

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: MONSANTO COMPANY GENETICALLY-
ENGINEERED WHEAT LITIGATION**

MDL No: 2473

Case No: 13-md-2473-KHV

**DREGER LAND COMPANY, INC., a Washington
corporation, DC DREGER FARMS, INC., a
Washington corporation and DREGER LAND &
LIVESTOCK, INC., a Washington corporation d/b/a
DREGER ENTERPRISES, a Washington
joint venture; DOUGLAS E. WAHL AND PHYLLIS
A. WAHL, husband and wife d/b/a DPJV, a
Washington joint venture; WHEAT, INC., a
Washington corporation; TOM STAHL, a Washington
resident; MERLE and ELSIE JACOBSEN,
Washington residents; CLARMAR FARMS, INC., a
Washington corporation; NEIL JESKE, a Washington
resident, and HIGH HOPES, INC., a Washington
corporation, d/b/a JESKE FARM JOINT VENTURE,
a Washington joint venture, on their own behalf and on
behalf of all others similarly situated,**

**This Document Relates to
D. Kan. No. 13-2537-KHV**

**AMENDED COMPLAINT
(CLASS ACTION) ON
BEHALF OF
WASHINGTON SOFT
WHITE WHEAT
PLAINTIFFS**

Plaintiffs,

vs.

MONSANTO COMPANY

**DEMAND FOR JURY
TRIAL**

Defendant.

I. INTRODUCTION

1. Plaintiffs Dreger Land Company, Inc., DC Dreger Farms, Inc., and Dreger Land & Livestock, Inc. doing business as Dreger Enterprises; Douglas E. Wahl and Phyllis A. Wahl doing business as DPJV; Wheat, Inc.; Tom Stahl; Merle and Elsie Jacobsen; Clarmar Farms, Inc.; Neil Jeske and High Hopes, Inc. doing

business as Jeske Farm Joint Venture, by their counsel, on their own behalf and on behalf of all others similarly situated, upon personal knowledge as to their agents and their own acts, and upon information and belief as to all other matters, allege in support of this Plaintiffs' First Amended Class Action Complaint ("First Amended Complaint") as follows:

II. NATURE OF THIS ACTION

2. Genetically-engineered wheat is not approved in the United States for commercial planting or sale. As in the United States, genetically-engineered wheat is not approved for commercial planting or sale in any foreign country, including any country to which U.S. farmers export wheat.

3. Despite this well-known fact, Defendant Monsanto Company ("Monsanto") developed and field tested genetically-engineered wheat resistant to the herbicide Roundup® ("Roundup Ready") in 16 states, including Washington, from 1998 through 2005. While Monsanto had been granted approval to "test" this wheat, it was supposed to do so only under very strict protocols to ensure that no unapproved, genetically-engineered wheat entered the domestic supply. After these tests, Monsanto never sought or obtained regulatory approval for commercial development of genetically-engineered wheat and, instead, decided in May 2004 to defer any pursuit of approval due to considerable market resistance to this genetically-engineered wheat. In particular, many Asian countries, which import a

large percentage of U.S. wheat, would not purchase U.S. wheat that had been genetically engineered.

4. The United States Department of Agriculture's ("USDA") Animal and Plant Health Inspection Service ("APHIS"), the Food and Drug Administration ("FDA"), and the U.S. Environmental Protection Agency ("EPA") share responsibility for regulating biotechnology products to ensure that approved products developed in the U.S. pose no risk to human health or the environment. Genetically-engineered wheat is a "regulated article" as defined in 7 C.F.R. Part 340 that cannot be commercialized without this regulatory approval.

5. In April 2013, many years after Monsanto's tests were concluded, an Oregon farmer applied Monsanto's Roundup herbicide to his field to kill unwanted wheat plants (a common method of killing plants in order to prepare a field for a new season of crops). Remarkably, the "zombie" wheat plants did not die. The farmer sent samples of this wheat to a university for scientific testing where it was discovered that the wheat was, in fact, unapproved, genetically-engineered wheat that had been modified to withstand the Roundup herbicide.

6. On May 29, 2013, the USDA issued a statement about the discovery of these genetically-engineered wheat plants in Oregon and confirmed that the wheat was an unapproved variety developed by Monsanto. Determining the extent

of the spread of this rogue crop became an urgent matter with significant consequences, as world markets reacted swiftly to news of the discovery.

7. As a result of the discovery of the rogue genetically-engineered wheat, Japan and South Korea immediately suspended all imports of U.S. soft white wheat. The resulting import ban caused soft white wheat prices to drop precipitously in the United States. Exports of soft white wheat remain down, and prices for soft white wheat remain depressed to this day.

8. From the time it began field-testing genetically-engineered wheat up to the present-day, Monsanto knew, or should have known,: (1) that its genetically-engineered wheat could escape or otherwise be disseminated to contaminate conventional wheat fields; (2) that the U.S. wheat production and marketing chain is a commodity-based system that gathers, commingles, and ships wheat from thousands of farms; (3) that no domestic purchaser or foreign importer will knowingly accept for purchase genetically-engineered wheat; and (4) that the mere existence of any genetically-engineered wheat in domestic market channels would severely disrupt the wheat market, causing a decline in U.S. wheat prices, including U.S. soft white wheat prices.

