIR 162 corn seed, Syngenta had a duty Plaintiffs and other domestic corn farmers to use its professional expertise and exercise the degree of skill and learning ordinarily used under the same, or similar, circumstances by a person or entity in Syngenta's business.

122. Syngenta breached this duty by failing to exercise the requisite degree of care in testing, growing, storing, transporting, selling, disposing or otherwise disseminating MIR 162 corn seed to prevent it from contaminating United States corn supply.

123. Syngenta also breached this duty by failing to notify the appropriate regulatory bodies and the public in a timely fashion after it first learned of the contamination of the United States corn supply with MIR162.

124. As a direct and/or proximate result of Syngenta's above-described material misrepresentations and wrongful conduct, Plaintiffs have suffered (and will continue to suffer) damages in the form of, *inter alia*, lost profits, increased expenses, loss of reputation, and other actual injury and harm. The damages incurred by Plaintiffs were, or should have been, foreseen by Syngenta, as Syngenta was uniquely positioned to understand the risks of releasing MIR 162 corn seed before it was approved by China including, but not limited to, the near certainty of cross-pollination, the risks of intentional or unintentional commingling of MIR 162 corn with

non-MIR 162 corn, China's zero-tolerance policy for MIR162 corn, and China's large – and growing – United States corn import market.

125. By breaching its above-described duties, Syngenta also breached the requisite standard of care owed to all foreseeable United States corn farmers, including Plaintiffs. Syngenta's above-described material misrepresentations and wrongful conduct constitute negligence and/or gross negligence at Texas common law.

COUNT V

TORTIOUS INTERFERENCE WITH EXISTING AND/OR PROSPECTIVE BUSINESS RELATIONSHIPS

126. The preceding factual statements and allegations are incorporated by reference.

127. Plaintiffs had a business relationship with various grain elevators, co-ops, and/or supply companies whereby Plaintiffs would sell their corn to such companies. These business relationships were memorialized by invoices, receipts, and other documents showing a consistent course of sales.

128. Plaintiffs had a reasonable expectation of economic gain resulting from the relationship with these grain elevators, co-ops, and/or supply companies. Plaintiffs reasonably expected to continue to sell corn to such entities, and rightfully maintained the expectation that such business relationships would continue in the future.

129. Syngenta knew that Plaintiffs and other corn farmers had business relationships with such grain elevators, co-ops, and/or supply companies in the normal chain of crop export and sales, and was fully aware that Plaintiffs and other corn farmers expected these business relationships to continue in the future.

130. By its above-described material misrepresentations and wrongful conduct, including its conscious decision to bring Viptera and Duracade corn to the market when they had not been approved by China, Syngenta intentionally interfered with Plaintiffs' existing and

prospective future business relationships. Syngenta knew, or should have known, that releasing MIR162 corn would lead to the contamination of United States corn shipments, and prevent such corn from being sold to export markets, such as China, where it had not been approved.

131. As a direct and/or proximate result of Syngenta's above-described material misrepresentations and wrongful conduct, Plaintiffs have suffered (and will continue to suffer) damages in the form of, *inter alia*, lost profits, increased expenses, loss of reputation, and other actual injury and harm. Syngenta's above-described material misrepresentations and wrongful conduct constitute intentional interference with existing and/or prospective business relationships at Texas common law.

RELIEF REQUESTED

132. The preceding factual statements and allegations are incorporated by reference.

133. **ACTUAL, CONSEQUENTIAL DAMAGES AND/OR NOMINAL DAMAGES.** As a direct and/or proximate result of Syngenta's above-described material misrepresentations and wrongful conduct, actions, Plaintiffs have suffered (and continue to suffer) damages in the form of, *inter alia*, lost profits due to lower corn prices than they otherwise would have received, increased expenses, loss of reputation, and other actual injury and harm. Plaintiffs' damages were foreseeable by Syngenta and exceed the minimum jurisdictional limits of this Court. All conditions precedent to Plaintiffs' claims for relief have been performed and/or occurred.

134. **EXEMPLARY DAMAGES.** Plaintiffs also are entitled to exemplary damages as punishment and to deter such wrongful conduct in the future. All conditions precedent to Plaintiffs' claims for relief have been performed and/or occurred.

135. **ATTORNEYS' FEES, LITIGATION EXPENSES AND COSTS.** Plaintiffs also are entitled to recover their attorneys' fees, litigation expenses and court costs in prosecuting this action. All conditions precedent to Plaintiffs' claims for relief have been performed and/or occurred.

WHEREFORE, Plaintiffs respectfully request that (i) Defendants be cited to appear and answer this lawsuit, and (ii) upon final trial or hearing, judgment be awarded against Defendants in favor of Plaintiffs for:

- (i) actual damages, consequential damages, and/or nominal damages (as described above) in an amount to be determined by the trier of fact;
- (ii) exemplary damages;
- (iii) pre- and post-judgment interest at the highest applicable legal rates;
- (iv) attorneys' fees and litigation expenses incurred through trial and any appeals;
- (v) costs of suit; and
- (vi) such other and further relief the Court deems just and proper.

JURY DEMAND

Plaintiffs respectfully demand a trial by jury on all claims and causes of action so triable.

Dated: April 25, 2015

Respectfully submitted,

By: /s/ Richard L. Coffman
Richard L. Coffman
THE COFFMAN LAW FIRM
First City Building
505 Orleans St., Suite 505
Beaumont, TX 77701
Telephone: (409) 833-7700
Facsimile: (866) 835-8250
Email: rcoffman@coffmanlawfirm.com

Mitchell A. Toups
WELLER, GREEN, TOUPS & TERRELL, LLP
2615 Calder, Suite 400
Beaumont, Texas 77702
Telephone: (409) 838-0101
Facsimile: (409) 832-8577
Email: matoups@wgttlaw.com

ATTORNEYS FOR PLAINTIFFS