UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

GREGORY HARRIS	)	
	)	
	)	
Plaintiff,	)	**CASE NO.: 3:17-cv-5262**
	)	
v.	)	
	)	
MONSANTO COMPANY,	)	
BASF CORPORATION, BASF SE,	)	**JURY TRIAL DEMANDED**
BASF CROP PROTECTION, and	)	
E.I. DUPONT DE NEMOURS AND COMPANY	)	
	)	
Defendants.	)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Gregory Harris by his undersigned attorneys, upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, brings this action against Monsanto Company ("Monsanto"); BASF Corporation, BASF SE, and BASF Crop Protection (together, "BASF"); and E.I. DuPont De Nemours and Company, ("DuPont"), and alleges as follows:

1. Although the Defendants here pledged to act responsibly, Defendants acted selfishly, focused on profits, and ignored their responsibilities to the market.

2. The GMO products at issue are Monsanto's Roundup Ready 2 Xtend Soybeans ("Xtend soybeans")4 and Bollgard II XtendFlex cotton ("XtendFlex cotton") (together, "Xtend products"), which are utilized in conjunction with the Defendants' dicamba herbicides (Monsanto's XtendiMax® Herbicide with VaporGrip® Technology ("XtendiMax"), BASF's Engenia herbicide ("Engenia") and DuPont's FeXapanTM herbicide Plus VaporGrip®

Technology("FeXapan")) (collectively sometimes herein referred to as "Defendants' dicamba Products").[1]

3. Monsanto, BASF and DuPont needed to develop and sought approval from the Environmental Protection Agency ("EPA") for new formulations of dicamba that were not yet on the market—formulations that would allegedly not volatilize or drift.

4. Initially, Monsanto stated it would not release its Xtend products until the EPA approved an over-the-top dicamba herbicide formulation.

5. Monsanto did so despite warnings from farmers and industry experts. For example, in 2014, a coalition of farmers named Save Our Crops warned Monsanto that premature release of dicamba resistant traits would pose a risk to crops in the Midwest.

6. Because no non-volatizing or drift-free dicamba formulations were approved by the EPA in 2015 (and thus no non-volatizing or drift free dicamba formulations available to farmers), any use of dicamba over-the-top of XtendFlex products would result in damage to non-target crops or plants.

7. After the damage caused to non-target crops and plants by over-the-top dicamba applications to XtendFlex cotton in 2015, Monsanto had no reasonable basis to expect anything less than additional drift and volatilization damage should it continue offering Xtend products, especially prior to EPA approval of non-drifting/non-volatilizing dicamba formulations.

8. In 2016 in Missouri, Tennessee and Arkansas, there were at least 27, 44, and 26 filed complaints (respectively).

9. In late 2016 and early 2017, Defendants won EPA approvals of their over-the-top dicamba formulations. However, in doing so, Defendants withheld crucial information from the

[1] DuPont also sells a brand of Xtend soybeans via a license from Monsanto.

EPA. For example, Monsanto relied on misleading volatility testing (e.g., only testing volatility relative to other dicamba formulations and not determining a safe level of volatility). Also, despite allowing independent and unbiased testing by third parties (i.e., universities) on the efficacy of its over-the-top dicamba formulations, it did not allow similar independent and unbiased tests on volatilization despite receiving multiple requests. When specifically asked about this on or about August 8, 2016, a Monsanto representative (Boyd Carey) stated to the Arkansas Plant Board such tests would not be allowed because the results might jeopardize Monsanto's registrations.

10. The result: the approved over-the-top dicamba formulations, even if properly applied, were not non-drifting or non-volatilizing.

11. In 2017, with issued EPA approvals, and despite two years of dicamba drift damage, Monsanto fully rolled out its Xtend soybean and XtendFlex cotton seeds, and its XtendiMax dicamba formulations for use on its Xtend soybeans and XtendFlex cotton seeds. Similarly, BASF and DuPont released their own approved dicamba formulations for over-the-top use on Xtend products: Engenia and FeXapan (respectively).

12. Unbeknownst to farmers and applicators, XtendiMax, Engenia and FeXapan—even when applied pursuant to their labels—were not non-volatizing. For example, Dr. Kevin Bradley of the University of Missouri reported damage even when label instructions were followed. Despite being touted by Defendants as safe for non-target crops and plants, they were not.

13. In his experiments, Dr. Bradley's initial test results showed that after proper spraying techniques, even the approved dicamba formulations show volatility:

> Formulations = Will be interesting to see how Engenia and XtendiMax compare to Banvel, but **initial results w/ air samples and indicator plants suggest that both can be detected in air after application.**
>
> Volatility = Much more to see with the remaining time points and air samples. **Indicator plants suggest volatilization is still occurring at least 24 hours after treatment.**
> *Id.* at 28 (emphasis added).

14. Similarly, Dr. Thomas Mueller of the University of Tennessee Institute of Agriculture in July 2017 released test results finding, "This data indicates the dicamba (from Engenia) is moving from the site of application into the air immediately above the treated field" and "Given sensitivity of soybeans to POST dicamba, these data indicate that soybean injury in adjacent areas should be expected from vapor moment of dicamba after application."

15. Robert Hartzler, an Iowa State University weed scientist said that "The big debate is whether or not the stuff is volatilizing . . .. New formulations were supposed to have taken care of the volatility problem, but all the research suggests that they've reduced the volatility, but not to a level that's safe" [after plants have emerged from the ground.] "If it is volatilizing, it's nearly impossible to use, in my opinion, post-emergence."

16. The reason for withholding independent testing on Defendants' over-the-top dicamba formulations is clear: independent, unbiased tests would have challenged in-house findings submitted by Defendants to the EPA, and jeopardized Defendants' registrations.

17. Jason Norsworthy at the University of Arkansas, Kevin Bradley at the University of Missouri and Aaron Hager at the University of Illinois all reported that Monsanto provided samples of XtendiMax before it was approved by the EPA. However, the samples came with contracts that explicitly forbade volatility testing.

18. "This is the first time I'm aware of any herbicide ever brought to market for which there were strict guidelines on what you could and could not do," Norsworthy said. *Id.*

19. Predictably, with a larger roll out of Xtend products in 2017, the damage to non-target crops and plants has dramatically increased.

20. Kevin Bradley has estimated that dicamba has damaged more than 3.1 million acres in the United States.

21. In July 2017, Arkansas banned the use of Engenia dicamba products for the remainder of the 2017 crop season (excluding rangeland and pastures) for over-the-top applications. Arkansas had previously banned Xtendimax dicamba technology in January 2017.

22. In July 2017, Missouri banned the sale and use of all Dicamba containing products labeled for agricultural use, including new Dicamba fomulations XtendiMax, Engenia and FeXapan for over-the-top (in-crop post-emergent) applications until new Special Local Need Labels are approved or until December 1, 2017.

23. In July 2017, Tennessee instituted emergency rules restricting over-the-top dicamba application.

24. In September 2017 the Pesticide Committee of the Arkansas State Plant Board ("ASPB") voted to restrict dicamba use in row crops, allowing it only from January 1 to April 15 during the 2018 season.