9. Despite this knowledge, Monsanto field-tested genetically-engineered wheat from 1994 to 2004 without adequate safeguards to prevent the release and/or dissemination of the crop and/or seeds containing the genetically-engineered trait

beyond the regulated test fields. Monsanto failed to instruct, oversee, or control its field trials adequately, or to take other reasonably necessary measures, to ensure that its genetically-engineered wheat was properly tested, planted, harvested, handled, stored, transported, and/or disposed of in such a manner as to prevent contamination of wheat fields outside of the regulated field trials. Such wrongful conduct by Monsanto directly led to market deterioration problems that damaged Plaintiffs and similarly situated soft white wheat farmers.

10. Plaintiffs are wheat farmers in Washington who have commercially cultivated and harvested non-genetically-engineered soft white wheat. Plaintiffs have been significantly injured as a result of the dropping prices for U.S. soft white wheat. Monsanto's wheat field contamination also constitutes an unreasonable interference with Plaintiffs' use of their property to grow soft white wheat and with the public's right to a food supply free of unregulated, unapproved, genetically-engineered crops. Plaintiffs seek relief on their own behalf and on behalf of all others similarly situated for compensatory damages arising from Monsanto's wrongful conduct.

III. JURISDICTION AND VENUE

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

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

13. Venue is proper in this District of Washington pursuant to 28 U.S.C. § 1391 because Defendant provides services to Class Members located in this District, conducts substantial business in this District, or otherwise has sufficient contacts with this District to justify it being brought into court in this District.

IV. PARTIES

A. Plaintiffs

14. Plaintiffs Dreger Land Company, Inc., DC Dreger Farms, Inc., and Dreger Land & Livestock, Inc., are Washington corporations doing business as Dreger Enterprises, which owns and operates a farm in Lincoln County, Creston, Washington. Each of the foregoing Washington corporations is current on all taxes, fees, and assessments due to the State of Washington. Dreger Enterprises grew soft white wheat at all times during the relevant time period. Dreger Enterprises has sold soft white wheat since the import bans at depressed prices as a result of Monsanto's conduct.

15. Plaintiffs Douglas E. Wahl and Phyllis A. Wahl are husband and wife doing business as DPJV. DPJV owns and operates a farm in Adams County, Lind, Washington. DPJV grew soft white wheat at all times during the relevant time period. DPJV sold soft white wheat since the import bans at depressed prices as a result of Monsanto's conduct.

16. Plaintiff Wheat, Inc. is a Washington corporation which owns and operates a farm in Adams County, Lind, Washington. Wheat, Inc. is current on all taxes, fees and assessments due to the State of Washington. Wheat, Inc. grew soft white wheat at all times during the relevant time period. Wheat, Inc. sold soft white wheat since the import bans at depressed prices as a result of Monsanto's conduct.

17. Plaintiff Tom Stahl, a Washington resident, owns and operates a farm in Waterville, Douglas County, Washington. Tom Stahl grew soft white wheat at all times during the relevant time period. Tom Stahl sold soft white wheat since the import bans at depressed prices as a result of Monsanto's conduct.

18. Plaintiffs Merle and Elsie Jacobsen, Washington residents, own and operate a farm in Waterville, Douglas County, Washington. The Jacobsens grew soft white wheat at all times during the relevant time period. The Jacobsens sold soft white wheat since the import bans at depressed prices as a result of Monsanto's conduct.

19. Plaintiff Clarmar Farms, Inc., a Washington corporation, owns and operates a farm in Waterville, Douglas County, Washington. Upon information and belief, Clarmar Farms, Inc. is current on all taxes, fees and assessments due to the State of Washington. Clarmar Farms, Inc. grew soft white wheat at all times during the relevant time period. Clarmar Farms, Inc. sold soft white wheat since the import bans at depressed prices as a result of Monsanto's conduct.

20. Plaintiff Neil Jeske is a resident of the state of Washington and the President of High Hopes, Inc. Plaintiff High Hopes, Inc., a Washington corporation, in conjunction with Neil Jeske, does business as Jeske Farm Joint Venture, a Washington joint venture (collectively, "Jeske Farm Joint Venture"). High Hopes, Inc. is current on all taxes, fees and assessments due to the State of Washington. Jeske Farm Joint Venture operates a farm located on State Route 21, North Odessa, Washington. Jeske Farm Joint Venture grew soft white wheat at all times during the relevant time period. Jeske Farm Joint Venture has sold soft white wheat since the import bans at depressed prices as a result of Monsanto's conduct.

B. Defendant

21. Monsanto Company is a Delaware corporation headquartered at 800 North Lindbergh Blvd., Saint Louis, Missouri, 63167. Monsanto sells products

including field crop and vegetable seeds, plant biotechnology traits, and pesticides. The global company has over 20,000 employees with 404 facilities in 66 countries.

