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13 UNITED STATES DISTRICT COURT FOR THE
 14 EASTERN DISTRICT OF WASHINGTON

15 CENTER FOR FOOD SAFETY; TOM
 16 STAHL; and CLARMAR FARMS INC.,
 17 on behalf of themselves and all others
 18 similarly situated,

Plaintiffs,

v.

MONSANTO COMPANY,

Defendant.

NO. CV-13-213-JLQ

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY

I. INTRODUCTION

1. Plaintiffs Center for Food Safety (“Center” or “CFS”), as well as
 Tom Stahl and Clarmar Farms (“Farmer Plaintiffs”), by their undersigned

1 counsel, on their own behalf and on behalf of all others similarly situated, upon
2 personal knowledge as to themselves and their own acts, and upon information
3 and belief as to all other matters, allege in support of this Plaintiffs' Class Action
4 Complaint ("Complaint") as follows:
5

6 **II. NATURE OF THIS ACTION**

7 2. Genetically-engineered wheat resistant to the herbicide Roundup was
8 developed and field tested by Defendant Monsanto Company ("Monsanto") in 16
9 states, including Oregon, from 1998 through 2005. No genetically-engineered
10 wheat has been approved for commercial planting or sale.
11

12 3. Monsanto dropped its development of genetically-engineered wheat
13 in 2004 following concerns from U.S. farmers that it could endanger wheat
14 exports. No genetically-engineered wheat has been approved in any foreign
15 country, including any country to which U.S. farmers export wheat.
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17 4. The United States Department of Agriculture's ("USDA") Animal
18 and Plant Health Inspection Service ("APHIS"), the Food and Drug
19 Administration ("FDA"), and the U.S. Environmental Protection Agency ("EPA")
20 share responsibility for regulating biotechnology products to ensure that approved
21 products developed in the U.S. pose no risk to human health or the environment.
22 Genetically-engineered wheat is a "regulated article" that cannot be
23 commercialized without regulatory approval. Monsanto has not obtained
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25
26

1 regulatory approval for genetically-engineered wheat and decided in May 2004 to
2 defer its pursuit of regulatory approval for “Roundup Ready” genetically-
3 engineered wheat due to considerable market resistance.
4

5 5. At the time it was field testing genetically-engineered wheat up to
6 the present-day, Monsanto knew that non-genetically engineered wheat could
7 become contaminated with genetically-engineered wheat through a wide variety
8 of means, including cross-pollination and commingling of seed during harvest,
9 storage, transport, and/or disposal.
10

11 6. Monsanto failed to take the steps necessary to prevent cross-
12 pollination with non-genetically engineered wheat. Additionally or alternatively,
13 Monsanto knew, or should have known, before it grew or otherwise disseminated
14 genetically-engineered wheat, that such cross-pollination could not be prevented.
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17 7. Monsanto also failed to take the steps to prevent commingling of
18 genetically-engineered wheat with non-genetically engineered wheat during test
19 planting, harvest, handling, storage, transport and/or disposal. Additionally or
20 alternatively, Monsanto knew, or should have known, before it grew or otherwise
21 disseminated genetically-engineered wheat that the U.S. wheat production and
22 marketing chain is a commodity-based system that gathers, commingles, and
23 ships wheat from thousands of farms, that widespread commingling of
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25
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1 genetically-engineered wheat with non-genetically engineered wheat could not be
2 prevented.

3 8. Farmer Plaintiffs are wheat farmers in the Pacific Northwest who
4 have commercially cultivated and/or harvested non-genetically engineered soft
5 white wheat. Farmer Plaintiffs seek relief on their own behalf and behalf of all
6 others similarly situated for compensatory and consequential damages, punitive
7 and exemplary damages. All Plaintiffs also seek declaratory and injunctive
8 relief arising from, inter alia:
9

10
11 (a) Monsanto's failure, either by itself or through its agents, to
12 adequately warn soft white wheat growers of the necessary precautions and
13 limitations to prevent genetically-engineered wheat from commingling with non-
14 genetically engineered wheat;
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16
17 (b) Monsanto's dissemination of genetically-engineered wheat
18 with the knowledge that it was not approved by regulatory authorities yet was
19 likely to contaminate non-genetically engineered wheat through cross-pollination,
20 commingling, or other means;
21

22 (c) Monsanto's dissemination of genetically-engineered wheat
23 with the knowledge that it was likely to contaminate through commingling with
24 non-genetically engineered wheat in cultivation, harvesting, handling, storage,
25 transport and disposal; and
26

1 (d) The harm to Plaintiffs and the Class resulting from the
2 genetically-engineered wheat's contamination of the general wheat supply in the
3 form of, inter alia, (i) diminished prices for soft white wheat resulting from loss
4 of export and domestic markets for that wheat; (ii) diminished prices for soft
5 white wheat and/or increased grower costs resulting from the need to, inter alia,
6 maintain the integrity of the soft white wheat supply and/or to keep genetically-
7 engineered wheat from further entering the general wheat supply and export
8 channels; and (iii) through the contamination of the entire wheat farming and
9 production chain, including, but not necessarily limited to, farmland, farming
10 equipment, harvesting equipment, seed cleaning and conditioning apparatus,
11 storage facilities, and transportation facilities and equipment.
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15 III. JURISDICTION AND VENUE

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17 9. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) and the
18 Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1711, *et seq.*

19
20 10. This Court has jurisdiction over the Defendant because it is a
21 corporation actively doing business and does sufficient business in Washington,
22 has sufficient minimum contacts in Washington, or otherwise intentionally avails
23 itself of the markets within Washington, through manufacturing, production,
24 promotion, sale, marketing and distribution of its products in Washington, to
25 render the exercise of jurisdiction by this Court proper and necessary.
26

1 11. Venue is proper in this District of Washington pursuant to 28 U.S.C.
2 § 1391 because Defendant provides services to Class members located in this
3 District, conducts substantial business in this District, or otherwise has sufficient
4 contacts with this District to justify it being fairly brought into court in this
5 District.
6 District.

7
8 **IV. PARTIES**

9 **Plaintiffs**

10 12. Plaintiff Tom Stahl owns and operates a farm in Waterville, Douglas
11 County, Washington. Tom Stahl grew soft white wheat at all times during the
12 relevant time period. Tom Stahl has never knowingly grown genetically-
13 engineered wheat.
14 engineered wheat.

