

CAUSE NO. _____

ANDY TIMMONS, INC. d/b/a LOST DRAW §
VINEYARDS, ALEGRIA DE LA VIDA §
VINEYARDS, LLC, ALTA LOMA VINEYARD §
PARTNERSHIP, BENJAMIN FRIESEN, §
BINGHAM FAMILY VINEYARDS, LLC, ROWDY §
BOLEN and TAMEISHA BOLEN, BUENO §
SUERTE VINEYARDS, LLC, CASTAÑO PRADO §
VINEYARD, LLC, MIKE WEST d/b/a CHALLIS §
VINEYARDS, CHASE LANE and KENDRA LANE §
d/b/a CHASE LANE VINEYARD, GARY STEVEN §
BROWN and PAMELA JOYCE BROWN d/b/a §
COOPER VINEYARD, RUSSELL SMOTHERMON §
and SHARLANN SMOTHERMON d/b/a §
CORKSCREW VINEYARD, CORNELIOUS §
CORPORATION, COX FAMILY WINEGROWERS, §
LLC d/b/a COX FAMILY VINEYARDS, LT §
INVESTMENT GROUP, LLC d/b/a CRAZY §
CLUSTER VINEYARD, MARY MCKEE d/b/a §
CURVO FILA VINEYARD, DANIELS §
FARMLAND TRUST, TY WILMETH d/b/a §
DIAMANTE DOBLE DOS VINEYARDS, JETER §
and GAY WILMETH d/b/a DIAMANTE §
DOBLE VINEYARD, LARRY SMITH and SUE §
SMITH d/b/a DOG GONE VINEYARD, DONNA §
BURGESS ENTERPRISES, LLC d/b/a MY §
COVENANT, DWAYNE CANADA, BRENDA §
CANADA, and DANIEL CANADA d/b/a CANADA §
FAMILY VINEYARD, SAWYER FARM §
PARTNERSHIP d/b/a THE FAMILY VINEYARD, §
LONNIE GRAHAM and PENNY GRAHAM d/b/a §
FIVE STAR VINEYARD, DUSTIN GILLIAM and §
GLENDA GILLIAM d/b/a GILLIAM GAP §
VINEYARDS, GILLMORE BROTHERS, LP d/b/a §
GILLMORE BROTHERS VINEYARD, ANDIS §
APPLEWHITE d/b/a HALF CIRCLE CROSS §
VINEYARD, LA PRADERA VINEYARDS, LLC, §
LAHEY FARMS, LLC, LILLI OF THE VINE §
VINEYARDS, INC., AA MARTIN PARTNERS, §
LTD., PEGGY SEELEY and GEORGE SEELEY §
d/b/a MOONLIGHT VINEYARDS, NARRA §
VINEYARDS, LLC, HILLTOP WINERY AT PAKA §
VINEYARDS, LLC, PEGGY BINGHAM §
d/b/a PEGGY BINGHAM FARMS, TONY §
PHILLIPS and MADONNA PHILLIPS d/b/a §
PHILLIPS VINEYARD, REDDY VINEYARDS, §
INC., ROWLAND TAYLOR VINEYARDS, LLC, §

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

_____ JUDICIAL DISTRICT

CLARA ANN MCPHERSON d/b/a SAGMOR §
VINEYARDS, CHARLES and CHERYL SEIFERT §
d/b/a SEIFERT STABLES & VINEYARDS, SIX §
HARTS VINEYARD, LLC, THE TOM AND §
JANICE HENSLEE LIVING TRUST, DOUG §
THOMAS and ANISSA THOMAS d/b/a THOMAS §
ACRES, TONY and BERTHA HENDRICKS d/b/a §
HENDRICKS FAMILY VINEYARD, CAROLYN §
KEANE, ANNA WINNELL YOUNG and §
MARJORIE JONES PARTNERSHIP d/b/a §
TCUKER FARMS, TWIN-T VINEYARDS, INC., §
JOE RIDDLE d/b/a UVA MORADO VINEYARD, §
RONALD LUKER and MARGARET LUKER d/b/a §
WHITE ROCK VINEYARDS, WILLIAMS RANCH §
VINEYARD, LLC, LARRY YOUNG d/b/a YOUNG §
FAMILY VINEYARDS, CAPROCK §
DISTRIBUTORS, LLC, STEVE NEWSOM, CINDY §
NEWSOM and GABE HISEL, NEWSOM FAMILY §
FARMS, LLC, LEDLIE POWELL, §
INDIVIDUALLY AND AS TRUSTEE OF THE §
LEDLIE S. AND DANETTE POWELL §
REVOCABLE TRUST d/b/a NEWSOM POWELL §
VINEYARD, DON HILL d/b/a DON HILL FARMS, §
TEXAS CUSTOM WINE WORKS, LLC, TEXAS §
WINERY OWNERS GROUP, LLC, KIM §
MCPHERSON d/b/a MCPHERSON CELLARS, §
INC., LYNCE CHARLES CARROLL, TEXAS §
WINE COMPANY, INC., and AKG §
REALTY, INC., §

Plaintiffs,

v.

BAYER CROP SCIENCE, LP, MONSANTO
COMPANY, and BASF CORPORATION,

Defendants.

PLAINTIFFS' ORIGINAL PETITION

COME NOW Plaintiffs, and file this Original Petition against Defendants, Bayer Crop Science, LP and Monsanto Company (collectively, "Monsanto"), and BASF Corporation ("BASF"), and in support thereof, Plaintiffs would show as follows:

INTRODUCTION

For decades, Monsanto made billions of dollars selling genetically modified crops that could be sprayed with Monsanto's Roundup herbicide. But several years ago, Monsanto realized that it needed to develop a new seed system that could be used with a different herbicide because the very weeds Roundup was supposed to kill were becoming resistant to Roundup. And, in more recent years, Roundup has saddled Monsanto (and Monsanto's current owner Bayer) with billions of dollars in liabilities associated with tens of thousands of claims that Roundup causes cancer.

Faced with this crisis, Monsanto partnered with BASF to develop a new seed system. The new system would employ genetically modified cotton and soybean seeds that would be resistant to and could be sprayed with the herbicide dicamba.

While dicamba has existed since the 1960s, it had limited application because of a well-known problem—it was highly prone to volatilizing into a gas and moving miles off target where it would damage whatever plants it came in contact with.