25. Rick Cartwright, University of Arkansas vice president and a nonvoting member of the ASPB, said that "[i]f education could solve this issue, we wouldn't see [nearly] 1,000 complaints in this state."

26. Aaron Hager, a crop science professor at the University of Illinois at Urbana-Champaign said that "[t]his was very predictable that this was going to happen. . .. We've only known for 50 years that soybeans are one of the most sensitive plants to dicamba. I continue to be amazed when people ask, 'Why is this so common?' I mean, what did people really expect?

27. 2017 damage from volatilization of dicamba is occurring even when Engenia, FeXapan and XtendiMax instructions and labels are followed. As experts have explained, the majority of 2017 damage to non-target crops and fields is uniform, meaning the damage arises due to volatility. As Dr. Kevin Bradley of the University of Missouri Extension stated:

> The majority of fields I've been in are injured from one end to the other with no discernable difference in soybean symptomology. This suggests problems with off-site movement through volatility.

Damage due to volatility is not due to applicator error; it arises due to a defect with the product.

28. The problem is compounded in that Defendants drastically underplayed the risk of damage due to volatilization and temperature inversions to the EPA for their Xtend, Engenia and FeXapan products. Described in greater detail below, temperature inversions (cooler ground level temperatures) lift volatilized and very small droplets of dicamba from fields into the air, allowing them to travel in an inversion layer, sometimes for miles. As temperatures invert again (warmer temperatures at ground level this time), the entire inversion layer is deposited onto non-target fields. This results in the widespread and uniform damage to non-target crops and plants seen in 2017.

29. Additionally, experts such as the University of Tennessee's Larry Steckel have criticized Defendants' labels and instructions (e.g., they do not allow for timely application), and questioned whether the technology itself is safe enough to be used under any conditions.

> The label associated with the approved low-volatility dicamba formulations called XtendiMax, FeXapan and Engenia are already complicated without further restrictions. "Following them as they are now is a Herculean task. Talk about threading the needle -- you can't spray when it's too windy. You can't spray under 3 miles per hour. You got to keep the boom down -- there are so many things," Steckel said. "It looks good on paper, but when a farmer or applicator is trying to actually execute that over thousands of acres covering several counties, it's almost impossible."

…

> He added that many farmers abandoned dicamba sprays and turned to other herbicide options to avoid hurting neighboring crops further. Depending on the weed control pressure and problems, that's a sacrifice and potential loss of income for those that bought into the technology, he agreed. "Mostly farmers want to do the right thing."
>
> "I'm just not sure we can steward this technology as it currently exists," he added.

In a later article, Dr. Steckel expanded on the difficulty in following the label:

> [T]hough it looks straight forward on paper, it is extremely hard to follow the label. The best example of this is that you cannot spray when the wind is above 10 mph or below 3 mph. Just that stipulation when you have crops to spray timely in three different counties makes the logistics a nightmare.

30. Given the now-shown volatility inherent even in the approved over-the-top formulations, non-target crop and plant damage was inevitable and was foreseeable.

PARTIES

31. Plaintiff Gregory Harris ("Harris") grows soybeans in Golden City, Missouri. Harris farms approximately 400 acres, of which 354 acres were planted with non-dicamba resistant soybeans.

32. Defendant Monsanto Company is a Delaware corporation with a principle place of business in St. Louis, Missouri. It is a global provider of agricultural products, including seeds, herbicides, and fertilizers.

33. Defendant BASF Corporation is a company organized and existing under the laws of Delaware, having a business address at 100 Park Avenue, Florham Park, New Jersey. BASF is the largest chemical producer in the world. BASF is authorized to do and does business in Texas and has facilities in Beaumont, Port Arthur, Pasadena, Channelview, Freeport, and Houston, Texas. BASF Corporation is the affiliate, subsidiary, agent, distributor and North American agent for BASF SE, a German company. In the United States, BASF sells its dicamba products

through BASF Crop Protection, which is either a division of, D/B/A or wholly owned subsidiary of BASF Corporation. Hereinafter, BASF Corporation, BASF SE and BASF Crop Protection will jointly be referred to as "BASF".

34. BASF cooperates and joint ventures with Monsanto in research, development and marketing of herbicides and weed control products, including dicamba. In early 2009, Monsanto collaborated with BASF and agreed to a joint licensing agreement to accelerate the development of dicamba-based weed control products.

35. On information and belief, Defendant DuPont is a Delaware corporation with its principal place of business at 1007 Market Street, Wilmington, Delaware 19898.

36. DuPont cooperates and joint ventures with Monsanto in research, development and marketing of herbicides and weed control products, including dicamba. In July 2016, Monsanto and DuPont announced a multi-year dicamba supply agreement for the U.S. DuPont also has licensed a variety of Xtend soybean seeds from Monsanto.

JURISDICTION AND VENUE

37. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. 1331 as one or more of Plaintiff's claims involves a question of federal law. This Court has pendent jurisdiction over Plaintiff's remaining state law claims.

38. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, and the Plaintiff's property that was damaged are located in this judicial district.

39. Further, Defendants have and continue to market, sell, and/or otherwise disseminate Xtend products, Engenia and FeXapan in this district.

40. Defendants also upon information and belief derived substantial revenue from goods and products made in, used in, and/or sold from this district.

FACTUAL ALLEGATIONS

41. Plaintiff Gregory Harris grows soybeans in Golden City, Missouri.

42. On or about August 2, 2017, damage was initially observed on Harris' soybeans (e.g., curling of leaves).

43. The damage was observed on up to 354 acres.

44. As harvest has not yet occurred, the total dollar value of damage is not known.

The Herbicide Dicamba

45. Dicamba is not a new herbicide; it has been around since the 1940s.

46. As an herbicide, dicamba works by increasing plant growth rate. Once sufficient concentration is reached, the target plant grows in abnormal and uncontrollable ways, eventually outgrowing its nutrient supplies. It essentially grows itself to death.

47. Symptoms of dicamba application can include cupping, twisting, stunting and yield loss. Damage also can carry over into the next generation of seed that can produce symptoms in its progeny.

48. Dicamba is a potent herbicide capable of killing difficult weeds such as pigweed, some of which is glyphosate (Roundup) tolerant.

49. Soybeans are especially vulnerable to dicamba, responding negatively to much lower concentrations of dicamba than most other plants.

50. Dicamba is mobile, and can spread across a large area, including unintended areas and fields.

51. Due to its high mobility, dicamba can reach non-target plants via field/site runoff, spray drift during application, by vapor drift from volatilization and through temperature inversion drift. The three types of damage to non-target crops and plants due to drift are relevant to this action.

52. Volatilization occurs when a liquid or solid changes into a vapor after spraying. Non-target damage due to volatilization occurs when an herbicide, after it hits the target, dries, then minutes to hours to days later, lifts off the target as a gas. Wind then allows for the dispersal of the herbicide gas to non-target fields.