15 13. Plaintiff Clarmar Farms, Inc. owns and operates a farm in
16 Waterville, Douglas County, Washington. Clarmar Farms, Inc. grew soft white
17 wheat at all times during the relevant time period. Clarmar Farms, Inc. has never
18 knowingly grown genetically-engineered wheat.
19 knowingly grown genetically-engineered wheat.
20

21 14. Plaintiff Center for Food Safety (“CFS”) brings this action on behalf
22 of itself and its members. CFS and its members are being, and will be, adversely
23 affected by Monsanto’s actions. CFS is a Washington, D.C. public interest non-
24 profit membership organization that has offices in San Francisco, California,
25 Portland, Oregon, and Washington, D.C.
26

1 15. Since the organization's founding in 1997, CFS has sought to
2 ameliorate the adverse impacts of industrial farming and food production systems
3 on human health, animal welfare, and the environment. CFS also supports and
4 promotes sustainable forms of agriculture, including organic systems. CFS has
5 over 300,000 consumer and farmer members, in almost every state across the
6 country, including thousands of members in many states and locations where
7 white wheat is grown.
8
9

10 16. CFS seeks to protect human health and the environment by
11 advocating thorough, science-based safety testing of GE products prior to any
12 marketing; cultivation of GE crops in a manner that minimizes any risk of
13 contaminating conventional food supplies or the environment, and that minimizes
14 negative impacts such as increased use of pesticides and evolution of resistant
15 weeds; and appropriate labeling of foods that are or contain GE products. CFS
16 also seeks to provide consumers with a means of identifying GE foods on the
17 market and to encourage full public participation in defining the issues presented
18 by GE crops.
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22 17. To achieve its goals, CFS disseminates to government agencies,
23 members of Congress, and the general public a wide array of educational and
24 informational materials addressing the introduction of GE crops into the
25 environment and food supply. These materials include, but are not limited to,
26

1 reprints of news articles, policy reports, legal briefs, press releases, action alerts,
2 and fact sheets. CFS also sends out action alerts to its True Food Network; these
3 action alerts generate public involvement, education and engagement with
4 governmental officials on issues related to genetic engineering and other issues
5 affecting a sustainable food system. Collectively, the dissemination of this
6 material has made CFS an information clearinghouse for public involvement and
7 governmental oversight of the use of genetic engineering in our nation's food
8 supply. Where necessary, CFS engages in public interest litigation to address the
9 impacts of GE crops on the environment, its members and the public interest.
10
11

12 **Defendant**

13
14 18. Monsanto Company is a Delaware corporation headquartered at 800
15 North Lindbergh Boulevard, Saint Louis, Missouri, 63167. Monsanto sells
16 products including field crop and vegetable seeds, plant biotechnology traits, and
17 pesticides. The global company has over 20,000 employees with 404 facilities in
18 66 countries.
19

20
21 19. The original Monsanto Company entered into a merger with
22 Pharmacia & Upjohn, Inc. in December 1999 and changed its name to Pharmacia
23 Corporation in 2000. A new Monsanto Company, based on the previous
24 agricultural division of Pharmacia, was incorporated in Delaware as a wholly-
25 owned subsidiary of Pharmacia under the name Monsanto AG Company in
26

1 February 2000. When the merger became effective on March 31, 2000, the new
2 Monsanto changed its name from Monsanto AG Company to Monsanto
3 Company. Pursuant to a separation agreement signed in September 2000 with
4 Pharmacia related to the transfer of the operations, assets and liabilities of the
5 agricultural business from Pharmacia to the new Monsanto Company, the new
6 Monsanto Company was required to indemnify Pharmacia for any liabilities
7 related to the agricultural business or chemicals business, and for any liabilities
8 assumed by Solutia prior to the distribution agreement.
9
10

11 20. In August 2002, Pharmacia distributed its shares to shareholders via
12 a stock dividend – resulting in Pharmacia divesting itself of any equity interest in
13 Monsanto. In April 2003, pursuant to a merger transaction, Pharmacia became a
14 wholly-owned subsidiary of Pfizer. In December 2003, Monsanto assumed the
15 management of certain tort litigation and environmental obligations related to its
16 chemical business.
17
18

19 21. Pharmacia itself eventually became a subsidiary of Pfizer in 2003.
20 There is currently no control relationship between Monsanto and Pharmacia, and
21 the indemnification obligations among the companies are ongoing.
22
23

24 22. Monsanto conducts business throughout the United States, including
25 the states in which the named Plaintiffs herein cultivate and/or harvest wheat.
26

V. FACTUAL ALLEGATIONS

A. Wheat Cultivation in the United States and Northwest States

23. Wheat is the principal U.S. cereal grain for export and domestic consumption. In terms of value, wheat is the fourth-leading U.S. field crop and serves as the nation’s leading export crop.

24. According to U.S. Wheat Associates, about \$8.1 billion in wheat was exported in 2012, representing half of the total \$17.9 billion wheat crop. Overall, about 50 percent of U.S. wheat is exported.

25. Pacific Northwest Soft White contains soft white wheat primarily from Washington, Oregon, and Idaho. The three states together produced 86 percent of total US soft white wheat in 2008.²⁶ About 90 percent of Oregon’s wheat crop is exported. Oregon’s total wheat crop is valued at \$300 million to \$500 million per year. Soft white wheat dominates Oregon’s total wheat production, with soft white wheat totaling 89 percent of the state’s wheat production in 2011.

26. In 2008, soft white wheat accounted for 79 percent of total wheat production in Washington state. More than 46 percent of all U.S. white wheat comes from Washington alone. Washington is one of the nation’s leading wheat-exporting states, with 85 to 90 percent of its production exported each year.