22. The original Monsanto Company merged with Pharmacia & Upjohn, Inc. in December 1999 and changed its name to Pharmacia Corporation in 2000. A new Monsanto Company, based on the previous agricultural division of Pharmacia, was incorporated in Delaware as a wholly-owned subsidiary of Pharmacia under the name Monsanto AG Company in February 2000. When the merger was effective on March 31, 2000, the new Monsanto changed its name from Monsanto AG Company to Monsanto Company. Pursuant to a separation agreement signed in September 2000 with Pharmacia related to the transfer of operations, assets and liabilities of the agricultural business from Pharmacia to the new Monsanto Company, the new Monsanto Company was required to indemnify Pharmacia for any liabilities related to the agricultural business or chemicals business, and for any liabilities assumed prior to the distribution agreement.

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

24. Pharmacia itself eventually became a subsidiary of Pfizer in 2003.

There is currently no control relationship between Monsanto and Pharmacia, but Monsanto maintains certain indemnification obligations related to environmental aspects of Pharmacia's former chemical and agricultural businesses.

25. Monsanto conducts business throughout the United States, including in the state of Washington in which the named Plaintiffs herein cultivate and/or harvest wheat.

V. FACTUAL ALLEGATIONS

A. Wheat Cultivation in the United States and Northwest States

26. 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.

27. 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.

28. Pacific Northwest Soft White contains soft white wheat primarily from Washington, Oregon, and Idaho. The three states together produced 86 percent of total U.S. soft white wheat in 2008.

29. 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.

30. 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.

31. Idaho ranks fifth nationally in the production of all wheat. In 2011, soft white wheat accounted for approximately 57 percent of total wheat production in Idaho. Idaho exports nearly 50 percent of its wheat each year.

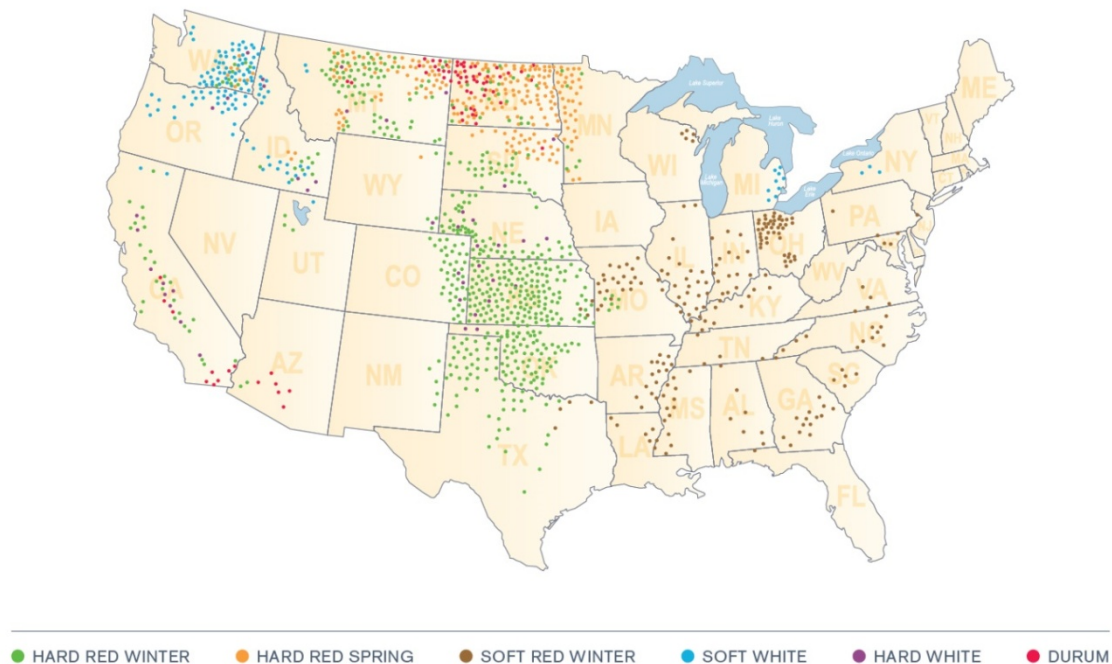
32. Used for bread, pasta, noodles, pizza and pastries, wheat has been the principal cereal crop in the United States since the 1700s.

33. Today, approximately 85 to 90 percent of the Pacific Northwest's soft white wheat crop is exported to Japan, South Korea, Taiwan and other Asian nations, where it is used to make noodles and crackers. In 2012, Japan was the leading importer of U.S. wheat, importing approximately four million metric tons. South Korea was the fourth largest importer of U.S. wheat, importing approximately two million metric tons.

34. Six classes of wheat are currently produced in the United States. The location of each class of wheat depends largely upon rainfall, temperature, soil conditions, and tradition. The Pacific Northwest states of Oregon, Washington and

Idaho, as well as portions of Montana and Northern California, grow the “soft white wheat” variety, which produces flour for baking cakes, crackers, cookies, pastries, quick breads, and muffins. This wheat is also grown in Michigan and New York.

