Court File No.: 2613-15

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DARMAR FARMS INC.

Plaintiff

- and -

SYNGENTA CANADA INC. and SYNGENTA AG

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED THIS 10th DAY OF Jan '18
PURSUANT TO RULE 26.02(a)
A. DeLuca
LOCAL REGISTRAR,
SUPERIOR COURT OF JUSTICE

MODIFIÉ CE 200
CONFORMÉMENT À LA RÈGLE
GREFFIER LOCAL
COUR SUPÉRIEURE DE JUSTICE

SECOND AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 1, 2015

Issued by "L. Webdale"
Local Registrar

Address of court office 80 Dundas Street
London, ON N6A 6A3

TO: **SYNGENTA CANADA INC.**
140 Research Lane
Guelph, ON N1G 4Z3

SYNGENTA AG
Schwarzwaldallee 215
4058 Basel-Stadt
Switzerland

CLAIM

1. The Plaintiff, Darmar Farms Inc. ("Darmar Farms"), seeks on its behalf, and others similarly situated in Canada:

   (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as the representative plaintiff;

   (b) general damages and special damages in the amount of $300,000,000;

   (c) punitive damages and/or aggravated damages in the amount of $100,000,000;

   (d) the costs of distributing all monies received to class members;

   (e) prejudgement interest in the amount of 10% compounded annually or as otherwise awarded by this Honourable Court;

   (f) costs on a substantial indemnity basis, plus applicable taxes; and

   (g) such further and other relief as this Honourable Court may deem just.

THE PLAINTIFF

2. The Plaintiff is a corporation in Ontario, Canada. Darmar Farms planted approximately 557 acres of corn in Ontario in 2013, 812 acres of corn in Ontario in 2014, and 927 acres of corn in Ontario in 2015. It has never knowingly planted Agrisure Viptera or Agrisure Duracade corn.

THE DEFENDANTS

3. Syngenta AG is a global agribusiness, agrochemical and biotechnology corporation. It is headquartered in Switzerland and has numerous research, development facilities, and production sites around the world.

4. Syngenta AG developed and designed genetically modified corn seed, known as Agrisure Viptera and Agrisure Duracade, which were then sold and released into the North American Market for farmers to plant, through its subsidiaries, including Syngenta Canada Inc.

5. On January 1, 2012, 531201 Syngenta Seeds Canada, Inc. and 3850617 Syngenta Crop Protection Canada, Inc. amalgamated to form Syngenta Canada Inc. Syngenta Canada Inc. is an indirect wholly owned subsidiary of Syngenta AG (collectively "Syngenta"). Syngenta Canada Inc. is incorporated pursuant to the *CBCA* and is headquartered in Guelph, Ontario.

NORTH AMERICAN CORN MARKET

6. North America is the largest producer and exporter of corn in the world. Canadian farmers reported planting 3.3 million acres of corn for grain in 2015.

7. Due to the interdependence and connectedness of the modern North American agricultural industry, and because of the peculiarities with which genetically modified seeds inevitably comingle and will be contaminated with non-genetically modified seeds, there exists a shared responsibility amongst industry participants, including Syngenta, to exercise reasonable care in the commercialization, handling, marketing, selling, and shipping of new biotechnology products to protect other known industry stakeholders, including farmers such as the Plaintiff and putative class members with whom they share a close relationship, from an unreasonable risk of harm. Syngenta and the Plaintiff/class members share a mutual interdependency within the operation of the corn industry.

8. Through its own information, Syngenta's industry stakeholders explicitly include farmers, growers, and individuals affected by Syngenta's business such as the Plaintiff and class members.

9. This interdependence and duty on all participants, including Syngenta, in the North American agricultural industry is furthered by the need for approval by prospective buyers before comingled crops can be sold.

10. Further, the Plaintiff and class members are particularly vulnerable in the circumstances given that they have no way to protect themselves against Syngenta's harmful and negligent actions in failing to obtain the adequate approvals before releasing Agrisure into the corn market.