1 27. Idaho ranks fifth nationally in the production of all wheat. In 2011,
2 soft white wheat accounted for approximately 57 percent of total wheat
3 production in Idaho. Nearly 50 percent of Idaho's wheat is exported each year.
4

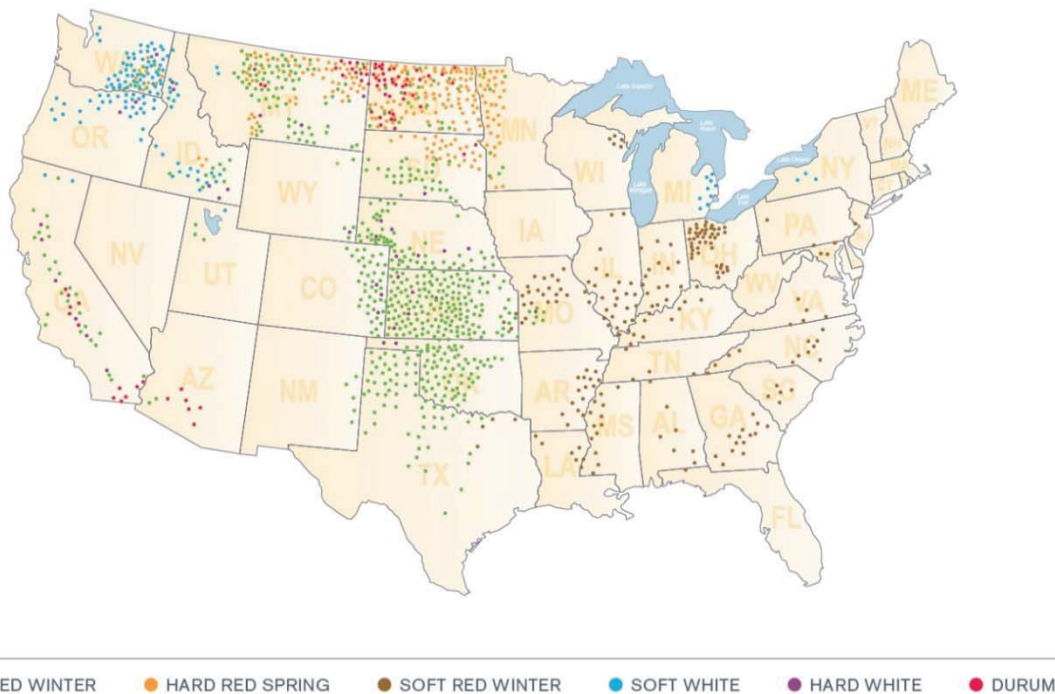
5 28. Used for white bread, pasta, noodles, pizza and pastries, wheat has
6 been the principal cereal crop in the United States since the 1700s.
7

8 29. Today, approximately 85 to 90 percent of the Pacific Northwest's
9 soft white wheat crop is exported to Japan, South Korea, Taiwan and other
10 nations, where it is used to make noodles and crackers.
11

12 30. Six classes of wheat are currently produced in the United States.
13 The location of each class of wheat depends largely upon rainfall, temperature,
14 soil conditions and tradition. The Pacific Northwest states of Oregon,
15 Washington, and Idaho, as well as portions of Montana and Northern California,
16 grow the "soft white wheat" variety, which produces flour for baking cakes,
17 crackers, cookies, pastries, quick breads and muffins. This wheat is also grown in
18 Michigan and New York. Soft white wheat primarily is exported to the Far East
19 Asian region.
20
21

22 31. In addition to soft white wheat, the other classes of wheat are: (1)
23 hard red winter produced in the Great Plains states; (2) hard red spring produced
24 in Montana, North Dakota and Minnesota; (3) soft red winter grown primarily
25 east of the Mississippi River; (4) durum produced in similar states to hard red
26

1 spring, primarily North Dakota; and (5) hard white wheat produced in a variety of
 2 states including Idaho, Kansas, Nebraska, and California. The following map
 3 shows the primary growing locations of all six wheat classes:
 4



18 **B. Roundup Resistant Genetically-Engineered Wheat**

19 32. Monsanto genetically has engineered “Roundup Ready” wheat to
 20 include a genetic construct that makes the wheat resistant to the broad-spectrum
 21 herbicide glyphosate (also known by the branded name Roundup®).
 22

23 33. Monsanto authorized 279 field tests with this specific glyphosate-
 24 resistant wheat trait in years spanning from 1998 through 2005. Field tests were
 25 conducted in Arizona, California, Colorado, Florida, Hawaii, Idaho, Illinois,
 26

1 Kansas, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota,
2 Washington, and Wyoming. Monsanto has not disclosed the specific locations of
3 the company's field trials.

4
5 34. No Roundup Ready wheat, or any other genetically-engineered
6 wheat, has been authorized for commercial sale in the United States or anywhere
7 else in the world.

8
9 35. Monsanto dropped the project and never sought approval based on
10 concerns from U.S. farmers that genetically-engineered wheat could endanger
11 wheat exports. Although most American soybeans and corn are genetically
12 engineered, these crops are largely consumed by animals or made into processed
13 foods. Wheat products in contrast are consumed directly by people, and many
14 consumers around the world reject genetically engineered products. In addition,
15 many of the countries to which the US exports wheat do not import genetically-
16 engineered food products. A 2005 study estimated that the national wheat
17 industry could lose \$94 million to \$272 million annually if genetically-engineered
18 wheat were approved.

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21
22 36. In the planting, growing, harvesting, transporting, storing and/or
23 disposing of the genetically-engineered wheat field tested between 1998 and
24 2005, Monsanto failed to comply with reasonable growing practices. Monsanto
25 knew that it was impossible to completely isolate the genetically-engineered
26

1 wheat from other varieties of soft white wheat and that the genetically-engineered
2 wheat would inevitably cross-pollinate, commingle with other wheat seeds and/or
3 find its way into the food chain through other Monsanto acts or omissions as it
4 has now done.

6 **C. Discovery of Genetically-Engineered Wheat in Eastern Oregon**

7 37. In May 2013, a farmer in Eastern Oregon trying to clear his fields
8 noticed that some plants he had sprayed with the herbicide glyphosate (the key
9 ingredient in Monsanto's Roundup) had not died. The grower found the
10 Roundup-resistant wheat dispersed throughout the field and not concentrated in
11 any one location.

14 38. The 125-acre field where the genetically engineered wheat was
15 found was one of several the grower had planted in the fall of 2011 with the soft
16 white winter wheat varieties "Rod" and "WB528." The grower used two types of
17 wheat in his fields that had never been used in Monsanto's trials.

19 39. "Rod" is a semi-dwarf soft white wheat variety with good cold
20 hardiness that was developed by Washington State University. The public
21 variety, released in 1992, was planted on about 8,000 acres in the region in 2011,
22 according to the figures.