53. Temperature inversion drift differs from volatilization in that both volatilized dicamba (as a gas) and physical droplets of dicamba travel in an "inversion layer." This occurs because vapors and fine droplets of dicamba hang in cold air. Typically during summer days, it is warmer at the soil level, and cooler as altitude increases. When a temperature inversion occurs, temperatures are cooler at the soil line. This allows for vapors and fines to hang in the air for hours. When the temperature inverts (warmer air occurring again at ground level, and colder at higher altitudes), the vapors and fines travel upwards with the inversion layer. When this happens, breezes, even a light breeze (a few miles an hour) will allow the fines to travel *en masse*, sometimes miles. When an inversion occurs again (warmer temperatures at ground level than in the air), the vapors and fines *en masse* drop onto fields below.

54. Damage caused by temperature inversion results in widespread and uniform damage.

55. Also, because temperature inversions can cause damage miles away from the source, it is sometimes impossible to determine the field from which the herbicide was sprayed.

56. The results are like the detonation of a dicamba bomb. All fields at the same growth stage will be affected in the same manner, even where dicamba was not sprayed for several miles.

57. Further, as the vapor and fines can remain aloft for multiple days, with multiple temperature inversions, non-target crops and plants could get hit day-after-day, multiple times. As experts such as the University of Tennessee's Larry Steckel have stated, multiple hits will result in increased yield loss.

> Fields that got hit early with light doses of herbicide may not have yield losses. "However, these fields that got hit multiple times are struggling. Some of them aren't boot-top tall and they were planted May 1. They are likely going to have some significant yield loss."

58. Due to its volatility, dicamba has primarily been used as a pasture herbicide and for vegetation burn down prior to planting in soybean, cotton, and other crops. Prior to Nov. 2016, dicamba was registered for use on pre-plant and post-harvest soybeans and on pre-plant and postharvest cotton. It was not approved for post-emergent spraying.

59. On April 28, 2010 and July 30, 2012, Monsanto filed applications to register new uses of dicamba on genetically-modified, dicamba-tolerant soybeans and cotton. Monsanto's proposed new use focused on adding post-emergence/over-the-top applications to dicamba-tolerant soybeans and cotton.

60. In 2012, experts questioned Monsanto's plan to utilize dicamba for over-the-top application on resistant crops. For example, a posting from Diane Brown from the Michigan State University Extension, interviewing David Mortenson, a professor of weed ecology from Penn State, stated that non-target crop and plant damage due to dicamba was 75 times greater than for glyphosate.

> "What is [more] troubling is that 2,4-D and dicamba are older and less environmentally friendly [than glyphosate]." Vapor drift of more toxic herbicides has been implicated in many incidents of crop injury and may have additional impacts on natural vegetation interspersed in agricultural landscapes, Mortensen stated. Scientists have documented that non-target terrestrial plant injury was 75 to 400 times higher for dicamba and 2,4-D, respectively, than for glyphosate.

61. When considering whether to approve dicamba for use over-the-top of Xtend soybean crops, Monsanto convinced the EPA that spray drift exposure was the principal risk issue.

> Without consideration of mitigation measures on the approved label, the agency considers spray drift exposure to be the principal risk issue to be considered with these new uses, owing to a variety of lines of evidence, including past experience with other dicamba formulations.

62. Due to dicamba's motility, it took until Nov. 2016 for the EPA to approve over-the-top application of certain formulations of dicamba for soybeans and cotton.

63. After EPA approval numerous states approved the use of Engenia, FeXapan and XtendiMax for over-the-top applications on Xtend crops.

64. Arkansas, however, especially hard hit by the dicamba drift in 2016, was skeptical of the safety of Monsanto's over-the-top dicamba formulations. It did not approve the use of Monsanto's XtendiMax dicamba formulations for 2017. It only approved BASF's Engenia.

The Unprecedented Damage of the 2017 Season

65. The EPA approved the application of certain formulations of dicamba for over-the-top application of Xtend crops in Nov. 2016.

66. This approval led to a full rollout of Monsanto's Xtend products, along with its XtendiMax dicamba formulation, BASF's Engenia and DuPont's FeXapan.

67. As many predicted, the 2017 planting season has been a disaster. Complaints arose even where "strict adherence" to label instructions were followed:

> Ominously, Goodson insists many of the countywide drift incidents involve applications with strict adherence to label specifications: spraying done right. "Some guys are doing it absolutely right by the label and management and still ending up with dicamba on a neighbor's crops through volatility," he says.

68. This led to a temporary ban of over-the-top dicamba usage in Missouri; a post-burn-down ban in Arkansas, and label changes in Tennessee.

The Dicamba Damage Was Foreseeable, And Defendants Knew Damage Would Occur

69. Industry experts predicted Xtend's premature release would result in damage to non-target crops and plants. For example, University of Arkansas weed scientist Jason Norsworthy warned of these dangers for years.

> "I had a reporter call two weeks ago after the first hearing at the Plant Board," says Norsworthy. "They asked 'Did you not see this coming? Why were you blindsided?' "There was no blind-siding. We knew this was likely to be a major issue. We've been telling the Plant Board this for several years now. We've been saying it at all the winter meetings. "Two years ago, a 400-foot buffer was set in every direction for dicamba applications to dicamba-resistant crops, even though the crop was not yet deregulated. That buffer was set based on the work we'd done in drift and volatility trials as well as injury to the progeny (offspring). At the end of the day, soybeans are highly sensitive to dicamba."

70. Other experts indicated that even with EPA approved formulations, dicamba damage was inevitable.

> From the first time I heard dicamba-tolerant soybeans and cotton were going to be developed, I have seen this coming. However, a part of me wanted to believe that surely with the brilliant minds in industry they must know something that I do not.
>
> The answer to that is now obvious.
>
> Last year's experiences should have told anyone everything they needed to know about this year. Yet there was the hope that lowering the volatility of dicamba formulations would somehow solve the problem.
>
> …

> However, what it really boils down to is the sensitivity of soybean to dicamba -- that part can't be fixed. I wish I could feel differently because the last thing I want is for a technology to fail. However I have said from the beginning this one would be the biggest train wreck agriculture has ever seen.

71. Industry experts also informed Defendants their label instructions could not be followed (e.g., they would not allow for timely application), and would lead to dicamba damage.

> I said from the start the label couldn't be followed and allow all the acres to be sprayed in a timely manner.

Despite knowing their label instructions were not workable, Defendants withheld such information from the EPA, again choosing profit over responsibility.

72. As experts have explained, the majority of 2017 damage to non-target crops and fields is uniform, meaning the damage arose due to temperature inversion and volatility. As Dr. Kevin Bradley of the University of Missouri Extension stated:

> The majority of fields I've been in are injured from one end to the other with no discernable difference in soybean symptomology. This suggests problems with off-site movement through volatility.

Damage due to volatility is not due to applicator error; it arises due to a defect with the product.