Where many companies would have seen a problem, Monsanto and BASF saw an opportunity to start an agricultural "protection racket." Monsanto and BASF's internal records reflect that they knew their new dicamba-based seed system would inevitably lead to the crops of farmers who did not buy their product (crops that were

not genetically modified to be dicamba resistant) being damaged from volatilizing and drifting dicamba. This would force cotton and soybean farmers to either buy the Monsanto/BASF dicamba-based seed system, or see their crops destroyed.

One of the largest cotton patches in the world is in the Texas High Plains near Lubbock. Monsanto and BASF's dicamba-based seed system has become widely used in the region, with more than two million acres planted. Thus, every summer when cotton farmers have dicamba applied over the top of their dicamba resistant crops, a massive cloud of dicamba covers the High Plains.

But cotton is not the only crop grown in the High Plains. Within and among the cotton fields are dozens of vineyards that produce roughly 85% of the grapes used to make wines in Texas. They are the core of the state's \$13 billion wine industry, the nation's fifth largest. Grapes, however, are extremely sensitive to dicamba. And grapevines cannot be made dicamba-resistant.

Dicamba damage on grapevines in the High Plains was unheard of prior to the release of Monsanto and BASF's dicamba-based seed system. Now it can be found throughout every portion of every vineyard in the region. As volatilizing or drifting dicamba comes in contact with a grapevine, the plant is harmed, reducing the plant's overall health. Leaves deform, cup, and shrink—and soon the plant stops growing. And when vines get hit with dicamba many times a year, for multiple years, the results are disastrous—stunted development, significantly reduced yields, poor quality grapes, and, eventually, vine death. Over the past few years, this is exactly what has happened in the High Plains.

This case is brought by fifty-seven (57) vineyards (roughly 3,000 acres of vines) and four related processors that have invested tens of millions of dollars and years of toil in developing their fields. Their investment and work, however, has been destroyed by Monsanto and BASF's defective dicamba-based seed system. The cloud of dicamba that now covers the High Plains each summer has crippled what was an award-winning and rapidly growing industry. The vineyards have seen their production fall dramatically, and what grapes do grow are often rejected for poor quality. Contracts have been cancelled, winemakers have had to seek grapes elsewhere, and a stigma has attached to the region. The overall value of these vineyards has been significantly impaired both now and in the future.

All told, the Plaintiffs have suffered over \$114 million in economic damages. The Plaintiffs now seek to recover these damages and, based on Defendants' knowing and intentional release of the defective seed system, at least \$228 million in punitive damages from Bayer-Monsanto and \$228 million in punitive damages from BASF. In total, Plaintiffs will seek at least \$560 million at trial.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.3 and affirmatively plead that this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169 because each Plaintiff seeks monetary relief over \$250,000.

PARTIES

2. Plaintiff Andy Timmons, Inc. d/b/a Lost Draw Vineyards is a Texas corporation with its principal place of business in Brownfield, Terry County, Texas.

3. Plaintiff Alegria de la Vida Vineyards, LLC is a Texas limited liability company with its principal place of business in Lubbock, Lubbock County, Texas.

4. Plaintiff Alta Loma Vineyard Partnership is a partnership consisting of Ronnie Floyd, Bobbye Jo Floyd, Ronny Burran, and Gale Burran. All partners reside in Brownfield, Terry County, Texas.

5. Plaintiff Benjamin Friesen is an individual residing in Lubbock, Lubbock County, Texas.

6. Plaintiff Bingham Family Vineyards, LLC is a Texas limited liability company with its principal place of business in Meadow, Terry County, Texas.

7. Plaintiffs Rowdy Bolen and Tameisha Bolen are sole proprietors with their primary residence in Smyer, Hockley County, Texas.

8. Plaintiff Bueno Suerte Vineyards, LLC is a Texas limited liability company with its principal place of business in Meadow, Terry County, Texas.

9. Plaintiff Castaño Prado Vineyard, LLC is a Texas limited liability company with its principal place of business in Brownfield, Terry County, Texas.

10. Plaintiff Mike West d/b/a Challis Vineyards is a sole proprietor with his primary residence in Lubbock, Lubbock County, Texas.

11. Plaintiffs Chase Lane and Kendra Lane d/b/a Chase Lane Vineyard are sole proprietors residing in Lubbock, Lubbock County, Texas.

12. Plaintiffs Gary Steven Brown, D.O. and Pamela Joyce Brown, Ph.D. d/b/a Cooper Vineyard are sole proprietors residing in Ropesville, Hockley County, Texas.

13. Plaintiffs Russell and Sharlann Smothermon d/b/a Corkscrew Vineyards are sole proprietors residing in Brownfield, Terry County, Texas.

14. Plaintiff Cornelious Corporation is a Texas corporation with its principal place of business in Plains, Yoakum County, Texas.

15. Plaintiff Cox Family Winegrowers, LLC d/b/a Cox Family Vineyards is a Texas limited liability company with its principal place of business in Lubbock, Lubbock County, Texas.

16. Plaintiff LT Investment Group, LLC d/b/a Crazy Cluster Vineyard is a Texas limited liability company with its principal place of business in Lubbock, Lubbock County, Texas.

17. Plaintiff Mary McKee d/b/a Curvo Fila Vineyard is a sole proprietor residing in Lubbock, Lubbock County, Texas.

18. Plaintiff Daniels Farmland Trust is a testamentary trust with its owner located in Woodland Park, Colorado.

19. Plaintiff Ty Wilmeth d/b/a Diamante Doble Dos Vineyards is a sole proprietor residing in Brownfield, Terry County, Texas.

20. Plaintiffs Jeter and Gay Wilmeth d/b/a Diamante Doble Vineyard are sole proprietors residing in Tokio, Terry County, Texas.

21. Plaintiffs Larry and Sue Smith d/b/a Dog Gone Vineyard are sole proprietors residing in Ropesville, Hockley County, Texas.

22. Plaintiff Donna J. Burgess Enterprises, LLC d/b/a My Covenant is a Texas limited liability company with its principal place of business in Lubbock, Lubbock County, Texas.

23. Plaintiffs Dwayne Canada, Brenda Canada, and Daniel Canada d/b/a Canada Family Vineyard are sole proprietors residing in Plains, Yoakum County, Texas.

24. Plaintiff Sawyer Farm Partnership d/b/a The Family Vineyard is a Texas partnership with its principal place of business in Brownfield, Terry County, Texas.

25. Plaintiffs Lonnie and Penny Graham d/b/a Five Star Vineyard are sole proprietors residing in Brownfield, Terry County, Texas.

26. Plaintiff Dustin Gilliam and Glenda Gilliam d/b/a Gilliam Gap Vineyards are sole proprietors residing in Ropesville, Hockley County, Texas.