1 40. “WB528” is a semi-dwarf soft white winter wheat variety developed
2 by WestBred, of Bozeman, Montana. WestBred was purchased by Monsanto in
3 2009.
4

5 41. Russ Karow, head of the Department of Crop and Soil Sciences at
6 Oregon State University, said that to his knowledge neither Rod nor WB528 had
7 been genetically engineered with the Roundup Ready gene. “From what I know,
8 the work done in the (late 1990s and) early 2000s, that was all done with a variety
9 called Bobwhite,” Karow said. Bobwhite is a spring wheat variety.
10

11 42. The farmer who discovered the genetically engineered wheat
12 reported the finding to an Oregon State University researcher, who tested plant
13 samples using “Roundup Ready” quick test strips and genetic analysis. The
14 results confirmed that the plants contained genetic constructs making them
15 resistant to glyphosate. The farmer’s field was never used for trials of
16 Monsanto’s Roundup-resistant wheat.
17

18 43. After the Oregon State researchers determined that the plants
19 contained the glyphosate-resistant gene, federal scientists also confirmed that the
20 plants were resistant to glyphosate herbicide. On May 28, 2013, the U.S.
21 Department of Agriculture’s Animal and Plant Health Inspection Service
22 (APHIS) announced the results and publicized that an unauthorized Roundup
23 Ready genetically-engineered trait had been detected in volunteer wheat from the
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1 Eastern Oregon farm in question. The announcement stated that APHIS will
2 investigate to determine how this regulated article appeared outside of a confined
3 test environment. On June 3, 2013, a spokesman with the USDA stated that a
4 team of 15 investigators is collecting evidence and information.
5

6 44. The announcement led to immediate concern that the development
7 could disrupt exports of soft white wheat from the Pacific Northwest. For
8 example, on May 28, 2013, the Japanese Ministry of Agriculture, Food and
9 Fisheries (MAFF) did not purchase soft white wheat in its regular tender, but did
10 purchase its regular allotment of red spring wheat and red winter wheat. An
11 official with the Japanese Embassy stated that the country would cancel orders for
12 Pacific Northwest soft white wheat because Japanese people were “concerned
13 about the discovery of unapproved wheat.”
14
15

16 45. Similarly, it was reported on May 31, 2013, that Japan had
17 postponed a 25,000-ton order of soft white wheat from a Portland, Oregon grain
18 shipper and that South Korea and the European Union have called for tests of
19 American wheat. In particular, South Korea has increased inspections of
20 incoming American wheat. Chinese officials said they would be “monitoring the
21 situation” and Japan’s consul general in Portland said on May 31 that his country
22 would need assurance that Oregon wheat is safe before continuing to import the
23 soft white wheat variety. Japan’s decision to suspend soft white wheat imports
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1 from the Pacific Northwest led traders to forecast potential long-term effects on
2 the wheat industry: “Nobody’s going to want to buy wheat from the PNW
3 (Pacific Northwest) for a while,” said an analyst with the Linn Group.

4
5 46. On June 3, 2013, *The Wall Street Journal* reported that Japan would
6 hold back shipments of previously-contracted soft white wheat from processors as
7 a precautionary measure. This action impacts several cargo shipments of soft
8 white wheat that had been purchased before Japan suspended imports from the
9 Pacific Northwest, but had yet to be delivered to the country.

10
11 47. In Taiwan, the Taiwan Flour Mills Association announced it would
12 not accept soft white wheat from Oregon and asked suppliers for assurances that
13 future shipments would be free from genetically-engineered wheat. It was
14 reported on June 3, 2013 that Taiwan’s Council of Agriculture and Department of
15 Health are conducting an ongoing investigation.

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18 48. Some researchers and crop scientists do not believe that the
19 genetically-engineered plants were found in the Eastern Oregon field as a result
20 of “gene flow.” Although a 2005 Oregon State study showed that it is possible in
21 some instances for genetic traits to pass from one wheat plant to another through
22 pollen, for example, this process occurs at a very low rate and the maximum
23 “flow” range is limited to 120 feet.
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1 49. Moreover, the genetically-engineered wheat tested in Oregon as part
2 of the Monsanto trials in 2000-01 was a spring-planted variety, while the wheat
3 found in the Eastern Oregon field was a winter variety. Thus, the unapproved
4 wheat in Oregon is indicative of widespread contamination, as opposed to wheat
5 remaining from Monsanto's earlier field trials.
6

7 **D. Monsanto's Knowledge of Genetically-Engineered Wheat**
8 **Concerns**

9 50. Monsanto was well aware of concerns regarding the health and
10 safety of genetically-engineered wheat and the potential detrimental market
11 effects arising from the use of such crops.
12

13 51. After conducting the field tests, Monsanto dropped its development
14 of genetically-engineered wheat in 2004, following concerns from U.S. farmers
15 that genetically-engineered wheat could endanger wheat exports. In a statement
16 made on May 9, 2004, Monsanto acknowledged that there was "not a sufficient
17 market to make the introduction of its GE wheat worthwhile" and said it would
18 concentrate on other crops, such as corn, cotton and oilseeds.
19
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21 52. A May 11, 2004 article in the *New York Times* reported that
22 Monsanto's wheat "was genetically engineered to be resistant to Monsanto's
23 Roundup herbicide, which would allow farmers to spray their fields to kill weeds
24 while leaving the crop intact. While Roundup Ready wheat attracted the expected
25 opposition from consumer groups and environmental advocates, what was
26

1 unusual in this case was the opposition of many American and Canadian farmers,
2 who have eagerly adopted other biotechnology crops. These farmers say that
3 wheat buyers in Europe, Japan and some other countries had told them they
4 would not buy genetically engineered wheat because they thought consumers did
5 not want it.”

6
7 53. Recent news articles have reported that Monsanto has started
8 conducting field trials of a new GE wheat version in two states. A Bloomberg
9 News article reported on May 31, 2013 that Monsanto planted 150 acres of wheat
10 in Hawaii last year that was genetically engineered to tolerate glyphosate and
11 tested an additional 300 acres of wheat engineered with glyphosate tolerance in
12 North Dakota this year. The same article quoted a Monsanto statement from late
13 May 2013 where the company said it had completed “closing out the Roundup
14 Ready wheat program” nine years ago.

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18 54. Monsanto knew, or should have known, that the existence of
19 genetically-engineered wheat – commingled within the general wheat supply –
20 would cause significant disruptions in the wheat export market, and that such a
21 situation could involve huge disruptions in the wheat trade while imposing
22 additional costs on U.S. wheat farmers and specifically Pacific Northwest soft
23 white wheat farmers. These costs eventually would detrimentally impact
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1 worldwide prices for Pacific Northwest soft white wheat, causing significant
2 financial damage to wheat farmers.