35. In addition to soft white wheat, the other classes of wheat are: (1) hard red winter produced in the Great Plains states; (2) hard red spring produced in Montana, North Dakota and Minnesota; (3) soft red winter grown primarily east of the Mississippi River; (4) durum produced in similar states to hard red spring, primarily North Dakota; and (5) hard white wheat produced in a variety of states including Idaho, Kansas, Nebraska and California. The following map shows the primary growing locations of all six wheat classes:



B. Roundup Resistant Genetically-Engineered Wheat

36. Monsanto has genetically engineered “Roundup Ready” wheat to include a genetic construct containing a glyphosate-resistance gene, thus generating a transgenic wheat plant resistant to its broad-spectrum herbicide glyphosate (also known by the branded name Roundup®).

37. Monsanto’s ultimate goal in creating a transgenic wheat plant that was resistant to glyphosate was profit. By developing and selling to wheat farmers a genetically-engineered line of wheat resistant to glyphosate – along with Monsanto’s glyphosate-containing herbicide products such as Roundup® – Monsanto would control a substantial part of the U.S. wheat market, translating into billions of dollars in profit for Monsanto (and has for similarly engineered Roundup-resistant crops).

38. Monsanto conducted 279 field tests with this specific glyphosate-resistant wheat trait in years spanning from 1998 through 2005. Field tests were conducted in Arizona, California, Colorado, Florida, Hawaii, Idaho, Illinois, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming. Monsanto has not disclosed the specific farm locations of these trials.

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

40. Monsanto withdrew commercial development of its field-testing project and never sought approval of genetically-engineered wheat based on concerns from U.S. farmers that this wheat would endanger wheat exports. Although most soybeans and corn grown in the United States are genetically engineered, these crops are largely consumed by livestock, used to make biofuels, or made into processed foods. Wheat products, in contrast, are grown for human consumption, and many consumers (particularly those in Asia and Europe) reject genetically-engineered products.

41. In the testing, planting, growing, harvesting, handling, transporting, storing and/or disposing of the genetically-engineered wheat field tested between 1998 and 2005, Monsanto and/or its agents failed to properly control Monsanto's unapproved wheat. Monsanto's failure to apply adequate safeguards to prevent the release and/or dissemination of genetically-engineered wheat beyond the regulated test fields allowed its genetically-engineered wheat to be disseminated and ultimately contaminate an Oregon wheat field.

42. Monsanto failed to instruct, oversee, or control its field trials adequately, or take other necessary measures, to ensure that its genetically-

engineered wheat was properly tested, planted, harvested, handled, stored, transported, and/or disposed of in such a manner as to prevent contamination of wheat fields outside of the regulated field trials. Throughout the duration of Monsanto's field-testing program, the genetically-engineered wheat seed always was supposed to remain in the exclusive control of Monsanto and its agents. As the owner and developer of this genetically-engineered wheat seed trait, Monsanto bore responsibility for the development, testing, planting, growing, harvesting, handling, storage, transportation, use, and/or disposal of the seed. Monsanto's duties were non-delegable under 7 C.F.R. Part 340.4.

43. Monsanto's history in testing and planting other biotechnology crops has been problematic. According to a *Reuters* article dated May 31, 2013, the USDA discovered five "major incidents of noncompliance" by Monsanto between 1995 and 2011, which included a failure to follow certain test planting protocols and a failure to properly notify regulators about test activities. For example, in one incident, Monsanto failed to check for biotech corn volunteers at a field trial, allowing the plants to release pollen to commercial corn grown in the field the following year.

44. At least one farmer who participated in the field trials has stated that Monsanto and/or its agents did nothing to dispose of the genetically-engineered wheat that was grown on that farmer's land during the field trials. Instead, the

farmer was left to determine how to dispose of the unapproved, Roundup-resistant wheat on his own. Monsanto did not come to the field, remove all of the wheat, and ensure that no unapproved wheat inadvertently entered the commercial market.

45. According to Doug Gurian-Sherman, senior scientist at the Union of Concerned Scientists: “Somebody has been breeding this wheat, inadvertently for a number of years, whether a seed company or this farmer.”

46. Although Monsanto cancelled its development of genetically-engineered wheat in 2004 and later ended the field trial program, a *Reuters* article dated June 28, 2013 reported that the unapproved seed trait was kept viable in a U.S. government storage facility in Colorado beginning in 2004 until as recently as 2011.

C. Discovery of Genetically-Engineered Wheat in Eastern Oregon

47. In May 2013, a farmer in Eastern Oregon trying to clear his fields noticed that some wheat plants he had sprayed with the herbicide glyphosate (the key ingredient in Monsanto’s Roundup) had not died. The farmer’s field had never been used for trials of Monsanto’s Roundup-resistant wheat.

48. The 125-acre field where the genetically-engineered wheat was found was one of several the farmer had planted in the fall of 2011 with the soft white winter wheat varieties “Rod” and “WB528.”

49. “Rod” is a semi-dwarf soft white wheat variety with good cold weather hardiness that was developed by Washington State University. The public variety, released in 1992, was planted on about 8,000 acres in the region in 2011.

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

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

52. The farmer who discovered the genetically-engineered wheat reported his finding to an Oregon State University researcher, who tested plant samples using “Roundup Ready” quick test strips and genetic analysis. The results confirmed that the plants were from Monsanto’s unapproved, genetically engineered seeds and contained transgenic constructs making them resistant to glyphosate.