27. Plaintiff Gillmore Brothers, LP d/b/a Gillmore Brothers Vineyard is a Texas limited partnership with its principal place of business in Lubbock, Lubbock County, Texas.

28. Plaintiff Andis E. Applewhite d/b/a Half Circle Cross Vineyard is a sole proprietor residing in Lockney, Floyd County, Texas.

29. Plaintiff La Pradera Vineyards, LLC is a Texas limited liability company with its principal place of business in Brownfield, Terry County, Texas.

30. Plaintiff Lahey Farms, LLC is a Texas limited liability company with its principal place of business in Lubbock, Lubbock County, Texas.

31. Plaintiff Lilli of the Vine Vineyards, Inc. is a Texas corporation with its principal place of business in Garden City, Glasscock County, Texas.

32. Plaintiff AA Martin Partners, Ltd. is a Texas limited partnership with its principal place of business in Houston, Harris County, Texas. AA Martin Management, LLC is a Texas limited liability company with its principal place of business in Houston, Harris County, Texas.

33. Plaintiffs Peggy D. Seeley and George M. Seeley d/b/a Moonlight Vineyards are sole proprietors residing in Brownfield, Terry County, Texas.

34. Plaintiff Narra Vineyards, LLC is a Texas limited liability company with its principal place of business in Brownfield, Terry County, Texas.

35. Plaintiff Hilltop Winery at Paka Vineyards, LLC is a Texas limited liability company with its principal place of business in Demarest, Bergen County, New Jersey. Hilltop Winery at Paka Vineyards, LLC's members include Kumar and Renuka Paka, who reside in Demarest, New Jersey. Kumar and Renuka Paka are both domiciled in the State of New Jersey.

36. Plaintiff Peggy Bingham d/b/a Peggy Bingham Farms is a sole proprietor residing in Meadow, Terry County, Texas.

37. Plaintiffs Tony Phillips and Madonna Phillips d/b/a Phillips Vineyard are sole proprietors residing in Brownfield, Terry County, Texas.

38. Plaintiff Reddy Vineyards, Inc. is a Texas corporation with its principal place of business in Frisco, Collin County, Texas.

39. Plaintiff Rowland Taylor Vineyards, LLC is a Texas limited liability company with its principal place of business in Houston, Harris County, Texas.

40. Plaintiff Clara Ann McPherson d/b/a Sagmor Vineyards is a sole proprietor residing in Lubbock, Lubbock County, Texas.

41. Plaintiffs Charles and Cheryl Seifert d/b/a Seifert Stables & Vineyards are sole proprietors residing in Shallowater, Lubbock County, Texas.

42. Plaintiff Six Harts Vineyard, LLC is a Texas limited liability company with its principal place of business in Lubbock, Lubbock County, Texas.

43. Plaintiff Texas Winery Owners Group, LLC is a Texas limited liability company with its principal place of business in Fredericksburg, Gillespie County, Texas.

44. Plaintiff The Tom and Janice Henslee Living Trust is a trust with the primary Trustee residing in Asheboro, Randolph County, North Carolina and doing business in the State of Texas.

45. Plaintiffs Doug Thomas and Anissa Thomas d/b/a Thomas Acres are sole proprietors residing in Lubbock, Lubbock County, Texas.

46. Plaintiffs Tony and Bertha Hendricks d/b/a Hendricks Family Vineyard are sole proprietors residing in Ropesville, Hockley County, Texas.

47. Plaintiff Carolyn Keane, Anna Winnell Young, and Marjorie Jones Partnership d/b/a Tucker Farms is a Texas partnership with partners residing in

Rockwall, Rockwall County, Texas; Meadow, Terry County, Texas; and, Lakefield, Polk County, Florida.

48. Plaintiff Twin-T Vineyards, Inc. is a Texas corporation with its principal place of business in Brownfield, Terry County, Texas.

49. Plaintiff Joe Riddle d/b/a Uva Morado Vineyard is a sole proprietor residing in Smyer, Hockley County, Texas.

50. Plaintiffs Ronald and Margaret Luker d/b/a White Rock Vineyards are sole proprietors residing in Brownfield, Terry County, Texas.

51. Plaintiff Williams Ranch Vineyard, LLC is a Texas limited liability company with its principal place of business located in Tokio, Terry County, Texas.

52. Plaintiff Larry Young d/b/a Young Family Vineyards is a sole proprietor residing in Brownfield, Terry County, Texas.

53. Plaintiff Caprock Distributors, LLC is a Texas limited liability company with its principal place of business in Lubbock, Lubbock County, Texas.

54. Plaintiffs Steve Newsom, Cindy Newsom, and Gabe Hisel are sole proprietors residing in Levelland, Hockley County, Texas.

55. Plaintiff Newsom Family Farms, LLC is a Texas limited liability company with its principal place of business in Levelland, Hockley County, Texas.

56. Plaintiffs Ledlie Powell and Danette Powell, Individually and as Trustees of the Ledlie S. and Danette Powell Revocable Trust d/b/a Newsom Powell Vineyard are individuals residing in Oklahoma City, Oklahoma County, Oklahoma.

57. Plaintiff Don Hill d/b/a Don Hill Farms is a sole proprietor residing in Levelland, Hockley County, Texas.

58. Plaintiff Texas Custom Wine Works, LLC is a Texas limited liability company with its principal place of business in Brownfield, Terry County, Texas.

59. Plaintiff Texas Wine Company, Inc. is a Texas corporation with its principal place of business in Brownfield, Terry County, Texas.

60. Plaintiff McPherson Cellars, Inc. is a Texas corporation with its principal place of business in Lubbock, Lubbock County, Texas.

61. Plaintiff Lynce Charles Carroll is a sole proprietor residing in Snyder, Scurry County, Texas.

62. Plaintiff AKG Realty, Inc. is a Texas corporation with its principal place of business in Brownfield, Terry County, Texas.