11. The National Grain and Feed Association (of which Syngenta is a member) and the North American Export Grain Association are Industry Associations who represent and provide services for grain, feed and related commercial businesses. These Industry Associations had previously warned Syngenta against an "ill-conceived' plan to commercialize" Syngenta's Agrisure biotechnology-enhanced corn as endangering corn-product exports.

12. The Biotechnology Industry Organization (the world's largest biotechnology trade association of which Syngenta is also a member) has expressly recognized that "[a]synchronous authorizations combined with importing countries maintaining 'zero tolerance' for recombinant-DNA products not yet authorized results in the potential for major trade disruptions."

13. The International Grain Trade Coalition outlines that when introducing a new genetically modified product, the process should respect the responsibility of importing governments to perform necessary risk assessments, as demanded by their legislation, in a transparent manner. Obtaining authorization in major international markets is a process which requires a scientifically sound approval system prior to commencing commercialization. Industry groups such as The International Grain Trade Coalition

acted in an attempt to address the vulnerability of the Plaintiff/class to Syngenta, for the greater good and national interest.

14. Syngenta has, since at least 2007, represented that it is "committed to the principles of good stewardship, which are exemplified through the responsible management of [its] products across their lifecycle [including] commercialization".

15. Commingling of different varieties of corn occurs during planting, harvesting, drying, storage, and transportation of corn.

16. The world price for corn is tied to the Chicago Board of Trade Futures and the loss of a key market for North America puts downward pressure on the price for corn, including in Canada.

AGRISURE VIPTERA AND AGRISURE DURACADE

17. Syngenta develops and obtains patents on its bio-engineered products and then commercializes the products by bringing them to market for planting and harvest. In or around 2010, Syngenta's new genetically modified corn Agrisure Viptera, containing the MIR162 genetic trait (intended to make the resulting corn crop more resistant to certain pests), was approved for use in North America (first by the United States Department of Agriculture and later by the Canadian Food Inspection Agency).

18. In 2010, Syngenta was aware that China, a large and growing export market for North American corn farmers, had not approved Agrisure Viptera, (which contained the MIR162 genetic trait).

19. Syngenta did not begin the regulatory approval process in China for Agrisure Viptera (containing MIR162) until or about 2010. Syngenta knew or ought to have known that the average time for regulatory approval in China was two to three years, or longer, if

applications are incomplete or incorrect (which was the case for Syngenta's application for Agrisure Viptera (containing MIR162)).

20. Syngenta had been warned by the Industry not to introduce another MIR genetic trait without approval in export markets because of the detrimental consequences which can occur from such premature commercialization. Syngenta undertook not to cause damage to the corn market by introducing another MIR genetic trait product into the market without necessary global approvals and the Plaintiff and class members reasonably relied on that undertaking. Syngenta's duty arises from the multifaceted interdependence of the market between Syngenta and the Plaintiff/class where genetically modified crops are sold/exported.

21. Notwithstanding the fact that China, one of North America's biggest importers of corn, had not yet approved Agrisure Viptera (containing MIR162), Syngenta brought Agrisure Viptera to market in North America for the 2011 crop year. Syngenta did this knowing that China would not approve Agrisure Viptera (containing MIR162) until possibly sometime after this product entered export channels.

22. Once in use, Agrisure Viptera contaminated the North American market throughout the supply chain, both through cross pollination and commingling. Syngenta failed to employ any meaningful or adequate segregation or identity preservation measures to isolate Agrisure Viptera from other Canadian corn. Syngenta failed to adequately educate Agrisure Viptera farmers and other industry stakeholders on the proper handling, stewardship, segregation, and channeling of Agrisure Viptera to prevent contamination of the Canadian corn supply.

23. In November 2013, North American corn exports to China were found to be contaminated with Agrisure Viptera (containing MIR162), resulting in China's rejection of shipments of corn from North America.

24. As a result of China's rejection of North American corn, a glut of corn was available for sale in North America, driving the price of corn down, subsequently and foreseeably economically damaging the Plaintiff and the proposed class.

25. In early 2014, following China's rejection of North American corn shipments, Industry participants requested that Syngenta immediately halt sale and planting of Agrisure Viptera (containing MIR162). At the same time, Industry participants also requested that Syngenta hold off on the commercialization of yet another new product, Agrisure Duracade, which also contained MIR162, and which was also not approved by China and other export markets outside North America.