3 55. Despite this knowledge, Monsanto tested genetically-engineered
4 wheat from 1998 to 2005 without adequate safeguards to prevent its release into
5 fields where it could comingle with non-genetically engineered wheat.
6

7 56. Monsanto failed to instruct, oversee or control field trial operators
8 adequately to ensure that its genetically-engineered wheat was adequately
9 segregated, at least, in part, because Monsanto was confident during the testing
10 time period of 1998 to 2005 that genetically-engineered wheat would eventually
11 be approved for commercial use, including export. Such wrongful conduct by
12 Monsanto led directly to contamination and market deterioration problems that
13 damaged Plaintiffs and all soft white wheat farmers.
14
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17 57. Monsanto knew, or should have known, of the potential that
18 genetically-engineered wheat from prior field testing could have spread. Indeed,
19 similar releases of unapproved crops have impacted the corn and rice markets.
20

21 58. A science policy analyst from the Center for Food Safety stated that
22 it has been 12 years since field testing trials occurred in Oregon. According to
23 the analyst, "It's highly doubtful that it's just on one farm. If it's out there, it's out
24 there . . . it's been 12 years since this wheat was grown officially in Oregon. It
25 doesn't just disappear and magically reappear 12 years later."
26

1 59. As a result of unapproved genetically-engineered wheat being found
2 in a field in Eastern Oregon in May 2013 confidence in the integrity and safety of
3 the Northwest’s soft white wheat crop has evaporated in those markets.
4

5 60. Due to Monsanto’s wrongful conduct, soft white wheat destined for
6 export markets for use in food products has been rejected for the purposes for
7 which it was intended. Because scheduled shipments already have been
8 postponed and canceled, the presence of genetically-engineered wheat has
9 detrimentally impacted the domestic and global wheat markets and damaged
10 Plaintiffs and other wheat farmers.
11

12 61. As a result of Monsanto’s wrongful conduct, Japan, one of the
13 largest foreign markets for U.S. wheat, has already halted imports and expressed
14 continuing concerns about the safety of soft white wheat.
15

16 62. Similarly, as a result of Monsanto’s wrongful conduct, the European
17 Union is urging its 27 member states to test certain wheat shipments from the
18 United States. The EU imports more than 1.1 million tons of U.S. wheat each
19 year, with soft white wheat accounting for 80 percent of that total. According to
20 news reports in the Washington Post, a representative from the E.U. stated that it
21 would act to “ensure E.U. zero-tolerance policy [for genetically engineered
22 wheat] is implemented.”
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1 **E. The Further Impact of Genetically-Engineered Wheat on**
2 **Plaintiffs and Other Wheat Farmers**

3 63. The discovery of genetically-engineered wheat in an Eastern Oregon
4 field, as a result of Monsanto's wrongful conduct, has detrimentally affected the
5 ability of Farmer Plaintiffs and all other non-GE soft white wheat farmers to sell
6 their wheat into export channels through the storage, handling, processing, and
7 export companies. Furthermore, many wheat exporters will undertake and
8 require expensive and time-consuming testing of all wheat crops prior to
9 purchasing them from farmers to determine whether they have genetically
10 engineered content and are fit for export. Even if no genetically engineered
11 content is detected, the economic burden of testing will be transferred to soft
12 white wheat farmers by, inter alia, diminished bids for wheat brought to the
13 market.
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17 64. The impact of testing will additionally burden wheat farmers by,
18 inter alia, potentially requiring loads of wheat that test positive to be destroyed
19 and deemed unfit for human consumption or barred from export.
20

21 65. Moreover, the presence of genetically-engineered wheat has and will
22 result in the loss of certain markets within the United States and certain export
23 markets for soft white wheat and, coupled with the above-described export
24 declines, has and will continue to result in reduced prices for all soft white wheat.
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1 66. Furthermore, the cost of segregating non-genetically engineered soft
2 white wheat from genetically-engineered wheat will be significant. As a result of
3 Monsanto's wrongful conduct, soft white wheat farmers will have to take extra
4 steps to attempt to preserve the integrity and economic value of their wheat crops.
5

6 67. Wheat farmers have also sustained damages to their property as a
7 result of Monsanto's wrongful conduct, through the potential contamination of
8 the entire wheat farming and production chain, including, but not necessarily
9 limited to, farmland, farming equipment, harvesting equipment, seed cleaning and
10 conditioning apparatus, storage facilities, and transportation facilities and
11 equipment.
12

13 68. Monsanto's wrongful conduct continues to place all Plaintiffs and all
14 other wheat farmers at risk for further damages caused by the cross-pollination,
15 commingling, and contamination of their soft white wheat crops with genetically-
16 engineered wheat and from the continued detrimental market effects of the
17 contamination on U.S. wheat prices, especially for exports.
18
19
20

21 **VI. INJURIES TO PLAINTIFFS AND WHEAT FARMERS**

22 69. The detection of genetically-engineered wheat in an Eastern Oregon
23 field has already resulted in the loss of certain export markets and domestic
24 markets for soft white wheat and will continue to do so.
25
26

1 70. Market changes resulting from the commingling of genetically-
2 engineered wheat with non-genetically engineered wheat has created
3 inefficiencies expressed in, inter alia, lower prices and higher producer costs.
4

5 71. Many wheat buyers will not accept deliveries without proof that the
6 soft white wheat crops being delivered to them do not possess any traces of
7 genetically-engineered wheat, thus requiring expensive and time-consuming
8 testing. Furthermore, the costs of storing and moving any other discoveries of
9 genetically-engineered wheat through segregated channels will be significant.
10 Storage and transportation entities will need to design and use systems and
11 equipment for testing and segregation, rather than handling all soft white wheat
12 products the same way. Plaintiffs and all other members of the Class will share
13 the economic burden of these costs.
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17 72. As set forth above, the impact of testing for genetically-engineered
18 wheat at various points in the wheat marketing channel will add extra expense by
19 leaving wheat that tests positive out of certain markets. Plaintiffs and all other
20 members of the Class will share the economic burden of these costs.
21