63. Defendant Bayer Crop Science, LP is a Delaware limited partnership. On information and belief, its principal place of business is located at 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. It is a wholly owned subsidiary of the German pharmaceutical and life sciences giant Bayer A.G. Bayer Crop Science, LP may be served with process by serving its registered agent Corporation Service Company (CSC), Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

64. Defendant Monsanto Company is a corporation organized and existing under the laws of the State of Delaware. Monsanto Company's principal place of business is in St. Louis County, Missouri. Monsanto may be served with process by

serving its registered agent Corporation Service Company (CSC), Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

65. Defendant BASF Corporation is a corporation organized and existing under the laws of the State of Delaware. BASF Corporation's principal place of business is located at 100 Park Avenue, Florham Park, New Jersey 07932. BASF Corporation is a wholly owned subsidiary of the German multinational company BASF SE, the largest chemical producer in the world. BASF Corporation may be served with process by serving its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

JURISDICTION AND VENUE

66. The Court has subject-matter jurisdiction over Plaintiffs' claims because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

67. The Court has personal jurisdiction over Defendants because they carry on a continuous and systematic part of their general businesses within Texas, have transacted substantial business with Texas entities and residents, and have caused grave harm in Texas as a result. The non-resident Defendants are subject to the jurisdiction of this Court pursuant to the Texas long-arm statute, which authorizes jurisdiction and the exercise of jurisdiction insofar as it is consistent with federal and state due process standards. Each of the non-resident Defendants does and has done

business in Texas. The cited statute extends personal jurisdiction as far as the federal constitutional requirements of due process will permit.

68. In addition, Defendants committed torts and other civil wrongs, in whole or in part, in this state, as more fully explained below. Each Plaintiff's claims against Bayer, Monsanto, and BASF arise out of or relate to their contacts in Texas.

69. Moreover, Defendants purposely availed themselves of the privilege of conducting activities within Texas; purposely directed their actions toward Texas; had contacts that were meaningful in Texas; and sought a benefit, advantage, or profit by virtue of their activities in Texas. Exercising jurisdiction over Defendants does not offend the traditional notions of fair play and substantial justice or run afoul of any constitutional limits.

70. This case is not removable to federal court because none of Plaintiffs' claims raise a federal question. Additionally, diversity jurisdiction does not exist because there is not complete diversity of citizenship. In particular, Plaintiff Hilltop Winery at Paka Vineyards, LLC and Defendant BASF are both citizens of New Jersey. Plaintiff Hilltop Winery at Paka Vineyards, LLC shared in the same exposure events as the other Plaintiffs in this suit.

71. Venue is proper in this Court under Tex. Civ. Prac. & Rem. Code 15.002(1), which provides for venue "in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred." At all times relevant to this Petition, Defendant BASF researched, designed, formulated, compounded, developed, tested, manufactured, produced, processed, assembled, inspected,

distributed, marketed, labeled, promoted, packaged, advertised, and sold an allegedly low-volatility dicamba-based herbicide called Engenia for use with the Xtend crop system. BASF manufactures its Engenia herbicide exclusively at its pesticide plant in Jefferson County, Texas.

72. Alternatively, venue is proper in this Court under Tex. Civ. Prac. & Rem. Code 15.002(3), which provides that suit shall be brought “in the county of the defendant’s principal office in this state, if the defendant is not a natural person . . .” BASF manufactures its dicamba-based herbicide Engenia at its pesticide plant in Jefferson County, which is located at 4385 West Port Arthur Road, Beaumont, Texas.

73. Venue is also proper with respect to Bayer and Monsanto pursuant to Tex. Civ. Prac. & Rem. Code § 15.005, which states: “In a suit in which the plaintiff has established proper venue against a defendant, the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.” Because venue lies as to Defendant BASF in Jefferson County, Texas, venue lies as to Bayer and Monsanto here as well. The claims against Bayer and Monsanto arise out of the same transaction, occurrence, or series of transactions or occurrences as the claims against BASF. In particular, and as alleged herein, Bayer-Monsanto and BASF entered into a joint venture to develop a dicamba-resistant seed system to which dicamba-based herbicides could be applied. Alternatively, Bayer-Monsanto and BASF each engaged in a series of transactions or occurrences that gave rise to Plaintiffs’ claims and injuries alleged herein.

FACTS

A. Overview

74. Monsanto researched, designed, formulated, compounded, developed, tested, manufactured, produced, processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised, and sold dicamba-based seed systems for cotton and soybean. These systems include the Roundup Ready 2 Xtend crop system that includes Monsanto's dicamba-tolerant ("DT") cotton seed, Bollgard 3 XtendFlex Cotton, Bollgard II XtendFlex Cotton, and XtendFlex Cotton (collectively, "Xtend cotton"), Monsanto's DT soybean seed, Roundup Ready 2 Xtend soybean ("Xtend soybean") (collectively, "Xtend seed" or "Xtend crops"), and dicamba-based herbicides, XtendiMax with VaporGrip Technology ("XtendiMax") and Roundup Xtend with VaporGrip Technology ("Roundup Xtend"), to allegedly protect crops from harm caused by weeds. BASF entered into a joint venture with Monsanto to design, develop and market the dicamba-based seed system. BASF also manufactures its own dicamba-based herbicide known as Eugenia.

75. Plaintiffs are the owners and operators of fifty-seven (57) vineyards, and four related processors, in the Texas High Plains near Lubbock, Texas whose businesses have been devastated by dicamba, a volatile and drift-prone herbicide that has ruined millions of acres of farmland in the United States. Grape growers across the country and particularly in the Texas High Plains have reported damage to their vines caused by dicamba. As one expert with the Texas A&M Agrilife Extension Service has estimated, 90-95% of the grape vines in the Texas High Plains region have been damaged.

76. While dicamba has been used for limited purposes since the 1960s, the use of dicamba has increased exponentially due to Monsanto's release of the Xtend system for cotton and soybeans—a dicamba-based crop system composed of genetically modified seeds that are dicamba resistant. Monsanto developed the system to address the problem of herbicide resistant weeds (*e.g.*, pigweed) that have afflicted cotton and soybean crops. This is despite the fact that the use of over-the-top dicamba application (a necessary component of any herbicide-resistant seed system for cotton or soybeans) has never been encouraged in the past due to the herbicide's volatility and susceptibility to secondary movement (post-application).

77. Even in the 1960s, dicamba's dangers were well-known, and it was used with caution. Its use was limited to applications that were before planting or after harvest in cooler temperatures. Dicamba was never used during the summer growing season or over-the-top of cotton or soybeans. This is because the chemical had a strong track record of turning into a gas and forming invisible clouds in the air that could then move. This is especially true when the weather is warm.

78. When Monsanto first released its Xtend system, reports began to surface of non-dicamba-resistant crops (*e.g.*, fruits) sustaining significant damage in agricultural areas where dicamba was being sprayed over-the-top of other crops. By 2017, Monsanto and BASF released a version of dicamba that purported to be "less volatile." Nonetheless, reports of continuing and widespread damage exploded throughout the Midwest and the South. As developed by Monsanto and BASF, the dicamba-based seed system was based on the use of a dicamba-tolerant seed as well

as dicamba-based herbicide that could be sprayed over the top of cotton and soybean fields.