26. Despite the significant economic harm already incurred by the Plaintiff herein and the proposed class due to China's rejection of North American corn shipments contaminated with unapproved Agrisure Viptera (containing MIR162), Syngenta not only continued to sell Agrisure Viptera, but it also launched Agrisure Duracade for the 2014 crop year, prolonging the subsequent and foreseeable economic harm already inflicted.

27. Syngenta actively misled farmers about the importance of the Chinese market, the timing and substance of its application for approval in China, in particular, the timing of when China was likely to approve Agrisure Viptera (containing MIR162), its ability to channel Agrisure Viptera (containing MIR162) to non-Chinese markets, and its ability to contain the infiltration of Agrisure Viptera (containing MIR162) to the North American corn supply.

28. In March 2014, Syngenta pulled Agrisure Duracade from the Canadian market for the 2014 growing season because both China and the European Union had not yet approved MIR162. Syngenta stated in a notice to Canadian corn growers: "While the vast majority of the Canadian corn crop is typically directed to domestic markets in North America, some corn may be destined for these markets." This statement, alone, establishes the fact that Syngenta knew that its actions would have an adverse effect on the market.

29. China eventually approved corn containing the MIR162 genetic trait in December 2014. However, this approval came far too late to prevent the damages suffered by the Plaintiff and class members.

30. Syngenta knew that the timing, manner, and scope of how it commercialized Agrisure Viptera would contaminate the Canadian corn supply. Due to its significant business interests in Canada, Syngenta knew the size of the corn market and the number of stakeholders, many of which were vulnerable and unable to protect themselves against the actions taken by Syngenta, that would be affected by the actions outlined herein. All of this was or could have been entirely foreseen by Syngenta. As such, the contamination was foreseen by Syngenta and, consequently, farmers such as the Plaintiff and class members suffered harm due to Syngenta's actions.

31. Syngenta knowingly, intentionally, and recklessly commercialized Agrisure Viptera and Agrisure Duracade corn in Canada, despite the fact that the corn was unapproved in China. Farmers like the Plaintiff who have not purchased or harvested Agrisure Viptera and/or Agrisure Duracade have sustained significant damages as a direct and proximate result of Syngenta's actions. Canadian corn producers who purchased or harvested Agrisure Viptera and/or Agrisure Duracade have sustained significant damages as a direct and proximate result of Syngenta's actions.

CAUSES OF ACTION

~~NEGLIGENCE~~

32. At all material times, the Defendants, through its servants and agents, misrepresented the legal status of their MIR162 corn products, causing confusion regarding the approval of the products from foreign authorities, including the Chinese government. Syngenta's statements were made in commercial advertising and/or promotion for MIR162 corn products, including Agrisure Viptera and Agrisure Duracade.

33. The Defendants failed to ~~get~~ obtain approval for their MIR162 corn products in foreign jurisdictions, including China, in a timely manner and/or released their MIR162 products in North America earlier than they should have. The Defendants knew or ought to have known that releasing their MIR162 corn products prior to regulatory authorizations from importing jurisdiction could result in the rejection of the North American corn supply and the resulting depression of corn prices in North America.

34. This is precisely what occurred, directly causing foreseeable damages to the plaintiff and proposed class.

35. At all material times, the Defendants, through their servants and agents, negligently, recklessly and/or carelessly marketed, distributed and/or sold their MIR162 corn products in North America.

~~CAUSES OF ACTION~~

(a) Negligence

36. The Defendants at all material times owed a duty of care to the Plaintiff and putative class members to use reasonable care in the timing, scope and terms under which it commercialized MIR162-containing corn seeds.

37. As stated above, this duty of care is exacerbated by the interdependence and interconnectedness of various participants in the corn market and the particular

vulnerability of the Plaintiff and class members. In fact, the Plaintiff's particular damages were not only foreseeable, but were by foreseen by Syngenta as described below.

38. The Plaintiff states that it had an expectation based on the Defendants prior actions and the Defendants' release of information regarding the market in China with respect to Agrisure Viptera (containing MIR162) and Agrisure Duracade that the Defendants would act prudently to ensure that the proper regulatory approvals were granted in China before introducing Agrisure Viptera (containing MIR162) and Agrisure Duracade to the North American market.