53. After the Oregon State University researchers determined that the plants contained the glyphosate-resistant gene, federal scientists also confirmed that the plants were resistant to glyphosate herbicide. On May 28, 2013, APHIS

announced its results and publicized that an unauthorized Roundup Ready genetically-engineered trait had been detected in volunteer wheat from the Eastern Oregon farm in question. The announcement stated that APHIS would investigate to determine how this regulated article appeared outside of a confined test environment. On June 3, 2013, a spokesman with USDA stated that a team of 15 investigators began collecting evidence and information.

54. The May 28, 2013 announcement led to immediate disruptions of exports of soft white wheat from the Pacific Northwest. On May 28, 2013, the Japanese Ministry of Agriculture, Food and Fisheries (MAFF) cancelled its soft white wheat order, but did purchase its regular allotment of red spring wheat and red winter wheat. An official with the Japanese Embassy stated that the country would continue to cancel orders for Pacific Northwest soft white wheat because Japanese people were “concerned about the discovery of unapproved wheat.”

55. Japan is regularly the largest purchaser of wheat from the Pacific Northwest states. *The Associated Press* quoted Blake Rowe, the CEO of the Oregon Wheat Commission, in a May 30, 2013 article where Mr. Rowe stated that a Japanese import ban could detrimentally affect farmers in Washington, Idaho, and Oregon because wheat from all three states is blended together before it is exported.

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

57. On June 1, 2013, *Reuters* reported that South Korea millers decided to officially suspend imports pending the results of testing. According to the article: “The impact of the GMO wheat find has been felt mostly on cash prices in Pacific Northwest, a key market for Asian buyers to purchase supplies of white wheat.”

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

59. On June 3, 2013, the Taiwan Flour Mills Association announced it would not accept soft white wheat from Oregon and asked suppliers for assurances that future shipments would be free from genetically-engineered wheat. It was reported on June 3, 2013 that Taiwan's Council of Agriculture and Department of Health would be conducting an ongoing investigation.

60. On June 17, 2013, *Reuters* reported that major importers such as Japan and South Korea had no plans to lift their import bans on U.S. soft white wheat, despite a statement from the U.S. Department of Agriculture that it had found no genetically-engineered seeds in any field it had investigated beyond the original field where the genetically-engineered wheat was discovered. The official in charge of grain trading at Japan's farm ministry stated that the country was regarding the USDA announcement as a temporary report rather than final results. The Korean Flour Mills Industrial Association stated that the USDA findings would not prompt them to lift their suspension on imports of both U.S. western white and soft white wheat.

61. Following additional testing by the Korean Ministry of Food and Drug Safety, however, South Korea announced on July 9, 2013 that it would lift its ban and begin importing U.S. soft white wheat. According to Bloomberg News, Japanese officials announced on July 30, 2013 that Japan would resume tenders of U.S. soft white wheat on August 1 and August 7, 2013.

62. As a result of Monsanto's wrongful conduct, significant quantities of soft white wheat destined for export markets for use in food products were rejected from the end of May 2013 through August 1, 2013. Because scheduled shipments were postponed and canceled, the presence of genetically-engineered wheat detrimentally impacted the domestic and global wheat markets, damaging Plaintiffs and similarly-situated soft white wheat farmers and depressing prices, which continues to this day.

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

63. Monsanto was well aware of concerns regarding the safety of genetically-engineered wheat and the potential detrimental market effects arising from the unapproved use of such crops.

64. After conducting the field tests, Monsanto stopped commercial development of genetically-engineered wheat in 2004, following concerns from U.S. farmers that genetically-engineered wheat could endanger wheat exports. In a statement made on May 9, 2004, Monsanto acknowledged that there was "not a sufficient market to make the introduction of its GE wheat worthwhile" and said it would concentrate on other crops, such as corn, cotton and oilseeds.

65. A May 10, 2004 article in the United Kingdom's *The Guardian* reported: "Monsanto, the world's biggest seller of GE seeds, had looked to the development and introduction of GE wheat to fulfill a dream of dominating the

world's bread market . . . but consumer resistance to the idea of eating GE bread – particularly in Europe – meant the biggest part of the U.S. export market would disappear overnight.”

66. Similarly, a May 11, 2004, article in *The New York Times* reported that Monsanto's wheat “was genetically engineered to be resistant to Monsanto's Roundup herbicide, which would allow farmers to spray their fields to kill weeds while leaving the crop intact. While Roundup Ready wheat attracted the expected opposition from consumer groups and environmental advocates, what was unusual in this case was the opposition of many American and Canadian farmers, who have eagerly adopted other biotechnology crops. These farmers say that wheat buyers in Europe, Japan and some other countries had told them they would not buy genetically engineered wheat because they thought consumers did not want it.”

67. Recent news articles have reported that Monsanto has started conducting field trials of a new genetically-engineered wheat version in two states. A *Bloomberg News* article reported on May 31, 2013, that Monsanto planted 150 acres of wheat in Hawaii last year that was genetically engineered to tolerate glyphosate and tested an additional 300 acres of wheat engineered with glyphosate tolerance in North Dakota this year.