79. In some instances, cotton and soybean growers were forced to purchase the Xtend system (at a premium price) as a defense mechanism against their neighbors. But for those growing grapes and other crops that cannot be made dicamba resistant, there was no recourse or defense.

80. The cause of the destruction of Plaintiffs' crops and businesses is Defendants' willful and negligent release of their dicamba-based seed system on the market. Defendants methodically engaged in a coordinated, systematic plan to release their defective products onto the market, thereby ensuring that crops that were not dicamba tolerant would be destroyed.

81. Monsanto and BASF willfully and negligently designed and sold the Xtend seed system without an effective and safe herbicide for use with Xtend crops. Monsanto did so even though it marketed its Xtend products as a "crop system," *i.e.*, a seed to be used in conjunction with its or BASF's dicamba herbicides.

82. Monsanto would benefit from the sales of its defective seed system. BASF, as the nation's largest seller of dicamba-based herbicides, would benefit from the sale of its existing, older dicamba-based herbicides. In the long-term, both entities knew that the massive increase in the use of dicamba-based herbicides would create a fear-based marketing frenzy for Xtend seed and Monsanto's XtendiMax herbicide and Defendant BASF's Engenia herbicide.

83. Defendants knew Monsanto's dicamba-based seed system as designed and sold to its customers would inevitably lead to other farmers' crops being damaged or destroyed by dicamba that drifted or volatilized when it was used as part of the seed system. Internal Monsanto and BASF documents show they were fully aware that dicamba-based seed systems would lead to thousands of farmers' crops being destroyed. But this did not cause Monsanto or BASF to try and find a safer, alternative design. Rather, Monsanto and BASF saw this inevitable damage to others as a source of future profit as it would force other cotton and soybean farmers to either buy Monsanto's seed system or get wiped out. And Monsanto and BASF viewed the damages they would cause to grape farmers and other fruit farmers as just a cost they would be happy to incur to gain market share for their cotton and soybean seed systems.

84. In particular, in one BASF strategy update, the company noted "defensive planting" as a "potential market opportunity." Similarly, a Monsanto employee told his colleagues via e-mail, "I think we can significantly grow business . . . if we reach out to all the driftee people." In other words, even where a cotton or soybean grower did not want to use Monsanto's dicamba-resistant seed system, they would be scared into buying it to protect themselves from these large-scale dicamba clouds moving across the region. As one Monsanto employee explained, "everyone will just have to plant Xtend crops, and then it won't be an issue."

B. What is Dicamba?

85. Dicamba is a highly volatile herbicide that is used to kill weeds.

86. Defendant BASF was one of the, if not the first, manufacturer to distribute dicamba.

87. Since dicamba was first introduced about 50 years ago, weed scientists have noted some yearly occurrences of dicamba injury due to its use and off-target movement.¹

88. There are three primary ways dicamba, including Defendants' new dicamba-based herbicides to be used in conjunction with dicamba-resistant seed, moves off-target and causes damage to surrounding crops and vegetation that have not been genetically modified to withstand dicamba.

89. The first and most destructive cause of off-target movement is volatilization. Volatilization occurs when dicamba is applied to a crop but then evaporates and moves in the air as a gas. This gas, or dicamba vapor, easily moves away from its intended target and can travel an immense distance (many miles through the air) before it settles on sensitive plants or other surfaces, thereby causing damage. Dicamba is highly volatile—it is more than 300,000 times more volatile than glyphosate, the active ingredient in Monsanto's Roundup.

90. After dicamba is sprayed on a crop, it can volatilize into a gas for many hours and days after application, thus increasing the scope of the damage it can cause. Also, the volatility of already-volatile dicamba increases in the warmer months of a growing season—June, July, and August.

¹ See <http://bulletin.ipm.illinois.edu/?p=3942>.

91. The next way dicamba moves off-target is through physical drift. Drift is the airborne migration of dicamba spray particles moved by the wind before the particles reach their intended target.

92. Calm and windless environments that might otherwise minimize drift, such as in a temperature inversion, also increase the off-target movement of dicamba.

93. The third way off-target movement of dicamba occurs is when dicamba is sprayed during a temperature inversion. Here, the dicamba does not volatilize into a gas or move off-target because of drift. Instead, when dicamba is sprayed into a temperature inversion, the fine spray particles of dicamba become suspended in a mass of cool air that hangs above the soil line.

94. As this cool air mass containing suspended dicamba particles leaves the field with the slightest breeze, the fine dicamba particles travel with it. The dicamba eventually falls out of suspension when the air mass warms many hours later, moving potentially miles away from its original target location.

95. The dangers posed by the volatile nature and off-target movement of dicamba alarm many weed scientists and farmers because many agricultural and specialty crops, including Plaintiffs' vineyards, which are ultra-sensitive to dicamba and can be damaged by extremely low doses of the herbicide. For example, as little as 1/800th of a recommended dose can harm a grapevine. In addition, only 10-16 drops of dicamba from an eyedropper is enough to damage an entire acre of grapes.

96. Monsanto and BASF knew that drift and volatilization would occur even if the people applying dicamba did exactly what they were supposed to do. In a recent

interview, BASF technical marketing manager Tracy Rowlandson admitted that dicamba used over the top of cotton or soybeans can drift or volatilize even if an applicator does exactly what they are supposed to do.

C. Development and Introduction of Defendants' Dicamba-Based Products

97. The purpose of genetically modified seed is to help farmers combat problematic weeds that have evolved to resist certain herbicides.

98. Monsanto's Xtend seed system is genetically modified to resist the herbicides dicamba and glyphosate, the latter being the main ingredient in Monsanto's Roundup.

99. Monsanto pushed its dicamba-based seed system, in joint venture with Defendant BASF, onto the market to supplant existing crop systems, and to move beyond Monsanto's Roundup Ready crop system, which has failed to control herbicide-resistant weeds that plague agriculture throughout the United States, including Texas.

100. But it was no surprise to scientists and other experts that Monsanto's dicamba-based seed system would cause massive damages to farmers who did not have dicamba-resistant crops. As early as 2009, experts warned that a dicamba-based seed system could have catastrophic consequences due to the large volume of dicamba that would be sprayed during the summer months combined with the volatility and drift-prone nature of the dicamba herbicides used in the seed systems.

101. One expert told Congress that widespread dicamba use presented a "serious threat to the specialty crop industry." University professors also wrote

articles outlining the risks of the seed system, warning of a high risk of movement and a negative impact on non-target crops.