39. Further, the Plaintiff relied upon the representations made by the Defendants regarding the market in China and/or the status of regulatory approvals in China with respect to the timing of the Defendants' release of Agrisure Viptera (containing MIR162) and Agrisure Duracade in North America.

40. Further, or more particularly, at the time of planting their crops, the Plaintiff and class members reasonably relied upon the representations made by the Defendants regarding the market in China and/or the status of regulatory approvals in China with respect to Agrisure Viptera and Agrisure Duracade. As such, if the Plaintiff and class members were aware that Agrisure Viptera and Agrisure Duracade did not have the regulatory approvals required, the Plaintiff and class members would have elected to plant alternate crops and/or make alternate use of their land.

41. The Plaintiff and class members allege that they could not have effectively prevented the resulting widespread contamination without the assistance of Syngenta. This is a significant vulnerability on the part of the Plaintiff and class members at the hands of Syngenta.

42. The Plaintiff and class members and the Defendants were in a special relationship given the expectation and reliance that the Plaintiff had on the Defendants. Specifically, as the Defendants were members of the Industry Associations, the Plaintiff and class members had an expectation of the Defendants that the Defendants would refrain from selling and distributing Agrisure Viptera and Agrisure Duracade in a manner that would foreseeably cause harm to the Plaintiff and class members, to use ordinary care in its commercialization, and to protect the Plaintiff and class members from an unreasonable risk of harm.

43. The Plaintiff and class members and the Defendants were in a special relationship given the representations made by the Defendants regarding the status of Agrisure Viptera and Agrisure Duracade in both the Canadian and Chinese markets. Specifically, as Syngenta was a member of the Industry Associations, the Plaintiff and class members had an expectation of Syngenta that Syngenta would not release incorrect and/or misleading information regarding the status of Agrisure Viptera and Agrisure Duracade. Further, the Plaintiff and class members relied to their detriment on the information and statements released by Syngenta regarding Agrisure Viptera and Agrisure Duracade.

44. The duty of care owed to the Plaintiff and class members is based on the duties that one party might owe to others in the interdependent and multifaceted market where genetically modified crops and seeds are sold. This is a unique situation. Due to the interdependence and proximity of the parties, Syngenta owes a duty of care to the Plaintiff and class members to ensure that the market can operate fairly and efficiently.

45. Syngenta owed the Plaintiff and class members a duty of reasonable care with respect to the timing, manner, and scope of Syngenta's commercialization of Agrisure.

46. The Defendants negligently breached their duty of care.

47. The Plaintiff states that its damages were caused by the negligence of the Defendants. Such negligence includes but is not limited to the following:

(a) Prematurely commercializing Agrisure Viptera and Agrisure Duracade on a widespread basis without reasonable or adequate safeguards;

(b) Releasing a product into the market without regulatory approval;

(c) Instituting a careless and ineffective stewardship program;

(d) Actively failing to provide assistance to stakeholders in the form of channeling and stewardship programs without which growers and non-growers could not reasonably avoid contamination and commingling;

(e) Failing to enforce or effectively monitor its stewardship program;

(f) Failing to refrain from actively misleading the Plaintiff and class members;

(g) Failing to warn the Plaintiff and class members;

(h) Manipulating the Plaintiff and class members and interfering with their personal rights;

(i) Not living up to a commitment to ensure MIR162 corn would not appear in export shipments;

(j) Selling Agrisure Viptera and/or Agrisure Duracade to thousands of farmers with knowledge that they lacked the mechanisms, experience, ability and/or competence to effectively isolate or channel those products in such a way as not to negatively impact exports and/or North American market value;

(k) Acting in a manner inconsistent with Industry standards and the conduct of other biotechnology companies;

(l) Failing to adequately warn and instruct farmers on the dangers of the foreseeable reality of and economic consequences of contamination by MIR162 and at least the substantial risk that growing Agrisure Viptera would lead to the loss of the Chinese market;

(m) Distributing misleading information regarding the timing of China's approval of Agrisure Viptera and/or Agrisure Duracade;

(n) Breaching other duties of care to the Plaintiff and putative class members, details of which are known only to the Defendants; and

(o) Affirmatively acting and failing to act with conscious disregard for the rights of others, including the Plaintiff and putative class.