68. Recent reports indicate that Monsanto is preparing to introduce genetically-engineered wheat onto the commercial market, and that the company is

confident that regulatory authorities will approve genetically-engineered wheat for commercial use by the time it is ready for release within the next few years.

Reportedly, Monsanto is actively promoting genetically-engineered wheat to its current soy and corn customers.

69. Monsanto apparently remains committed to the introduction of genetically-engineered wheat to the U.S. market despite unresolved health concerns associated with genetically-engineered wheat consumption. In early 2013, it was reported that genetically-engineered wheat produced by Australia's Commonwealth Scientific and Industrial Research Organization (CSIRO) was linked to liver disease and even death, reportedly due to the crop's ability to "silence" certain genes within the body.

70. Monsanto knew, or should have known, that if genetically-engineered wheat appeared outside of its regulated field trials, it would cause major foreign trading partners to halt U.S. wheat imports. Monsanto knew, or should have known, that such appearance of genetically-engineered wheat also would detrimentally impact worldwide prices for Pacific Northwest soft white wheat, causing significant financial damage to wheat farmers. Indeed, similar releases of unapproved biotechnology crops have negatively impacted the corn and rice markets.

71. Despite this knowledge, Monsanto tested genetically-engineered wheat from 1998 to 2005 without adequate safeguards to prevent its release, which has resulted in the contamination of at least one conventional wheat field.

72. Monsanto failed to instruct, oversee, or control field trial operators adequately to ensure that its genetically-engineered wheat was adequately controlled, at least, in part, because Monsanto was confident during the testing time period of 1998 to 2005 that genetically-engineered wheat would eventually be approved for commercial use, including exports. Such wrongful conduct by Monsanto led directly to contamination and market deterioration problems that damaged Plaintiffs and all soft white wheat farmers. In the end, after years of testing and a large economic expenditure for research, Monsanto never sought to develop and market genetically-engineered wheat commercially because it knew that domestic and foreign buyers would reject it.

E. The Further Impact of Genetically-Engineered Wheat on the Soft White Wheat Market

73. The discovery of genetically-engineered wheat in an Eastern Oregon field, as a result of Monsanto's wrongful conduct, has detrimentally affected the ability of Plaintiffs and all other soft white wheat farmers to sell their wheat into export channels through the storage, handling, processing, and export companies.

74. The presence of genetically-engineered wheat resulted in the loss of certain export markets for soft white wheat, from approximately May 31, 2013

through August 1, 2013, and has resulted and will continue to result in reduced demand and prices for all soft white wheat.

75. Even six months after the ban on soft white wheat ended and Asian countries reopened their markets to exports, export sales reporting data from the U.S. Department of Agriculture dated February 6, 2014 shows a decrease in accumulated exports of white wheat by approximately 13 million bushels from last year to the current year, resulting in a 14.6 percent drop in white wheat exports to date in 2013-2014.

76. The World Agricultural Supply and Demand Estimates (WASDE) Report had similarly estimated an 8 percent drop in projected white wheat exports for the year 2013-2014, as compared to the previous year. From June 1, 2012 through May 31, 2013, before the presence of genetically-engineered soft white wheat was publicized and import restrictions began, 174 million bushels of white wheat were exported, while only 160 million bushels are projected to be exported from June 1, 2013 through May 31, 2014, resulting in the 8 percent drop according to WASDE statistics released on February 10, 2014. This decline in white wheat exports contrasts with projections for all classes of U.S. wheat. The WASDE data illustrates that, when analyzing projections for all classes of U.S. wheat, exports are projected to rise from 1,007 million bushels in 2012-2013 to 1,175 million bushels during the 2013-2014 year.

77. Thus, Monsanto's wrongful conduct continues to place Plaintiffs and all other soft white wheat farmers at risk for further damages caused by the ongoing detrimental market effects of the contamination on U.S. soft white wheat prices.

F. Monsanto Continues Remains Secretive and Resistant to Addressing the Concerns Associated with Genetically-Engineered Crops

78. Monsanto continues to operate without transparency regarding the safety and efficacy of its products. On January 28, 2014, Monsanto's board of directors successfully urged its shareholders to defeat two resolutions seeking to increase the company's transparency. In particular, one resolution sought to require the Monsanto board to issue a report detailing the financial risks and operational impacts related to genetically-engineered crop production, including the costs of contamination of neighboring farmers' non-genetically-engineered crops and the resulting lawsuits. The other resolution would have required Monsanto to work with federal regulators to establish labeling standards for genetically-engineered products.

79. Despite Monsanto shareholders' action in voting down both resolutions, Monsanto CEO Hugh Grant conceded that, "There is a recognition that we need to do more." Recent polls indicate that up to 90 percent of Americans

desire labeling standards for genetically-engineered products so that they have the option to consume non-genetically-engineered products.

VI. INJURIES TO PLAINTIFFS AND WHEAT FARMERS

80. The detection of genetically-engineered wheat in an Eastern Oregon field resulted in the loss of certain export markets for a more than two-month period in late May through early August 2013 for soft white wheat.

81. Market changes, such as lower prices and higher producer costs, have resulted from the discovery of genetically-engineered wheat outside of the regulated field trials, and these market changes have continued through the first two months of 2014 – seven months after Asian countries halted their import bans and began re-accepting U.S. soft white wheat tenders.