22 73. Commodities traders, financial reporters, and agricultural officials
23 have stated that the presence of genetically-engineered wheat has and will
24 continue to impact soft white wheat prices, wheat futures prices, and U.S. wheat
25 exports detrimentally.
26

1 74. As a result of Monsanto's wrongful conduct, soft white wheat
2 farmers have also suffered harm to their property through the contamination of
3 the wheat farming and production chain, including, but not necessarily limited to,
4 farmland, farming equipment, seed cleaning and conditioning apparatus,
5 harvesting equipment, storage facilities, and transportation facilities and
6 equipment.
7

8 75. The interests of CFS and their members are being, and will be,
9 adversely affected by Monsanto's actions complained of herein. Defendant's
10 actions ensure that CFS's members are, and will be, aesthetically, economically,
11 and physically injured by the spread of genetically-engineered wheat. CFS has
12 consumer and farmer members in almost every state across the country, including
13 many thousands of members in states and locations where white wheat is being
14 grown. CFS's members also regularly eat organic and natural foods, and desire
15 foods that are free of GE products or derive from animals not fed such GE
16 products. The potential for transgenic contamination of genetically-engineered
17 wheat will reduce the supply and food that is not contaminated with GE material.
18 Defendant's actions in allowing the introduction of genetically-engineered wheat
19 into the environment will imminently make it more difficult for CFS's members
20 to produce, sell, and eat wheat that is not contaminated by GE materials.
21
22
23
24
25
26

1 76. Plaintiffs and all members of the Class have been damaged and are at
2 continuing risk of further damages arising out of Monsanto's wrongful conduct.

3 **VII. CLASS ACTION ALLEGATIONS**
4

5 77. Plaintiffs bring these claims against Monsanto, pursuant to Fed. R.
6 Civ. P. 23(a), 23(b)(1), 23(b)(2), and 23(b)(3), individually and on behalf of a
7 class consisting of:
8

9 All persons and entities who grew, owned, cultivated,
10 harvested and/or had planted soft white wheat from
11 May 29, 2013 to present. Excluded from this Class are
12 the Court and its employees; Monsanto; any parent,
13 subsidiary, or affiliate of Monsanto; and all employees
14 and directors who are or have been employed by
15 Monsanto during the relevant time period.

16 78. Plaintiffs reserve the right to amend this class definition prior to
17 class certification.

18 79. Farmer Plaintiffs seek to represent the class for any damages,
19 injunctive, and declaratory relief. CFS seeks injunctive and declaratory relief
20 only.
21

22 80. The Class is so numerous and geographically dispersed among four
23 large states that joinder of all members is impracticable. The exact number and
24 identity of Class Members is not known. Plaintiffs believe that thousands of
25 persons cultivated and/or harvested soft white wheat during the relevant time
26

1 period and would be members of the class. Accordingly, Rule 23(a)(1) is thus
2 satisfied.

3 81. Common questions of fact and law exist here, satisfying the
4 requirement of Rule 23(a)(2), including but not limited to:
5

6 (a) Whether Monsanto is liable to Farmer Plaintiffs and the other
7 members of the Class for damages, and the proper measure of such damages;
8

9 (b) Whether Plaintiffs and the other Class Members are entitled to
10 injunctive relief to decontaminate their farming, harvesting, and transportation
11 equipment, and their on-farm storage facilities, to monitor and investigate, and
12 prevent contamination in future growing seasons;
13

14 (c) Whether Monsanto is responsible for contamination of non-
15 genetically engineered soft white wheat;
16

17 (d) Whether Monsanto field tested genetically engineered wheat
18 in such a manner that commingling of genetically engineered with non-
19 genetically engineered wheat was reasonably foreseeable;
20

21 (e) Whether Monsanto was negligent or negligent per se in its
22 supervision of field testers who oversaw the testing program affiliated with
23 genetically-engineered wheat from 1998 to 2005;
24

25 (f) Whether Monsanto was negligent or negligent per se in the
26 testing, growing, storing, transport and disposal of genetically-engineered wheat;

1 (g) Whether Monsanto's conduct in contaminating the soft white
2 wheat supply and the entire wheat farming and production chain constitutes a
3 public nuisance;

4 (h) Whether Monsanto's conduct in contaminating Farmer
5 Plaintiffs' and/or Class Members' farmland and equipment constitutes private
6 nuisance;

7 (i) Whether Monsanto is strictly liable for damages caused by its
8 testing, growing, storing, transport and disposal of genetically-engineered wheat;

9 (j) Whether Monsanto is liable to Farmer Plaintiffs and Class
10 Members for damages and the proper measure of such damages; and

11 (k) Whether Plaintiffs are entitled to a judgment declaring that the
12 practices of Defendant are unlawful.

13
14 82. Farmer Plaintiffs' claims are typical of the other Class Members'
15 claims and do not conflict with the interests of any other Class Members, as
16 Farmer Plaintiffs and all Class Members were damaged by Monsanto's wrongful
17 conduct, and the relief Farmer Plaintiffs seek is common to the relief sought on
18 behalf of the Class. Rule 23(a)(3) is thus satisfied.

19
20 83. Farmer Plaintiffs will fairly and adequately protect the interests of
21 the other Class Members and have no interests that are antagonistic to or which
22 conflict with those of other Class Members. Farmer Plaintiffs are committed to

1 the vigorous prosecution of this action and have retained competent counsel
2 experienced in litigation of this nature to represent them and the members of the
3 Class. Rule 23(a)(4) is thus satisfied.
4

5 84. Absent a representative class action, members of the Class would
6 continue to suffer the harm described herein, for which they would have no
7 remedy. Even if separate actions could be brought by individual farmers, the
8 resulting multiplicity of lawsuits would cause undue hardship and expense for
9 both the Court and the litigants, as well as create a risk of inconsistent rulings and
10 adjudications that might be dispositive of the interests of similarly situated
11 farmers, substantially impeding their ability to protect their interests, while
12 establishing incompatible standards of conduct for Monsanto. The proposed
13 Class thus satisfies the requirements of Fed. R. Civ. P. 23(b)(1).
14
15

16
17 85. Monsanto has acted and/or refused to act on grounds generally
18 applicable to Farmer Plaintiffs and the other Class Members, thereby rendering
19 class certification and injunctive and/or declaratory relief with respect to the Class
20 as a whole appropriate as well. Certification under Fed. R. Civ. P. 23(b)(2)
21 would, therefore, be appropriate.
22