102. Monsanto and BASF’s response was to reduce their testing to make sure they did not create data that would corroborate what outside experts were saying. Monsanto and BASF responded by, as they described it, “pull[ing] back some of this academic testing . . . to ensure that these formulations keep a ‘clean’ slate.” They also refused to test the product under the type of real-world conditions found on the High Plains—high temperatures and strong winds. In one instance, Monsanto told academic researchers it could not produce enough of the product for field tests, to which a Monsanto employee replied internally: “Hahaha. Difficulty in producing enough product for field testing. Hahaha bullshit.”

103. Also in 2009, a report prepared for Monsanto warned that “off-target movement” of dicamba was expected, along with “crop loss,” “lawsuits,” and “negative press around pesticides.” The same report specifically identified “off-target movement” as the “primary issue” with the proposed product, particularly for “sensitive, high-value crops” including: “1. Organics. 2. Tomatoes. [and] 3. Vineyards.”

104. By 2015, just before the seed system’s release onto the market, an internal Monsanto document reflected Monsanto’s own damage projections—estimating that dicamba drift-related damage claims from farmers would total more than 10,000 cases, with projections of soybean-related damage claims alone of 1,305 in 2016; 2,765 in 2017; 3,259 in 2018; 2,333 in 2019; and 2,447 in 2020.

105. In other words, Monsanto, in joint venture with Defendant BASF, distributed and sold a defective dicamba-based seed system that they absolutely knew would damage farmers near cotton or soybean farms that used Monsanto's dicamba-based seed system. And what they knew would occur has, in fact, occurred. A 2017 Monsanto e-mail specifically referred to the "wall-to-wall damage we've been seeing." This has continued each growing season through present. As one BASF employee wrote: "That ticking time bomb has finally exploded! The scope of the damage is on a massive scale."

106. By releasing their unsafe, defective dicamba-based seed system, Defendants created an economic and ecological disaster for grape growers on the Texas High Plains.

D. The Sale and Distribution of XtendiMax and Engenia for Use with the Xtend Crop System

107. Beginning in 2017, Monsanto sold and distributed its Xtend seed system that use dicamba-tolerant seed and dicamba-based, over-the-top herbicides to farmers across the country and, in particular, the Texas High Plains.

108. Monsanto sold 25 million acres of Xtend seed in 2017.

109. Monsanto stated the launch was one of their largest ever.²

110. Defendants claim that their dicamba herbicides to be paired with the seed are the lowest volatility dicamba herbicides on the market. Through their company executives and scientists, Defendants have gone to great lengths to promote

² See <http://www.indianaprairiefarmer.com/crop-protection/monsanto-officials-add-their-perspective-dicamba-issues-season>.

this exaggerated and false message, giving the impression that their product will not move off-target.

111. For example, Monsanto claims XtendiMax is designed to be the industry's lowest volatility dicamba herbicide with the addition of a VaporGrip additive, a mechanism that allegedly prevents the formation of dicamba acid and allows for an alleged 90% to 99% reduction in volatility compared to older dicamba herbicides currently on the market.

112. According to Monsanto's Robb Fraley, XtendiMax and Engenia are 100 times less volatile than older dicamba herbicides.³

113. Scott Partridge, Monsanto's then Vice President of Global Strategy (and current general counsel and senior vice president of Bayer Corporation), has been even more definitive, stating XtendiMax "will not move far, including through volatilization."⁴

114. Mr. Fraley's and Mr. Partridge's claims, however, are undercut by Monsanto's own internal documents and have been soundly rejected and disproved by weed scientists across the country.

E. Joint Venture of Monsanto and BASF

115. As early as 2005, Monsanto licensed the dicamba resistance gene from the University of Nebraska. In doing so, Monsanto sought to prolong the usefulness of its Roundup crop system with dicamba, an active ingredient in XtendiMax and

³ See <http://www.indianaprairiefarmer.com/crop-protection/monsanto-officials-add-their-perspective-dicamba-issues-season>.

⁴ See <http://cen.acs.org/articles/95/i33/Widespread-crop-damage-dicamba-herbicide.html>.

Roundup Xtend. With Defendant BASF's cooperation and partnership, the two companies formed a joint venture to develop, design, and market a new crop system featuring dicamba.

116. Defendants' joint venture now spans more than a decade. Since at least 2010, Monsanto and BASF's venture has been governed by an agreement known as the Umbrella Agreement, that created a joint governing body called the Alliance Management Team ("AMT"). Monsanto and BASF are equally represented on the team, and they alternate the chairmanship with joint control over the project. Through the Team, Monsanto and BASF have entered into, *inter alia*, the March 8, 2011 Dicamba Tolerance System Agreement ("DTSA"), a June 9, 2014 Amended & Restated Dicamba Tolerance System Agreement ("ARDTSA"), and an October 2014 Letter Agreement. BASF has repeatedly referred to the arrangement as a "joint venture."

117. Under the Umbrella Agreement, Monsanto and BASF agreed to contribute assets, including intellectual property and know-how to the joint development and commercialization of agricultural products in areas including seed treatment and weed control. This included dicamba-tolerant seed systems for cotton and soybeans.

118. Under the DTSA, in addition to certain obligations to grant reciprocal licenses, share access to regulatory data, and supply materials (including dicamba herbicide and dicamba-tolerant seed), the parties agreed Monsanto would make DT Systems Payments to BASF, which they call "value share payments." The DTSA also

established joint working groups, through which Monsanto and BASF jointly pursued development, regulatory, and commercialization efforts pertaining to their DT System.

119. Among other things, the Regulatory Working Group coordinated registration of herbicides for use in the DT system; the Development Working Group coordinated field trials and developed label recommendations and research studies; and the Commercialization Working Group evaluated operational considerations including forecasts for seed volume and chemistry volume, developed and coordinated a communications strategy, and developed and coordinated the commercial launch strategy. The joint work plans were approved by equal vote of the Team under the Umbrella Agreement.

120. Further, Defendant BASF is a longstanding producer of dicamba herbicides and by sharing its technologies and formulas with Monsanto, Defendants shortened the timeline for their dicamba products to reach the market.

121. Pursuant to their various agreements, Monsanto and BASF coordinated the strategy and schedule for commercialization of the dicamba-based seed system—through the Commercialization Working Group, which in turn reported to the AMT.

122. From March 2010 until the eve of the product launch, Monsanto and BASF continued to collaborate on and discuss aspects of the dicamba tolerant crop system at meetings of the AMT under the protocols set forth in the Umbrella Agreement. In total, there were at least 17 meetings of the AMT in which the aspects of the dicamba tolerant crop system were discussed.