73. In conducting independent tests after the 2017 planting season, Dr. Bradley's initial test results indicate that after proper spraying techniques, even the approved dicamba formulations show volatility:

> Formulations = Will be interesting to see how Engenia and XtendiMax compare to Banvel, but **initial results w/ air samples and indicator plants suggest that both can be detected in air after application.**
>
> Volatility = Much more to see with the remaining time points and air samples. **Indicator plants suggest volatilization is still occurring at least 24 hours after treatment.**

74. This is contrary to how Monsanto markets its approved dicamba herbicides; instead, Monsanto misleads its consumers by touting that XtendiMax has a "significant reduction

in volatility potential," has "[l]ow volatility" and "Will provide applicators confidence in on-target application of dicamba in combination with application requirements for successful on-target applications."

75. Even BASF touts that it has solved the volatility problem:

> Although the potential for dicamba volatility is low, the Engenia herbicide formulation was developed to further minimize secondary loss due to volatilization.

76. It's not just Dr. Bradley's tests that find Defendants' claims of "low" volatility were false. Dr. Thomas Mueller of the University of Tennessee in July 2017 released test results finding, "This data indicates the dicamba (from Engenia) is moving from the site of application into the air immediately above the treated field" and "Given sensitivity of soybeans to POST dicamba, these data indicate that soybean injury in adjacent areas should be expected from vapor moment of dicamba after application."

77. Having volatilization after proper treatment is not acceptable, and certainly not "low volatility" or a "significant reduction in volatility potential" and has not "Addressed" the "Volatility Concerns" …especially in areas where temperature inversions are common, and neighboring crops are very susceptible to dicamba damage (such as soybeans).

Defendants Withheld Crucial Information From the EPA

78. Defendants withheld information from the EPA, which had they disclosed, would have resulted in the denial of their over-the-top dicamba formulations, if not of Xtend products altogether. Such information includes, but is not limited to, misrepresenting the risks of temperature inversions and volatility, and providing misleading test results.

79. Monsanto also limited its EPA disclosures to its own tests; it did not allow independent tests on volatility, despite numerous requests from experts that such independent tests be conducted *prior* to receiving their EPA registrations.

80. In August 2016, Dr. Bradley of the University of Missouri, commented on Monsanto's refusal to allow such independent studies.

> Bradley says that he and other university researchers have studied the efficacy of the new herbicide for its weed control, but he says Monsanto has not allowed independent research on the drift properties of the new compound.
>
> "We can talk about what these formulations do for weed control nine ways from Sunday," said Bradley. "We really can't tell you anything about the volatility or its potential volatility, because we have not been able to do that research, and that's really unfortunate."

Dr. Bradley explained his concerns that more tests were needed in detail to a reporter after he addressed the Missouri House Agriculture Committee in 2016.

> Secondly there is a lot of stuff coming out from companies in response to all of this about, you know, when you have the new formulations of dicamba in the future, or if we have the new formulations of dicamba in the future, that this is all going to go away, kind of, I'm paraphrasing there. But that's basically the gist of the message, and you know I would say, you know, I just tried to tell the committee I'm not of that opinion, I'm not real comfortable in being able to say that we have all this solved. And yes, what has happened this year is primarily due to some illegal applications of formulations that shouldn't have been sprayed, but I guess I don't have the confidence of being able to say that when we move forward assuming EPA grants approval of these new herbicides and

> different formulations that we won't experience some of this in the future and I think we just need to have a little bit of a moment of pause and also perhaps some more research to figure all this out.

81. Further, during an Arkansas Plant Board meeting on or about August 8, 2016, there was a discussion with Monsanto about its refusal to allow University of Arkansas weed scientists to conduct drift and volatility research on XtendiMax with VaporGrip. During this discussion, Monsanto's representative (Dr. Boyd Carey) responded that Monsanto was concerned that the results of such studies could jeopardize Monsanto's EPA registration.

82. The point of this should not be lost. Monsanto allowed independent, unbiased testing by universities on efficacy; it did not allow such independent, unbiased testing for volatility. Not allowing such tests for volatility is suspect by itself. The damage in 2017, shows such tests were warranted, especially as the results of Dr. Bradley and Dr. Mueller confirm damage is caused by volatilization even after following the labels' instructions. This is due to a product defect, not applicator error.

83. Defendants also were aware of the risk of dicamba damage to non-target crops and plants through temperature inversion, but downplayed its risks.

84. Though mostly a self-serving document, in July of 2017, Monsanto COO Fraley responded to the large-scale dicamba damage. There, he admitted that Defendants were warned about the risk of dicamba damage due to temperature inversions.

> Some consultants and academicians felt that vaporization of dicamba, especially from older and generic formulations not approved for in-crop use, could be exacerbated by temperature inversions, which were quite frequent this spring.

85. Despite receiving these warnings, Defendants did not provide any testing showing their products could be safely used in environments where temperature inversions were common

(e.g., the midsouth where temperature inversions occur nearly every clear night) and where the neighboring crops would be very susceptible to dicamba damage (e.g., soybeans).

86. For example, the Engenia label states:

> ## Temperature Inversions
>
> **DO NOT** make applications of **Engenia** when Temperature inversions exist at the field level. Temperature inversions increase drift potential Because fine driplets may remain suspended in the air longer after application. Suspended droplets can move In unpredictable directions because of the light, variable winds common during inversions. Temperature inversions are characterized by increasing temperatures with altitude and are common on nights with limited cloud cover and light-to-no wind.
>
> Inversions begin to form as the sun sets and often Continue into the morning before surface warming. Their presence can be indicated by ground fog, smoke Not rising, dust hanging over a road, or presence of dew or frost. Smoke that layers and moves laterally (under low wind conditions) indicates an inversion, while smoke that moves upward and rapidly dissipates indicates good vertical air mixing. Inversion conditions typically dissipate with increased winds (above 3 MPH) or when surface air begins to warm (3° F from morning low).

This means regardless of the conditions at the time of spraying, they could (and often would) drastically change within the next 24 hours.

87. Similarly, the XtendiMax label states that:.

> **Temperature Inversions.** Do not apply during a temperature inversion because off-target movement potential is high.
>
> - During a temperature inversion, the atmosphere is very stable and vertical air mixing is restricted, which causes small, suspended droplets to remain in a concentrated cloud. This cloud can move in unpredictable directions due to the light, variable winds common during inversions.

- Temperature inversions are characterized by increasing temperatures with altitude and are common on evenings and nights with limited cloud cover and light to no wind. Cooling of air at the earth's surface takes place and warmer air is trapped above it. They begin to form as the sun sets and often continue into the morning.

- Their presence can be indicated by ground fog; however, if fog is not present, inversions can also be identified by the movement of smoke from a ground source or an aircraft smoke generator. Smoke that layers and moves laterally in a concentrated cloud (under low wind conditions) indicates an inversion, while smoke that moves upward and rapidly dissipates indicates good vertical air mixing.

- The inversion will dissipate with increased winds (above 3 miles per hour) or at sunrise when the surface air begins to warm (generally 3° F from morning low).

88. Defendants thus down-played the risk of temperature inversions and their products' ability to stay "on target" rather than drift non-target. Had they properly raised other experts' concerns about temperature inversions, Engenia, FeXapan and XtendiMax would not have been approved.