(b) Breach of the Competition Act

48. The Defendants' actions are false or misleading representations under section 52 of the *Competition Act.* In particular, without limiting the scope of the Defendants' representations contrary to section 52 of the *Competition Act,* the Defendant falsely, misleadingly or deceptively made:

(a) representations that Agrisure Viptera and Agrisure Duracade had characteristics, benefits or qualities which the products did not have;

(b) representations that Agrisure Viptera and Agrisure Duracade had regulatory approval which the products did not have;

(c) representations that Agrisure Viptera and Agrisure Duracade were of a particular standard, quality, and regulatory compliance which the products were not;

(d) representation using exaggeration, innuendo or ambiguity as to a materials fact or failing to state a material fact with respect to the status of regulatory approval where such use or failure tended to deceive the Plaintiff and class members;

49. The Plaintiff pleads and relies upon the provisions of the *Competition Act.*

DAMAGES

50. The Plaintiff's and other putative class members' damages (past, present, and future) across Canada were directly and proximately caused by the negligence of the Defendants, their servants, affiliates, and agents.

51. The Plaintiff's and other putative class members' damages are a direct result of relational economic loss caused by the actions of the Defendants, their servants, affiliates, and agents.

52. Prior to the import ban, virtually all of China's corn imports were from North America. China's MIR162 import ban virtually halted North American corn sales to China indefinitely.

53. As a result of the Defendants' negligence, the Plaintiff has and will continue to suffer considerable financial harm. As a result of the conduct of the Defendants, the Plaintiff and other putative class members suffered and continue to suffer expenses and special damages, of a nature and amount to be particularized prior to trial.

54. Had the Defendants' MIR162 corn products been released in a responsible manner in accordance with internationally recognized procedure, the Plaintiff and putative class members would not have suffered their damages.

55. The Defendants made tens of millions of dollars in revenue from the sale of their MIR162 corn products at the expense of the Plaintiff and the putative class.

56. Studies by the National Grain and Feed Association and the North American Export Grain Association published in April 2014 estimated that the industry as a whole was damaged by at least $1 billion and as much as $2.9 billion due to the actions of the Defendants. That study projected preliminary market losses to corn producers of at least $0.11 per bushel, and more recent estimates set the loss at $0.20 to $0.30, or more, per bushel of corn. Damages to corn producers will continue until the corn trade between North America and China is re-established to the levels projected before the trade disruption.

57. The Defendants' conduct described above was arrogant, high-handed, outrageous, reckless, wanton, entirely without care, deliberate, secretive, callous, willful, disgraceful, and intentionally disregarded the interests of the Plaintiff, putative class members, and the public. For such abhorrent conduct motivated by economic consideration, the Defendants are liable to pay punitive and aggravated damages.

LEGISLATION

58. In bringing this action on behalf of a class of persons in Canada who produce corn, to be further defined in the motion for certification, the Plaintiff pleads and relies upon the provisions of the *Class Proceedings Act, 1992*, S.O. 1992, c.6; the *Negligence Act*, R.S.O. 1990, c. N-1, as amended, and regulations thereunder; ~~the *Business Practices Act*, R.S.O. 1990, c. B.18; the *Consumer Protection Act, 2002*, S.O. 2002, c.30;~~ and the *Competition Act*, R.S.C. 1985, c. C-34.

SERVICE OUTSIDE OF ONTARIO

59. The Plaintiff pleads and relies on section 17.02 (g) and (p) of the *Rules of Civil Procedure*, allowing for service *ex juris* of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario in that the claim is:

(a) in respect of a tort committed in Ontario (rule 17.02(g)); and

(b) against a person carrying on business in Ontario (rule 17.02(p)).

PLACE OF TRIAL

60. The Plaintiff proposes that this action be tried in London, Ontario.

December 1, 2015

McKENZIE LAKE LAWYERS LLP
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Solicitors for the Plaintiff

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