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

83. Plaintiffs Dreger Land Company, Inc., DC Dreger Farms, Inc., and Dreger Land & Livestock, Inc., doing business as Dreger Enterprises, sold soft white wheat at depressed market prices after May 31, 2013.

84. Plaintiffs Douglas E. Wahl and Phyllis A. Wahl, doing business as DPJV, and Wheat, Inc., sold soft white wheat at depressed market prices after May 31, 2013.

85. Plaintiff Tom Stahl sold soft white wheat at depressed market prices after May 31, 2013.

86. Plaintiffs Merle and Elsie Jacobsen sold soft white wheat at depressed market prices after May 31, 2013.

87. Plaintiff Clarmar Farms, Inc. sold soft white wheat at depressed market prices after May 31, 2013.

88. Jeske Farm Joint Venture sold soft white wheat at depressed market prices after May 31, 2013.

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

VII. CLASS ACTION ALLEGATIONS

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

All persons and entities in the State of Washington who sold soft white wheat at market prices set after May 31, 2013.

91. Excluded from this Class are the Court and its employees; Monsanto; any parent, subsidiary, or affiliate of Monsanto; and all employees and directors who are or have been employed by Monsanto.

92. Plaintiffs reserve the right to amend this class definition prior to class certification.

93. Plaintiffs seek to represent the class for any damages caused by Monsanto's wrongful conduct.

94. The Class is so numerous and geographically dispersed among the state of Washington that joinder of all members is impracticable. The exact number and identity of Class Members is not known. Plaintiffs believe that thousands of persons cultivated and/or harvested soft white wheat during the relevant time period and would be members of the class. Accordingly, Fed. R. Civ. P. 23(a)(1) is thus satisfied.

95. Common questions of fact and law exist here, satisfying the requirement of Fed. R. Civ. P. 23(a)(2), including but not limited to:

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

(b) Whether Monsanto is responsible for the dissemination of genetically-engineered wheat and for the contamination of non-genetically-engineered soft white wheat;

(c) Whether Monsanto field tested non-genetically-engineered wheat in such a manner that contamination of non-genetically-engineered wheat was reasonably foreseeable;

(d) Whether Monsanto was negligent in its supervision of field testers who oversaw the testing program affiliated with genetically-engineered wheat;

(e) Whether Monsanto was negligent in the testing, planting, growing, harvesting, storing, transport, use and/or disposal of genetically-engineered wheat;

(f) Whether Monsanto's conduct constitutes a public nuisance;

(g) Whether Monsanto's conduct constitutes a private nuisance;
and

(h) Whether Monsanto is strictly liable for damages caused by its testing, planting, growing, harvesting, storing, transport, use and/or disposal of genetically-engineered wheat.

96. Plaintiffs' claims are typical of the other Class Members' claims and do not conflict with the interests of any other Class Members, as Plaintiffs and all Class Members were damaged by Monsanto's wrongful conduct, and the relief Plaintiffs seek is common to the relief sought on behalf of the Class. Fed. R. Civ. P. 23(a)(3) is thus satisfied.

97. Plaintiffs will fairly and adequately protect the interests of the other Class Members and have no interests that are antagonistic to or which conflict with those of other Class Members. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in litigation of this nature to represent them and the members of the Class. Fed. R. Civ. P. 23(a)(4) is thus satisfied.

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

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

100. As discussed above, numerous common questions of fact and law exist. These questions predominate over the individual questions presented in this action. The predominance requirement of Fed. R. Civ. P. 23(b)(3) is thus satisfied.

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

102. Alternatively, a class action is appropriate under Fed. R. Civ. P. 23(c)(4)(A) with respect to particular issues.

VIII. PLAINTIFFS' CLAIMS FOR RELIEF

Count 1 – Negligence

103. For the purposes of Count 1, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

104. Monsanto's acts and/or omissions as described above constitute negligence.

105. Monsanto had a common law duty to Plaintiffs and the Class Members to test, plant, grow, harvest, store, transport, use and/or dispose of genetically-engineered wheat in a manner that would not result in contamination of non-genetically-engineered wheat crops.

106. In addition, or in the alternative, Monsanto had a common law duty to refrain from testing, planting, growing, harvesting, storing, transporting, using and/or disposing of genetically-engineered wheat in a manner that would foreseeably cause harm to Plaintiffs and the other Class Members.

107. In addition, or in the alternative, Monsanto had a statutory and regulatory duty under the Plant Protection Act, 7 U.S.C. §104, and 7 C.F.R. Part 340 to the Class Members to test, plant, grow, harvest, store, transport, use and/or dispose of genetically-engineered wheat and associated seeds following field testing in a manner that would not result in contamination of conventional wheat fields.

108. Plaintiffs and the Class Members are persons meant to be protected by the Plant Protection Act, 7 U.S.C. §104, and 7 C.F.R. Part 340.

109. Monsanto breached its common law, statutory, and/or regulatory duties by failing to exercise reasonable care to prevent the foreseeable contamination of the Pacific Northwest's soft white wheat through dissemination that would naturally result from the inadequately controlled testing, planting, growing, harvesting, storing, transporting, using and/or disposing of genetically-engineered wheat as outlined herein.