89. Defendants' failure to properly apprise the EPA and its customers of the risk of temperature inversions directly led to off-target crop and plant damage. In 2017, the damage seen is widespread and uniform. Multi-county/multi-state damage of a uniform nature could only occur due to temperature inversions.

90. Along these same lines, Defendants did not explain to the EPA that dicamba volatility takes place over time, sometimes over several days. With inversions in summertime occurring on most clear nights, the result would be volatilized dicamba and fine droplets catching in the inversion layer, then moving *en masse* and affecting others' fields. Such damage is a chemical problem (*i.e.*, a problem with Engenia, FeXapan and XtendiMax not performing as explained to the EPA and to Defendants' customers), not an applicator problem.

91. Experts such as the University of Tennessee's Larry Steckel confirm the observed 2017 damage is due to the Defendants' dicamba Products not misapplication.

> Steckel, like weed specialists in other states, say much of the injury they are seeing this year seems related to the herbicide moving as a gas at some point after application. "This is landscape level redistribution of that herbicide," Steckel said, compared to physical drift that often injures in a pattern in the field.
> "It's 200-acre or larger fields covered pretty uniformly. I've never seen anything like it," he said.

Other experts, such as Dr. Mark Loux from the Department of Horticulture and Crop Science at University of Illinois and Dr. Bill Johnson of Purdue University similarly agree that most of the damage is not due to spray drift, but rather the volatility of dicamba.

> But particle drift does not result in the relative uniformity of dicamba injury over a large adjacent field that has occurred in some cases. This would be more indicative of movement via dicamba volatilization from leaf or soil surfaces, occurring sometime within several days after application. Vapors then move with prevailing air currents, with potential to move far greater distances than spray particles, upwards of a half mile. Movement of vapors does not require much wind. For example, volatilization of dicamba that occurs under relatively still inversion conditions can result in prolonged suspension and movement of vapors with gentle air currents. In one field we looked at, there appeared to be an initial volatilization event from the adjacent dicamba-treated soybeans, with some subsequent soybean recovery. This appeared to be followed by a second round of dicamba exposure and injury to the recovering soybeans several weeks later.

92. Temperature inversions in combination with volatility is what has led to the widespread, uniform damage of fields, such as what is being seen in 2017.

93. Given Defendants' dicamba Products' propensity to volatilize and cause damage at least through temperature inversions even where their labels are followed, Defendants' dicamba Products do not perform their intended function without unreasonable adverse effects on the environment (especially given the scale of damage).

94. Further, Defendants' volatility tests submitted to the EPA were inadequate. Defendants did not submit tests to the EPA 1) showing the safe level of dicamba volatility to eliminate non-target damage and 2) that their products meet that safe level. Rather, Defendants merely showed their products were less volatile (i.e., have a "reduced" volatility) than currently approved dicamba formulations. Given how sensitive soybeans are to dicamba, a "reduced" volatility test is insufficient as any amount of volatility would lead to non-target crop and plant damage. As Aaron Hager of the University of Illinois stated:

> Please keep in mind that low volatility is not the same as no volatility. The new formulations are still volatile, albeit less volatile than older formulations.

95. Experts have called the instructions into question as unworkable given the window of application is very small.

> "We've probably had everything occur," [University of Illinois weed scientist Aaron Hager] notes. "There were not many days where it was possible to spray within label requirements."
>
> Josh Gunther, Burrus Hybrids, used weather data from 2013, 2014 and 2015 to compare label requirements and possible XtendiMax, Liberty and RoundUp PowerMax application hours. "On average, there are half as many hours available to spray on label with XtendiMax compared to Liberty and RoundUp," [Stephanie Porter, sales agronomist with Burrus Hybrids] explains.
>
> Every growing season has different weather conditions, she notes, but the calculations indicate just how small the application window can be, especially considering temperature inversion frequencies.

96. Defendants' dicamba Products then, when used in accordance with widespread and commonly recognized practices has led to unreasonable adverse effects on the environment as described in detail in this Complaint.

97. The injury caused by exposure to dicamba-containing products resulted in damage to non-target crops and plants. Particularly here, exposure to dicamba led to financial loss to all Plaintiff farmers.

98. The proximate cause of the injury was the defective design, marketing, selling, and misbranding of the Xtend products and the dicamba formulations that made up the Xtend crop system. Defendants were willful and negligent in their release, marketing, and selling of a defective crop system (e.g., in 2017) and for releasing, marketing, and selling a defective crop system without an accompanying EPA-approved dicamba herbicide (in 2015 and 2016).

99. For example, Monsanto falsely markets XtendiMax as allowing for "successful on-target applications."

Significantly Reduce Relative Volatility With VaporGrip® Technology

- Proprietary technology developed by Monsanto that helps prevent the formation of dicamba acid
- XtendiMax® herbicide with VaporGrip® Technology provides a significant reduction in volatility potential compared to commercially available dicamba formulations
- Will provide applicators confidence in on-target application of dicamba in combination with application requirements for successful on-target applications

Upon information belief this identical (and similar statements) appeared on Monsanto marketing materials from earlier in 2017 as well and therefore was marketed towards potential customers.

100. Similar misleading statements were made about Engenia, and from BASF's webpage:

> Field research demonstrates on-target herbicide application success with low volatility and drift, *so the herbicide remains in place*.

This same statement appeared on BASF's website at least as of April 2017 (if not earlier), and thus was marketed towards potential customers. Further, when speaking with customers, Engenia

sales representatives compared Engenia molecules to “bowling balls” that would not go anywhere as compared to other chemicals molecules that were like “softballs” or “baseballs.”

101. On February 16, 2017, in its press release announcing EPA registration of FeXapan, DuPont made similar statements about its “low-volatility dicamba formulation.”

> FeXapan™ employs a new formulation of dicamba that offers *a significant reduction in volatility potential* than conventional dicamba herbicides, which helps *minimize off-target movement* when used according to label guidelines.

102. These statements, and statements like these, are false and misleading. As shown above even properly applied XtendiMax, Engenia and FeXapan volatilize and damage other fields through temperature inversion. Therefore, Defendants stating or implying that there will be no volatilization is likely to confuse and mislead consumers.

103. Defendants have common-law and statutory duties to not mislead consumers about their products ability to damage non-target crops and plants.

104. Defendants also have common-law and statutory duties to give reasonable and adequate warning of dangers reasonably foreseeable in the use of their products to others.

105. Defendants also have common-law and statutory duties to provide instructions on how to utilize their products to make it reasonably likely that any harm to non-target crops will be avoided if followed.

106. The inherent, phytotoxic profile of dicamba-containing products cannot be applied with reasonable safety in agricultural areas using any typical or reasonably practical application techniques and conditions of use limitations. Given the well-recognized nature and patterns of cultivation in these (and other) regions, the proximity of other non-Xtend crops and plants, and the foreseeable weather patterns and timing of likely application, damage to non-target crops and plants was inevitable and known to Defendants. Accordingly, Defendants

products are defective as inherently posing an irreducible, unreasonable risk of harm to crops that are not resistant to dicamba.

Defendants' Knowledge and Warnings of the Dicamba Drift Crisis

107. As shown above, for years, Defendants were warned that release of Defendants' dicamba Products would have the disastrous consequences that have taken place in 2017.