23 86. As discussed above, numerous common questions of fact and law
24 exist. These questions predominate over the individual questions presented in
25 this action. The predominance requirement of Rule 23(b)(3) is thus satisfied.
26

1 87. A class action is the superior method for the fair and efficient
2 adjudication of this controversy, because joinder of all Class Members is
3 impracticable. Because the damages suffered by individual Class Members may
4 be relatively small, the expense and burden of litigation would prevent Class
5 Members from individually redressing the wrongs done to them. Where, as here,
6 the size and nature of individual Class Members' claims would allow few, if any,
7 Class Members to seek legal redress against Monsanto for the wrongs complained
8 of herein, a representative class action is both the appropriate vehicle by which to
9 adjudicate these claims and is essential to the interests of justice. Furthermore, a
10 class action regarding the issues in this Court creates no significant problems of
11 manageability. The superiority and manageability requirements of Rule 23(b)(3)
12 are thus satisfied.
13
14
15
16

17 88. Alternatively, a class action is appropriate under Rule 23(c)(4)(A)
18 with respect to particular issues.
19

20 **VIII. PLAINTIFFS' CLAIMS FOR RELIEF**

21 **Count I – Negligence Per Se**

22 89. For the purposes of Count I, Plaintiffs repeat and reallege all
23 previous paragraphs above as though fully set forth herein.
24

25 90. Monsanto's acts and/or omissions as described above constitute
26 negligence per se. Monsanto had a regulatory duty to the Class Members to test,

1 grow, store, transport and dispose of genetically-engineered wheat and associated
2 seeds following field testing in a manner that would not result in contamination of
3 the wheat market prior to regulatory approval.

4
5 91. Monsanto breached this duty by testing, growing, storing,
6 transporting and disposing of genetically-engineered wheat in such a manner as to
7 prevent contamination of wheat fields in the future.

8
9 92. Such breaches are the direct and proximate causes of the damages
10 suffered by Plaintiffs and the other Class Members as outlined herein.

11 93. Plaintiffs and the other Class Members have suffered injury and
12 property damage by the testing, growing, storing, transporting and disposal of
13 genetically-engineered wheat as outlined herein and seek compensatory damages
14 requiring that Monsanto decontaminate their farming, harvesting and
15 transportation equipment, and their on-farm storage facilities, and take other
16 actions as necessary to prevent contamination in future growing seasons and
17 beyond. Plaintiffs further seek, on behalf of themselves and all other members of
18 the Class, punitive damages as a result of Monsanto's reckless and willful
19 conduct, and all costs and attorneys' fees as allowed by law.
20
21
22

23 **Count II – Negligence**

24
25 94. For the purposes of Count II, Plaintiffs repeat and reallege all
26 previous paragraphs above as though fully set forth herein.

1 95. Monsanto's acts and/or omissions as described above constitute
2 negligence.

3 96. Monsanto had a duty to the Class Members to test, grow, store,
4 transport and dispose of genetically-engineered wheat in a manner that would not
5 result in contamination of neighboring wheat crops or in the contamination of
6 Class Members' wheat during the storage, shipment, and other processes that
7 constitute the supply chain.
8

9 97. Monsanto breached this duty by testing, growing, storing,
10 transporting and disposing of genetically-engineered wheat in violation of (1)
11 standards that would prevent contamination of wheat fields in the future and (2)
12 standards that would prevent contamination of the storage, shipment, and wheat
13 supply chain in the future.
14

15 98. In addition, or in the alternative, Monsanto had a duty to refrain from
16 testing, growing, storing, transporting and disposing of genetically-engineered
17 wheat in a manner that would foreseeably cause harm to Plaintiffs and the other
18 members of the Class.
19

20 99. Monsanto breached this duty by failing to exercise reasonable care to
21 prevent the foreseeable contamination of the Pacific Northwest's soft white wheat
22 through cross-pollination or commingling that would naturally result from the
23
24
25
26

1 testing, growing, storing, transporting and disposing of genetically-engineered
2 wheat as outlined herein.

3 100. Such breaches are the direct and proximate causes of the damages
4 suffered by Plaintiffs and the other Class Members as outlined herein.
5

6 101. Plaintiffs and the other Class Members have suffered injury and
7 property damage by the testing, growing, storing and disposing of genetically-
8 engineered wheat by Monsanto as outlined herein and seek compensatory
9 damages and injunctive relief requiring that Monsanto decontaminate their
10 farming, harvesting and transportation equipment, and their on-farm storage
11 facilities, to prevent future contamination. Plaintiffs further seek, on behalf of
12 themselves and all other members of the Class, punitive damages as a result of
13 Monsanto's reckless and willful conduct, and all costs and attorneys' fees as
14 allowed by law.
15
16
17

18 **Count III - Public Nuisance**

19 102. For the purposes of Count III, Plaintiffs repeat and reallege all
20 previous paragraphs above as though fully set forth herein.
21

22 103. Monsanto has created a public nuisance by causing contamination of
23 soft white wheat with genetically-engineered wheat, which constitutes an
24 unreasonable and significant interference with public rights, public health, public
25 comfort and public convenience.
26

1 104. This substantial interference is imposed on the community at large
2 and on a considerable and diverse number of persons. It arises from: (a) the
3 testing, growing, storing, transporting and disposing of genetically-engineered
4 wheat by Monsanto without adequate limitations to prevent contamination; and/or
5 (b) the testing, growing, storing, transporting and disposing of genetically-
6 engineered wheat with the knowledge that it would contaminate soft white wheat
7 by commingling; and/or (c) the testing, growing, storing, transporting and
8 disposing of genetically-engineered wheat with the knowledge that it could
9 contaminate the human food supply prior to regulatory approval.
10
11

12 105. Plaintiffs and the other Class Members have suffered injury from
13 Monsanto's public nuisance distinct from that suffered by the general public in
14 that they suffer business losses in the form of rejection of their wheat crops by
15 certain markets (especially foreign exports), reduced or restricted demand for
16 their crops in certain markets, reduced price for their crops at market, added costs
17 for segregation in order to sell their crops, and contamination of their property.
18
19
20

21 106. Plaintiffs and the other Class Members seek compensatory damages
22 and injunctive relief requiring abatement of the public nuisance by mandating that
23 Monsanto decontaminate their farming, harvesting and transportation equipment,
24 and their storage facilities, to prevent future contamination, and also seek punitive
25
26

1 damages as a result of Monsanto's reckless and willful conduct, and all costs and
2 attorneys' fees as allowed by law.