123. Defendants had “a community of pecuniary interest” in their common purpose, given Monsanto’s agreement to make “value share payments” to BASF as a means of sharing profits for every single acre of dicamba-tolerant seed planted from 2015 to the present. Those payments were in fact made.

124. Monsanto and BASF also jointly agreed to share access to proprietary testing and data for regulatory approval, share materials to enable testing and development, share in the costs of dicamba residue testing, and make capital expenditures to fulfill their respective obligations under the agreements.

125. With Monsanto’s Roundup Ready cotton and other crops losing the battle of the increasing infestation of glyphosate-resistant weeds in the Texas High Plains, Defendants rushed to release dicamba-resistant Xtend seed. Monsanto did this to renew its stranglehold on the weed control market which would foster its scheme with Defendant BASF as well.

126. In anticipation of the billions in profit it would reap from the dicamba seed system, Monsanto invested \$2 billion toward its scheme—over \$1 billion producing its new dicamba formula and another \$1 billion to upgrade a dicamba manufacturing plant in Luling, Louisiana.

127. In 2016, Monsanto, in partnership and joint enterprise with Defendant BASF, sold about three million acres of Xtend cotton and one million acres of Xtend soybeans nationwide.

128. In 2017, Monsanto exceeded its expectations for Xtend seed sales, as farmers in the U.S. planted 20 million acres of Xtend soybeans and five million acres of Xtend cotton nationwide.

129. After Bayer acquired Monsanto, it opened a new \$16.7 million seed processing plant in Lubbock to increase its sales of dicamba-resistant cotton seed in the Texas High Plains, often called the “Cotton Patch of the World.”

130. Monsanto and BASF’s sales of the dicamba-based seed system continue to grow to this day.

131. As dicamba-resistance is added to other crops, it is believed that Xtend seed will eventually cover at least 250 million acres in the United States.

F. Dicamba Damage to High Plains Grape Growers

132. There are more than 400 wineries in Texas, accounting for over 5,000 acres of vineyards, 100,000 jobs, and a \$13.1 billion total economic impact (placing Texas fifth in the nation).⁵ Over 85% of all the wine grapes grown in Texas are grown within one hour of Lubbock in the High Plains.

133. Until Monsanto and BASF first released their dicamba-resistant cotton seed system, you would have been hard-pressed to find a vine in the High Plains with dicamba damage. Now, five years later, it is everywhere. Entire landscapes have been changed.

134. In recent years, Plaintiffs have identified significant grapevine damage caused by exposure to dicamba. Dicamba exposure results in unique and distinctive

⁵ See <https://www.npr.org/sections/thesalt/2018/08/21/638588456/west-texas-vineyards-blasted-by-herbicide-drift-from-nearby-cotton-fields>.

physical symptomology in grapevines. The primary symptom is leaf cupping (pictured below), but additional symptoms may include leaf curling, strapping, discoloration, elongation, wrinkling, stunting, or twisting. The difference between a healthy leaf and a dicamba-exposed leaf is obvious (also pictured below).



135. Texas grape growers in the High Plains have been among those most affected by the dicamba problem. This can be attributed to the fact that Texas wine grapes are grown in and around the same agricultural areas where dicamba-resistant cotton—the predominant crop in the High Plains region—is being utilized. Currently, over two-thirds of the 3 million acres of cotton grown in the Texas High Plains are planted with dicamba-resistant seed. This means that most of these more than 2 million acres of cotton fields are sprayed with over-the-top dicamba herbicide multiple times during the summer growing season when temperatures in the region are at their highest, increasing volatility.

136. Because of the millions of acres of cotton fields in the Texas High Plains, much of which are now planted with Monsanto's Xtend cotton seeds, each summer

now results in a massive cloud of drifting and volatilized dicamba that covers the entire High Plains (and all 57 vineyards) as dicamba volatilizes and drifts from hundreds if not thousands of different cotton fields in the High Plains. Once sprayed, volatilized or drifting dicamba can travel for many miles before falling on plants. The dicamba cloud is particularly prevalent and intense in the parts of Terry, Lubbock, Hockley, Yoakum, and Floyd Counties where the Plaintiffs' vineyards are located—all within the same 100-mile radius. At any given time, millions of pounds of the herbicide can be suspended over the region.

137. Plaintiffs have been victimized by Defendants' greed through the coordinated release of their unsafe and defective dicamba products. Defendants' defective seed system has enticed the application of incredible amounts of a very volatile herbicide across the region. As a result, there is identifiable dicamba damage in every portion of every Plaintiff vineyard.

138. Defendants' dicamba-based herbicides used as part of the dicamba-based seed system have volatilized and drifted throughout Lubbock, Hockley, Terry, Floyd, and Yoakum Counties, where the Plaintiffs' vineyards are located.

139. Defendants intentionally set their sights on the High Plains, which is a unique farming environment. The same geography and weather that makes the High Plains an ideal location for growing cotton, grapes, and other crops, also makes the area especially vulnerable to dicamba volatilization and off-target movement. Defendants were well aware that climates like those found on the High Plains were particularly vulnerable to drift and volatilization.

140. Plaintiffs' grapevines are not resistant to dicamba, and they have been decimated by Defendants' dicamba-based seed system, which necessarily invites the large-scale spraying of dicamba over the top of large swaths of row crop. A seed system never should have been built around a volatile and uncontrollable herbicide like dicamba.

141. Through their joint venture, Defendants have created and encouraged an ecological disaster in Texas to increase the profits and demand for their dicamba products.

142. As a perennial crop, grapevines are like trees in that they need only be planted once. Although it takes more than three years for a newly planted vine to produce commercial quality grapes (and years after that to produce a full crop), mature vines can be expected to produce grapes for decades. The tradeoff for the significant initial cost of setting up a vineyard is that the vines are a 25-year investment that will continue to make money—provided the vines stay healthy.

143. But when damaged by dicamba in even one season, a vineyard can take years to recover (if at all). When a vineyard is hit by volatilized or drifting dicamba in multiple years, the damage increases (and the recovery, if any, takes even longer). This is especially true for younger vines and vineyards that are still developing. They can experience significant developmental delays and even total loss (requiring tear out and replanting) before ever making a viable crop.

144. Dicamba damage causes numerous harms to a vineyard. Those injuries include (a) lost grape yields, (b) reduced quality of grapes produced, and (c) lost value

of the vineyard. Moreover, the vines themselves can be weakened or killed. And, even if a vine is not killed by dicamba, it can be permanently injured. A dicamba weakened vine is more susceptible to damage or death due to weather, drought, or disease. In other words, a grape vine that would normally survive a freeze or a year of little rain will be further damaged or killed following dicamba injury.