Defendants Failed in their Responsibilities and Legal Duties

108. Manufacturers should exercise reasonable care not to commercialize and sell products that they know will create a risk of widespread harm.

109. Beyond that, Monsanto agreed to a legal, ethical, and moral obligation to release only safe and environmentally responsible products. Through at least its website, Monsanto represented that it takes product stewardship "seriously":

> We take the stewardship of our products seriously. Product stewardship is the legal, ethical and moral obligation to ensure our products and technologies are safe and environmentally responsible. It is a component of Product Life Cycle Stewardship, which includes product introduction, stewardship of products in the marketplace and effective discontinuation of outdated technology.

110. Monsanto agreed that "Stewardship is the *shared* responsibility of Monsanto, our licensees and our grower customers."

111. Here, Monsanto and its licensees BASF and DuPont failed in their duties and in their shared responsibility by releasing products they knew created a risk of widespread harm.

112. Monsanto also failed in this "shared responsibility," by allowing applicators and farmers to purchase Xtend products in 2017.

113. BASF also failed to meet its duties. Even now, BASF contends Engenia is safe for use and offers a stewardship program

> A responsibility for stewardship.

> Every aspect of farming takes commitment, and teaching correct, effective herbicide application is our commitment to you.
>
> In modern agriculture, the advent of new and advanced herbicide technologies must accompany an equal dedication to stewardship. With the push toward leading technologies, like Engenia herbicide, BASF developed the On Target Application Academy (OTAA) to provide best-practice training that promotes correct and effective herbicide application.
>
> OTAA guides BASF's long-standing stewardship responsibility to growers through a one-of-a-kind educational program. Featuring some of the top minds in herbicide application technology in the country, OTAA sessions teach growers how to minimize drift and make applications of low-volatility Engenia herbicide safe, accurate and effective. Since its inception in 2012, OTAA has reached thousands of growers in highest crop producing regions in the country.

114. BASF has failed in this regard. As the above-tests show, Engenia was volatile, subject to drift through at least temperature inversions and damaged non-target crops and plants.

115. DuPont has a similar stewardship pledge.

> Balancing our search for solutions that are both science-enabled and sustainable helps us make the most responsible and appropriate use of science to help ensure food security, deliver global energy solutions, and protect the earth and its citizens.

116. DuPont has failed in this regard. As the above-tests show, FeXapan was volatile, subject to drift through at least temperature inversions and damaged non-target crops and plants. Allowing such destruction to occur to non-target crops does not align with DuPont's purported duty to ensure "the most responsible and appropriate use of science to help ensure food security."

117. The interconnected nature of the parties' relationship here also gave rise to a duty from the exact harm Defendants caused.

118. Defendants commercialized their products without taking sufficient steps to avoid the foreseeable consequences of dicamba application, temperature inversion, volatilization, and destructive drift.

119. The harm to Plaintiff and others were not only foreseeable, it was foreseen as Plaintiff suffered the very harm expected to occur.

120. The connection between Plaintiff's harm centers on Defendants' release of their dicamba formulations.

121. The injury suffered by Plaintiff and others are not out of proportion to Defendants' culpability. Defendants knew that damage to non-target plants and crops would occur. Defendants' refusal to allow independent testing on volatility also confirm they were aware their products would damage non-target crops and plants. Further, Defendants were aware that no matter what safeguards were taken, damage due to temperature drift, volatility and drift would result, and hid such information from the EPA.

122. Through their stewardship pledge, Defendants affirmatively adopted a duty or responsibility to prevent the harm they caused.

123. Given Defendants' adoption of stewardship standards, the expectation on behalf of Plaintiff and other similarly situated stakeholders, would be that Defendants would not release a product that would cause harm to others.

124. Further, allowing a damages recovery in a case like this has a sensible stopping point: once over-the-top dicamba use is prevented, future damages will stop (though, as some damage will occur to seeds which will be planted the following year, the stopping point would require an additional growing season).

125. Defendants failed to provide assistance in the form of stewardship programs that would eliminate dicamba volatilization or drift, and thereby avoid non-target crop damage.

126. Defendants failed to offer a dicamba formulation that would not volatilize or drift, thereby making non-target crop damage inevitable.

127. Defendants engaged in affirmative conduct that contributed to the harm caused.

128. Similarly, and allegedly, Monsanto and DuPont have agreements with each purchaser of Xtend products that warned them against utilizing dicamba in the 2017 season. These alleged agreements give Monsanto and DuPont some measure of control over the use of their Xtend products, as well as a means to abate any damages caused by misuse.

PLAINTIFF'S CLAIMS FOR RELIEF

COUNT I
Violation of Lanham Act
(15 U.S.C. § 1125(a)(1)(B))

129. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

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

> (1) 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.

131. Further, Defendants' statements and commentary made to the press, statements on the internet, during quarterly conference calls and incorporated into Defendants' websites, and marketing materials, which, inter alia, represent that dicamba could be safely used for over-the-top application on Xtend products and would not lead to drift and volatilization were materially false statements that were likely to cause confusion and mistake as to the nature, characteristics, and qualities of Xtend soybeans and Defendants' over-the-top dicamba formulations use thereon.

132. These statements are materially false as they misrepresented, and are, and continue to be, likely to cause confusion and mistake as to the nature, characteristics, and qualities of Xtend products and the dicamba formulations to be used with Xtend products, the impact of drift, volatilization, and temperature inversion of dicamba on non-target crops and plants, and the ability to prevent/minimize damage due to over-the-top dicamba application.

133. Defendants' statements were made as advertisements for the Xtend product line, XtendiMax, Engenia and FeXapan.

134. Defendants' statements refer specifically to the Xtend product line, XtendiMax, Engenia and FeXapan.

135. Defendants had an economic motivation for making its statements – sales of the Xtend product line, XtendiMax, Engenia and FeXapan.

136. Defendants' statements were likely to and did influence purchasing decisions.

137. Defendants' misleading representations deceived and/or continue to deceive, farmers, applicators, and other consumers.

138. Defendants' statements where widely distributed, which is, at least, sufficient to constitute promotion within the soybean industry.

139. Plaintiff has and continues to be damaged by Defendants' material misrepresentations.

140. Defendants' acts proximately caused damage to Plaintiff.

141. Defendants' acts constitute the use of false descriptions and false representations in interstate commerce in violation of the § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT II
Continuing Nuisance
(Missouri Common Law)

142. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

143. Through the conduct alleged above, Defendants have created a nuisance by causing widespread damage due to over-the-top spraying of dicamba on Xtend products.

144. This constitutes an unreasonable and substantial interference with rights common to the general public.

145. This unreasonable interference was and is imposed on the Plaintiff. It arises from Defendants providing products in 2017 prone to the creation of drift, volatilization and temperature inversions: (a) without adequate precautions to prevent damage to other crops and plants due to drift, volatilization and temperature inversion; (b) with the knowledge that dicamba would damage non-target crops and plants; (c) with the knowledge that this contamination would likely affect the U.S. crop and seed supplies; or (d) with the knowledge that there was a substantial risk of damage to crop and seed supplies earmarked for sale and export.