3 **Count IV – Private Nuisance**

4
5 107. For the purposes of Count IV, Plaintiffs repeat and reallege all
6 previous paragraphs above as though fully set forth herein.

7
8 108. Monsanto has created a private nuisance through the testing,
9 growing, storing, transporting and disposing of genetically-engineered wheat.
10 Monsanto conducted field testing without instituting adequate safeguards to
11 prevent against cross-pollination or commingling that could result when
12 genetically-engineered wheat pollen or seeds contaminate neighboring crops or
13 fields. As a result, the soft white wheat farming and production chain, including
14 but not limited to, farmland, equipment, storage facilities, harvesting equipment,
15 transportation facilities and equipment potentially are contaminated with
16 genetically-engineered wheat.
17
18

19 109. Monsanto's acts and/or omissions constitute the unreasonable,
20 unusual, or unnatural use of its property in a manner that substantially impaired
21 the right of Plaintiffs and the other members of the Class to the peaceful
22 enjoyment of their property.
23

24 110. The interference with the use and enjoyment of the property caused
25 by Monsanto is substantial, unreasonable, and ongoing, as evinced by the fact that
26

1 genetically-engineered wheat was discovered on an Eastern Oregon farm in May
2 2013, approximately 12 years after Monsanto's field testing in Oregon had
3 concluded.

4
5 111. Plaintiffs and the other Class Members seek compensatory damages
6 and injunctive relief requiring abatement of the private nuisance by mandating
7 that Monsanto decontaminate their farming, harvesting and transportation
8 equipment, and their on-farm storage facilities, and take other action necessary to
9 prevent future contamination, and also seek punitive damages as a result of
10 Monsanto's reckless and willful conduct, and all costs and attorneys' fees as
11 allowed by law.
12
13

14 **Count V – Strict Liability**

15 112. For the purposes of Count V, Plaintiffs repeat and reallege all
16 previous paragraphs above as though fully set forth herein.
17

18 113. Monsanto tested genetically-engineered wheat, a defective and
19 unreasonably dangerous product, which, when used as anticipated, produced
20 wheat unapproved by regulatory authorities that became commingled with
21 Plaintiffs' and all other members of the Class' soft white wheat and contaminated
22 their wheat crops.
23
24

25 114. The testing, growing, storing, transporting and disposal of
26 genetically-engineered wheat has resulted in the contamination of wheat fields,

1 causing export markets to restrict, or ban altogether, importation of soft white
2 wheat. Export and domestic markets are now and/or will continue to impose
3 stringent testing and authorization requirements on soft white wheat sellers. As a
4 result of such market conditions, wheat farmers are suffering and will continue to
5 suffer injuries in the form of depressed wheat prices and increased producer costs.
6

7 115. Exercise of reasonable care could not have eliminated the risk of
8 such contamination and resulting injuries.
9

10 116. Monsanto's testing, growing, storing, transporting and disposal of
11 genetically-engineered wheat not approved by regulatory authorities has caused
12 unprecedented damage to Plaintiffs and all other members of the Class.
13

14 117. Given the structure and operation of the U.S. wheat production and
15 handling system, Monsanto's testing, growing, storing, transporting, and
16 disposing of genetically-engineered wheat was improper.
17

18 118. Any benefit derived from the field testing program of genetically-
19 engineered wheat from 1998 to 2005 is greatly outweighed by the harms resulting
20 from contamination of soft white wheat.
21

22 119. Plaintiffs and the other Class Members seek compensatory damages
23 and injunctive relief mandating that Monsanto decontaminate their farming,
24 harvesting and transportation equipment, and their on-farm storage facilities, and
25 take other actions necessary to prevent future contamination, and also seek
26

1 punitive damages as a result of Monsanto's reckless and willful conduct, and all
2 costs and attorneys' fees as allowed by law.

3 **Count VI – Declaratory Judgment**

4
5 120. For the purposes of Count VI, Plaintiffs repeat and reallege all
6 previous paragraphs above as though fully set forth herein.

7
8 121. An actual case and controversy exists between the parties, within the
9 meaning of 28 U.S.C. § 2201 (declaratory judgments), with respect to
10 Defendant's failure to prevent the contamination of soft white wheat by its
11 genetically engineered wheat.

12
13 122. The Plaintiffs, on behalf of themselves, their constituent members
14 and all other similarly situated, are entitled to judgment declaring that the
15 practices of Defendant are unlawful and are entitled to further relief pursuant to
16 28 U.S. C. § 2202.

17
18 **IX. REQUEST FOR RELIEF**

19
20 WHEREFORE, Plaintiffs, individually and on behalf of the other members
21 of the Class proposed in this Complaint, respectfully request that the Court enter
22 judgment in their favor and against Defendant, as follows:

23
24 A. That the Court certify the Class pursuant to Rules 23(a), 23(b)(2),
25 and 23(b)(3), and designate the named Farmer Plaintiffs as the representative of
26 the Class;

1 B. That the Court adjudge and decree that Monsanto is liable to
2 Plaintiffs and the members of the Class for:

- 3 1. Negligence per se,
4
5 2. Negligence,
6
7 3. Public Nuisance,
8
9 4. Private Nuisance,
10
11 5. Strict liability, and
12
13 6. Conversion;

14 C. That the Court order Monsanto:

- 15 1. Pay compensatory and consequential damages,
16
17 2. Pay exemplary and punitive damages,
18
19 3. Undergo injunctive relief requiring the decontamination of
20 Class Members' farmland, farming, harvesting, and transportation equipment, as
21 well as their on-farm storage facilities, to prevent contamination for the future
22 growing seasons,
23
24 4. Pay the costs of this action, including attorneys' fees and
25 expenses, and
26
27 5. Pay pre- and post- judgment interest;

28 D. That the Court declare that the acts of Monsanto described herein are
29 unlawful; and

1 E. That the Court grant Plaintiffs such other and additional relief as the
2 Court deems equitable, appropriate, and just.

3 **X. JURY DEMAND**

4 Plaintiffs demand a jury trial on all claims so triable.

5
6 RESPECTFULLY SUBMITTED AND DATED this 6th day of June,
7 2013.

8
9 TERRELL MARSHALL DAUDT
& WILLIE PLLC

10
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