145. Some High Plains growers have seen grape production decrease by as much as 95% in recent years. Others have suffered widespread vine death, cancelled contracts, ruined buyer relationships, and a resulting stigma. Many young vineyards have been stopped in their tracks before ever having a chance to make a crop. For many growers, the constant dicamba exposures (and the prospect of more to come) have made growing grapes, at best, seem financially unsustainable and, at worst, an exercise in futility.

146. Grape growers know that growing quality grapes rests on several decisions: how much to water, how to train vines, when to harvest, and how to prune. But for growers on the High Plains, Monsanto and BASF have taken this control out of their hands. There is nothing growers can do to stop these clouds of dicamba from injuring their vines. All they can do is sit and watch. The growers' property, passion, and in many instances, their very livelihoods have been taken.

CAUSES OF ACTION

COUNT I - STRICT LIABILITY - DESIGN DEFECT

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

148. Defendants designed, tested, developed, manufactured, marketed, distributed, and sold the Xtend dicamba-based seed system, including Xtend seed, Monsanto's XtendiMax herbicide, and Defendant BASF's Engenia herbicide.

149. The Xtend dicamba-based seed system was used by farmers for the cultivation and protection of cotton crops which was their reasonably anticipated use.

150. Defendants developed, designed, marketed, and sold their dicamba-based seed system pursuant to (1) an express or implied agreement or agreements; (2) a common purpose to be carried out by Defendants; (3) a community of pecuniary interest in that common purpose; and (4) an equal right to direct and control the enterprise. In so doing, Defendants agreed to share in the profits, risks, costs, and losses associated with their joint enterprise and created a joint venture.

151. As described above, the Xtend dicamba-based seed system was defective and unreasonably dangerous at the time it left Defendants' hands. Such defect was a direct and producing cause of Plaintiffs' injuries. Each Plaintiff has suffered the following injuries caused by the defective seed system: (a) lost yields of grapes from their vineyards, (b) reduced quality of grapes produced from their vineyards, and (c) lost value of their vineyards.

152. A safer alternative design existed that would have prevented or significantly reduced the risk of Plaintiffs' injuries without impairing the product's utility. Such safer alternative design was economically and technologically feasible at the time the product left the control of Defendants through the application of existing or reasonably achievable scientific knowledge.

153. As joint venturers in a joint venture that developed, designed, and marketed the seed system, Defendants are jointly and severally liable.

COUNT II - NEGLIGENT DESIGN

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

155. Defendants negligently designed their dicamba-based seed system.

156. Defendants designed their dicamba-based products in their ordinary course of business.

157. Defendants developed, designed, marketed, and sold their dicamba-based products pursuant to (1) an express or implied agreement or agreements; (2) a common purpose to be carried out by Defendants; (3) a community of pecuniary interest in that common purpose; and (4) an equal right to direct and control the enterprise. In so doing, Defendants agreed to share in the profits, risks, costs, and losses associated with their joint enterprise and created a joint venture.

158. As described above, Defendants failed to use ordinary care in the design of their dicamba-based seed system.

159. Defendants owed a duty to Plaintiffs to use ordinary care in the design of their dicamba-based seed system.

160. Each Plaintiff has suffered the following injuries proximately caused by Defendants' negligence: (a) lost yields of grapes from their vineyards, (b) reduced quality of grapes produced from their vineyards, and (c) lost value of their vineyards.

161. As joint venturers in the development, design, marketing, and commercialization of the dicamba-based seed system, Defendants are jointly and severally liable.

COUNT III - PUNITIVE DAMAGES - BAYER-MONSANTO

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

163. Each Plaintiff seeks from Bayer-Monsanto the maximum amount of exemplary damages allowed by law. Each Plaintiff is entitled to exemplary damages from Bayer-Monsanto because the harm for which they seek recovery of exemplary damages results from malice or gross negligence.

164. Bayer-Monsanto acted with malice because it had a specific intent to cause substantial injury or harm to each Plaintiff. As set forth above, Bayer-Monsanto intentionally designed its seed system to cause harm to farmers who did not buy their system as part of a de facto “protection racket” to force those farmers to buy their product or otherwise face the destruction of their business.

165. Bayer-Monsanto’s conduct was also grossly negligent. When viewed objectively from Bayer-Monsanto’s standpoint at the time it designed its dicamba-based seed system that was sold to cotton farmers in the Texas High Plains, Bayer-Monsanto’s conduct involved an extreme degree of risk, considering the possibility and magnitude of the potential harm to others, particularly innocent third parties. And Bayer-Monsanto had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others.

COUNT IV - PUNITIVE DAMAGES - BASF

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

167. Each Plaintiff seeks from BASF the maximum amount of exemplary damages allowed by law. Each Plaintiff is entitled to exemplary damages from BASF because the harm for which they seek recovery of exemplary damages results from malice or gross negligence.

168. BASF acted with malice because it had a specific intent to cause substantial injury or harm to each Plaintiff. As set forth above, BASF intentionally designed its seed system to cause harm to farmers who did not buy their system as part of a de facto “protection racket” to force those farmers to buy their product or otherwise face the destruction of their business.

169. BASF’s conduct was also grossly negligent. When viewed objectively from BASF’s standpoint at the time it designed its dicamba-based seed system that was sold to cotton farmers in the Texas High Plains, BASF’s conduct involved an extreme degree of risk, considering the possibility and magnitude of the potential harm to others, particularly innocent third parties. And BASF had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others.

CONDITIONS PRECEDENT

170. Pursuant to Rule 54 of the Texas Rules of Civil Procedure, Plaintiffs aver that all conditions precedent to their claims have been performed, have occurred, or been waived.

JURY DEMAND

171. Plaintiffs hereby demand a trial by jury in this cause and the required jury fee has been paid contemporaneously with the filing of this case.

RULE 47 STATEMENT OF RELIEF SOUGHT

172. Each Plaintiff seeks monetary relief over \$1,000,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court that Defendants be cited to appear and answer herein, and that upon trial of this case, the Court render judgment in Plaintiffs' favor on their claims against Defendants, and award to Plaintiffs:

- a) All general and compensatory damages;
- b) All special and consequential damages;
- c) Punitive and exemplary damages;
- d) Pre-judgment interest;
- e) Post-judgment interest;
- f) Taxable costs of court; and
- g) All such other and further relief, both at law and in equity, to which

Plaintiffs may be justly entitled.

Dated: June 4, 2021

Respectfully submitted,

/s/ Adam M. Dinnell

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