146. Defendants have unreasonably interfered with the Plaintiff's right to expect to grow and raise his crops and his plants free of damage due to others' use of Defendants' dicamba Products.

147. This interference is unreasonable in that it involves a significant interference with the Plaintiff's health, safety, peace, and comfort. It is also unreasonable in that it is of a temporary and continuing nature.

148. Plaintiff has suffered harm caused by Defendants' unreasonable intrusion upon their right to use and enjoy their property and they have suffered business losses in the form of, among other things, the damage and destruction of non-target crops and plants.

149. Considering the surrounding circumstances described above, Defendants knew or should have known that their conduct would naturally or probably result in injuries and damages to the Plaintiff. Nevertheless, Defendants continued such conduct in reckless disregard of or conscious indifference to those consequences.

COUNT III
Trespass to Chattels
(Missouri Common Law)

150. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

151. Plaintiff is a farmer engaged in the planting, cultivation, harvesting and selling of crops such as soybeans.

152. Defendants by selling Xtend, Engenia and FeXapan have damaged or killed Plaintiff's crops and plants as described above.

153. Dicamba drift, volatilization and/or damage due to temperature inversions have negatively impacted Plaintiff's crops, including harvest and yield.

154. Defendants' actions led not only to damage Plaintiff's crops and plants, but also market-wide damage as the harm is widespread.

155. Upon information and belief this harm has manifested itself as reduced yield, and ultimately a loss of sales. Further, for those growing crops for seed, damage to the next generation of crops as well.

COUNT IV
Negligence
(Missouri Common Law)

156. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

157. Defendants owed a duty of at least reasonable care to its stakeholders, including Plaintiff, in the timing, scope, and terms under which they commercialized their Xtend products and their dicamba formulations.

158. Defendants also owed a duty to prevent the exact harm they caused here to non-target crops and plants.

159. Defendants commercialized their products without taking sufficient steps to avoid the foreseen consequences of dicamba application, including temperature inversion, volatilization, and destructive drift.

160. Defendants breached their duty by acts and omissions including but not limited to:

a. Commercializing Xtend and their dicamba formulations on a widespread basis without reasonable or adequate safeguards;
b. Instituting a nonexistent, or at a minimum, careless and ineffective "stewardship" program;
c. Failing to enforce or effectively monitor their stewardship program and/or providing an inadequate stewardship program;
d. Failing to adequately warn and instruct farmers on the dangers of utilizing dicamba would lead to others' crops.

161. Further, each Defendant has a duty to use ordinary care in the design and in the selection of the materials used in its products to protect those who are in the area of its use from unreasonable risk of harm. Given the toxicity of dicamba to certain crops, it was negligent to design, formulate, manufacture, and sell a dicamba-resistant seed and over-the-top dicamba formulations in the subject area. Each Defendant, therefore, failed to use ordinary care in the design and selection of materials in its products.

162. Defendants also had a duty to test their products, including allowing independent testing, to determine the extent to which over-the-top dicamba application would injure off target crops, and to provide reasonable instructions and take other appropriate measures as are

necessary to prevent such non-target damage. Defendants failed to adequately test their products or to take appropriate steps to prevent such damage.

163. Defendants also have a duty to give reasonable and adequate warnings of dangers inherent or reasonably foreseeable in the use of their products and to provide such instructions as are necessary to permit the reasonably safe use of their products.

164. Defendants' negligence is a direct and proximate cause of the injuries and damages sustained by the Plaintiff.

165. With respect to the release their products, Defendants had a duty to utilize their professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar circumstances by a person or entity in Defendants' business.

166. Defendants breached their duties by failing to exercise the requisite degree of care in selling and disseminating their products to prevent them from damaging non-target crops and plants.

167. The damages incurred by Plaintiff were or should have been foreseen by Defendants as they understood the risks of releasing their products

168. As alleged above, Defendants breached their duties and the requisite standard of care owed to all foreseeable Plaintiffs, and were therefore negligent.

169. Plaintiff is thus entitled to an award of compensatory damages, pre-judgment and post-judgment interest.

170. Defendants' conduct was grossly negligent and showed a complete indifference to or conscious disregard of the rights of others, including the Plaintiff. Punitive damages are thus warranted.

171. Further, Defendants sold their products knowing there was a significant risk that use of even approved dicamba formulations would lead to damage to non-target crops and plants, especially in view of the inadequate instructions provided.

172. Defendants violated their duty to give a reasonable and adequate warning of the dangers inherent and reasonably foreseeable in the use of their products, including the danger of causing significant and far-reaching off-target movement, temperature inversion, migration, and drift of dicamba-containing products in amounts that would cause severe damage to crops and plants other than those grown from Xtend seeds.

173. Likewise, Defendants violated their duty to provide adequate instructions for use of their products that would not lead to damage to non-target crops and plants.

174. Defendants' inadequate warnings were a proximate cause of the harm to Plaintiff.

175. Defendants were negligent in selling of products in areas that they knew or should have known that using dicamba-containing products posed an unreasonable risk of harm to nearby crops, given their physical proximity to non-dicamba resistant crops and plants, the timing of use of Defendants' dicamba Products, the inadequate instructions provided, and the history of crop and plant damage occurring in these areas from the use of dicamba-containing products.

COUNT V
Strict Liability – Products Liability

176. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

177. Defendant Monsanto is engaged in the business of manufacturing, selling, and distributing Xtend soybean seeds and its XtendiMax dicamba formulations to use on its Xtend soybean seeds.

178. Defendant BASF is engaged in the business of manufacturing, selling, and distributing its own approved dicamba formulation for over-the-top use on Xtend products: Engenia.

179. Defendant DuPont is engaged in the business of manufacturing, selling, and distributing its own approved dicamba formulation for over-the-top use on Xtend products: FeXapan, as well as selling a brand of Xtend soybeans via a license from Monsanto.

180. Defendants' Xtend products and/or over-the-top dicamba formulations are defective products that cannot be used in a safe manner to prevent injury to non-target crops. Each of the Defendants supplied their respective products in a defective condition that rendered them unreasonably dangerous.

181. The defective condition of Defendants' dicamba Products was a proximate cause of the harm to Plaintiff.

182. Defendants are strictly liable for all damages to Plaintiff caused by their products.

183. Monsanto was and continues to be a supplier of Xtend products.

184. BASF was and continues to be a supplier of Engenia.

185. DuPont was and continues to be a supplier of Xtend seeds and FeXapan.

186. Monsanto has in the past and continues to manufacture, sell, or otherwise distribute Xtend products.

187. BASF has in the past and continues to manufacture, sell, or otherwise distribute Engenia.

188. DuPont has in the past and continues to manufacture, sell, or otherwise distribute Xtend seeds and FeXapan.

189. Defendants' dicamba Products were used in a manner reasonably foreseeable and anticipated.

190. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendants' dicamba Products as they existed when Defendants supplied them, Plaintiff has sustained injuries and damages as alleged above.