110. Monsanto breached its common law, statutory, and/or regulatory duties by testing, planting, growing, harvesting, storing, transporting, using and/or disposing of genetically-engineered wheat in such a manner as to allow contamination of conventional wheat fields.

111. Monsanto breached its duties under the Plant Protection Act, 7 U.S.C. §104, and 7 C.F.R. Part 340.

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

113. Plaintiffs and the other Class Members have suffered injury as a result of Monsanto's actions and omissions as outlined herein and seek compensatory damages. Plaintiffs further seek all costs and attorneys' fees as allowed by law.

Count 2- Public Nuisance

114. For the purposes of Count 2, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

115. Monsanto has created a public nuisance by allowing its unapproved, genetically-engineered wheat to contaminate the domestic soft white wheat market, which constitutes an unreasonable and significant interference with public rights (including the public's right to a food supply free from unregulated, unapproved genetically-engineered crops), public health, public comfort and public convenience.

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

117. Plaintiffs and the other Class Members have suffered injury from Monsanto's public nuisance distinct from that suffered by the general public in that they suffered business losses in the form of rejection of their wheat crops by certain markets (especially foreign exports) and reduced price for their crops at market.

118. Plaintiffs and the other Class Members seek compensatory damages, and all costs and attorneys' fees as allowed by law.

Count 3 – Private Nuisance

119. For the purposes of Count 3, Plaintiffs repeat and reallege all previous paragraphs above as though fully set forth herein.

120. Monsanto has created a private nuisance through its tortious conduct in failing to adequately test, grow, store, transport and dispose of its genetically-engineered wheat. Monsanto conducted field testing without instituting adequate safeguards to prevent against contamination of non-genetically-engineered crops or fields.

121. Monsanto's genetically-engineered wheat was discovered on an Eastern Oregon farm in May 2013, approximately 12 years after Monsanto's field testing in Oregon had concluded, causing a drop in the market price Plaintiffs and the other Class Members received for the soft white wheat grown on their property.

122. Monsanto's acts and/or omissions constitute the unreasonable, unusual, or unnatural use of its property in a manner that substantially impaired the right of Plaintiffs and the other Class Members to the use and enjoyment of their property.

123. Plaintiffs and the other Class Members have suffered injury as a result of Monsanto's actions and omissions as outlined herein and seek compensatory damages. Plaintiffs further seek all costs and attorneys' fees as allowed by law.

Count 4 – Strict Liability

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

125. Monsanto tested genetically-engineered wheat, an unreasonably dangerous product, which, when used as anticipated, produced wheat unapproved by regulatory authorities. Monsanto allowed that unapproved wheat to be released, disseminated and/or otherwise to contaminate a conventional wheat field, which has resulted in depressed prices for U.S. soft white wheat.

126. Monsanto's actions and omissions in the testing, planting, growing, harvesting, storing, transporting, use and/or disposal of genetically-engineered wheat has resulted in the contamination of a conventional wheat field, causing export markets to restrict, or ban altogether, importation of soft white wheat for certain periods. As a result of such market conditions, wheat farmers suffered injuries in the form of depressed wheat prices.

127. Exercise of reasonable care could not have eliminated the risk of such contamination and resulting injuries.

128. Monsanto's testing, planting, growing, harvesting, storing, transporting, use and/or disposal of genetically-engineered wheat not approved by regulatory authorities has caused unprecedented damage to Plaintiffs and all other Class Members.

129. Given the structure and operation of the U.S. wheat production and handling system, Monsanto's testing, planting, growing, harvesting, storing, transporting, use and/or disposing of genetically-engineered wheat was improper.

130. Any benefit derived from the field-testing program of genetically-engineered wheat from 1998 to 2005 is greatly outweighed by the harms resulting from Monsanto's contamination of the soft white wheat market.

131. Plaintiffs and the other Class Members have suffered injury as a result of Monsanto's actions and omissions as outlined herein and seek compensatory damages. Plaintiffs further seek all costs and attorneys' fees as allowed by law.

IX. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the other members of the Class proposed in this First Amended Complaint, respectfully request that the Court enter judgment in their favor and against Monsanto, as follows:

(a) That the Court certify the Class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and, 23(b)(3), and designate the named Plaintiffs as the representatives of the Class;

(b) That the Court adjudge and decree that Monsanto is liable to Plaintiffs and the members of the Class for:

- (i) Negligence;
- (ii) Public Nuisance;
- (iii) Private Nuisance; and
- (iv) Strict Liability.

(c) That the Court order Monsanto:

- (i) To pay compensatory damages;
- (ii) To pay the costs of this action, including attorneys' fees and expenses;
- (iii) To pay pre- and post- judgment interest; and

(iv) To allow Plaintiffs to amend these pleadings to conform to evidence produced at trial.

(d) Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a jury trial on all claims so triable.

Respectfully submitted this 5th day of March, 2014.

/s/ James J. Pizzirusso

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CERTIFICATE OF SERVICE

I certify that on 5th day of March, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send a notice of electronic filing to all persons registered for ECF as of that date.

/s/ James Pizzirusso