191. In light of the surrounding circumstances, Defendants knew or should have known that their conduct would naturally or probably result in injuries and damages to the Plaintiff.

192. Defendants' dicamba Products are the direct and proximate cause of the injuries and damages sustained by Plaintiff.

193. Nevertheless, Defendants continued such conduct in reckless disregard of conscious indifference to those consequences.

COUNT VI
Strict Liability – Ultrahazardous or Abnormally Dangerous Activity
(Missouri Common Law)

194. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

195. Monsanto, BASF, and DuPont's testing, growing, selling, disposing, or otherwise disseminating Defendants' dicamba Products to constitute an abnormally dangerous or ultrahazardous activity because such activities created a high degree of risk of harm, the harm has been and will continue to be significant, the risk cannot be eliminated by the exercise of

reasonable care, the value to the community is outweighed by its dangerous attributes, and the activity resulted in injuries and damages to Plaintiff.

196. In addition, the activity was unduly dangerous and inappropriate for the places where it was conducted.

197. The type of harm suffered by Plaintiff is the kind of harm, or the possibility of such harm, which makes the activity abnormally dangerous.

198. As a direct and proximate result of Defendants' ultrahazardous or abnormally dangerous activities, Plaintiff has sustained, and will continue to sustain substantial injuries and damages, including those alleged above.

199. Defendants are therefore strictly liable to Plaintiff for all damages which has resulted or will result from their abnormally dangerous activities with respect to Defendants' testing, growing, storing, selling, disposing, or otherwise disseminating Defendants' dicamba Products.

200. In light of the surrounding circumstances, Defendants knew or should have known that their conduct would naturally or probably result in injuries to Plaintiff.

201. Nevertheless, Defendants continued such conduct in reckless disregard of or conscious indifference to those consequences.

COUNT VII
Strict Liability – Failure to Warn
(Missouri Common Law)

202. Plaintiff incorporates by reference all of the above paragraphs as though fully set forth herein.

203. Defendants are strictly liable to Plaintiff as a result of their failure to warn about the dangers of dicamba use associated with Xtend products.

204. Defendants sold Defendants' dicamba Products in the course of their business, as alleged above.

205. When Xtend products are planted, grown, harvested, or otherwise utilized as reasonably anticipated in conjunction with over-the-top dicamba formulations, and without knowledge of the products true characteristics, Defendants' dicamba Products were unreasonably dangerous at the time of its sale.

206. Defendants did not give adequate warnings of the danger of planting, growing, harvesting, or otherwise utilizing Xtend products and use of, disposing, or otherwise disseminating Engenia and/or FeXapan for over-the-top applications.

207. Upon information and belief, Defendants' dicamba Products were utilized together in a reasonably anticipated manner.

208. Plaintiff suffered injury and damages as a direct and proximate result of Defendants' failure to provide adequate warnings regarding the dangers of planting, growing, harvesting, or otherwise utilizing Xtend products in conjunction with over-the-top dicamba formulations such as Engenia and/or FeXapan at the time Defendants' products were sold.

209. In light of the surrounding circumstances, Defendants knew or should have known that their conduct would naturally or probably result in injuries to Plaintiff.

210. Nevertheless, Defendants continued such conduct in reckless disregard of or conscious indifference to those consequences.

COUNT VIII
Civil Conspiracy
(Missouri Common Law)

211. Plaintiff incorporates all of the above paragraphs as though fully set forth herein.

212. Monsanto, in a scheme to improperly market and expand the sales of its defective Xtend crop system, conspired with BASF and DuPont to create the scenario where over-the-top spraying of dicamba on Xtend products would lead to non-target crop and plant damage.

213. The unlawful actions of Monsanto, BASF and DuPont resulted in extensive damages to Plaintiff for which the Defendants should be held liable.

COUNT IX
DAMAGE OR DESTRUCTION OF FIELD CROP PRODUCTS
(MO. REV. STAT. 537.353)

214. Plaintiff incorporates all of the above paragraphs as though fully set forth herein.

215. Defendants are liable for the damage to Plaintiff's crops pursuant to Mo. Rev. Stat. 537.353 because Defendants knowingly manufactured, sold, or distributed their dicamba products which destroyed or damaged Plaintiff's crops.

216. Wherefore, Plaintiff prays for judgment against Defendants pursuant to Mo. Rev. Stat. 537.353 and for an award of double damages as provided by statute, for his costs incurred, and for attorney fees.

PRAYER FOR RELIEF

Plaintiff, on behalf of itself and all others similarly situated, requests:

A. Entry of preliminary and permanent injunctions providing that Monsanto and DuPont shall be enjoined from selling, marketing, distributing, or otherwise disseminating Xtend products;

B. Entry of judgment ordering Monsanto, BASF and DuPont to take affirmative steps to remediate the damage caused by over-the-top application of dicamba on Xtend products;

C. Entry of judgment finding:

i. Defendants falsely advertised Xtend products, Engenia and FeXapan under §43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

ii. Defendants' release of Xtend products and Engenia constitutes a public nuisance;

iii. Defendants' release of Xtend products and Engenia and use of over-the-top dicamba formulations constitute a trespass to chattels;

D. Monetary damages including compensatory relief to which Plaintiff is entitled and will be entitled at the time of trial, in an amount exceeding $75,000;

E. Disgorgement of Defendants' profits for their sale of Xtend products, XtendiMax, Engenia and FeXapan;

F. Punitive damages against Defendants;

G. A trebling of damages;

H. Prejudgment interest;

I. The attorneys' fees for the costs of this action;

J. The costs of this action; and

K. Such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial on all issues so triable.

Dated: November 20, 2017

SPEER LAW FIRM, P.A.

By /s/Charles F. Speer

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JS 44 (Rev 09/10)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):

First Listed Plaintiff:
Gregory Harris ;
1 Citizen of This State;
County of Residence: Barton County

Defendant(s):

First Listed Defendant:
Monsanto Company ;
2 Citizen of Another State; Delaware
County of Residence: Outside This District

Additional Defendants(s):
BASF Corporation ;
2 Citizen of Another State; Delaware

BASF SE ;
3 Citizen of Foreign Country;

BASF Crop Protection ;
2 Citizen of Another State; Delaware

E.I. DuPont De Nemours and Company ;
2 Citizen of Another State; Delaware

County Where Claim For Relief Arose: Barton County

Plaintiff's Attorney(s):

Charles F Speer (Gregory Harris)
Speer Law Firm, P.A.
104 W 9th Street, STE 400
Kansas City, Missouri 64105
Phone: 8164723560
Fax: 8164212150
Email: cspeer@speerlawfirm.com

Defendant's Attorney(s):

Basis of Jurisdiction: 4. Diversity of Citizenship

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: 1 Citizen of This State

Defendant: 2 Citizen of Another State

Origin: 1. Original Proceeding

Nature of Suit: 385 Personal Property Damage Product Liability

Cause of Action: 15 U.S.C. 1125(a) - Sale of product that is known to cause widespread harm and misrepresents that product.

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands): 1000

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

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Signature: /s/ Charles F. Speer

Date: 11/20/2017

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.