UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURT
EASTERN DIVISION

IN RE GENETICALLY MODIFIED RICE LITIGATION	**4:06 MD 1811 CDP** **ALL CASES** **Judge Catherine D. Perry** **JURY TRIAL DEMANDED**

MASTER CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Dated: Jan. 5, 2009

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I. INTRODUCTION

1. These actions have been brought by rice producers from the states of Arkansas, Louisiana, Mississippi, Missouri, and Texas, who allege claims on behalf of themselves and on behalf of: (a) separate classes of rice producers residing in each of the foregoing respective states (collectively, the "State Classes") against Defendants, asserting state common law and statutory claims; and (b) a five-state class against Defendants for their violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.* (the "Five-State Rice Producer Class"). The allegations in this Complaint are based upon the personal knowledge of each of the Plaintiffs named herein (collectively, "Plaintiffs") as to themselves and their own actions, and upon information and belief as to all other matters.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over those actions originally filed in this District pursuant to 28 U.S.C. § 1332. As to those actions that the Judicial Panel on Multidistrict Litigation ("JPML") transferred to this Court, this Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1332, 1367, and 1407.

3. As to those actions originally filed in this District, venue properly lies in this District pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claims occurred in this District, Defendants transact a substantial amount of business in this District, or Defendants otherwise have sufficient contacts with this District to justify them being fairly brought into court in this District. As to those actions transferred to this District, venue properly lies in this District pursuant to 28 U.S.C. §§ 1391 and 1407.

III. PARTIES

A. Plaintiffs

4. Dennis Brown, Sherry Brown, and Coty Brown, Arkansas residents, are the partners of Legacy Farms Partnership ("Legacy Farms"), in Lonoke County, Arkansas. At all times relevant to this action, they and Legacy Farms, were long-grain rice producers in the State of Arkansas. In this action, the partners of Legacy Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

5. Lynn Gene, Inc., Eifling Investment Co., Sam Don, Inc., Rebecca Lynne, Inc., Clayton Lee, Inc., Don L. Eifling, Inc., and D. Lynn Eifling, Inc., Arkansas corporations, are the partners of Don Eifling & Son, a partnership based in Lincoln County, Arkansas. At all times relevant to this action, they and Don Eifling & Son, were long-grain rice producers in the State of Arkansas. In this action, the partners of Don Eifling & Son seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

6. Jeffrey Keeter, an Arkansas resident, Robert J. Venable, an Arkansas resident, and Robbin V. Tuller, a Texas resident, are the partners of RJR Farms, a partnership located in Lincoln County, Arkansas. At all times relevant to this action, they and RJR Farms were long-grain rice producers in the State of Arkansas. In this action, the partners of RJR Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

7. Keeter Farms, Inc. is an Arkansas corporation located in Lincoln County, Arkansas. At all times relevant to this action, Keeter Farms, Inc. was a long-grain rice producer in the State of Arkansas. In this action, Keeter Farms, Inc. seeks to represent and pursue claims on its own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

8. P & K, Inc. is an Arkansas corporation located in Lincoln County, Arkansas. At all times relevant to this action, P & K, Inc., was a long-grain rice producer in the State of Arkansas. In this action, P & K, Inc. seeks to represent and pursue claims on its own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

9. Jim Penn and Joe Penn, Arkansas residents, are the partners of Penn Brothers Partnership, located in Portia, Lawrence County, Arkansas. At all times relevant to this action, they and Penn Brothers Partnership were long-grain rice producers in the State of Arkansas. In this action, the partners of Penn Brothers Partnership seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

10. Penn Brothers Landleveling, Inc. is an Arkansas corporation located in Portia, Lawrence County, Arkansas. At all times relevant to this action, Penn Brothers Landleveling, Inc. was a long-grain rice producer in the State of Arkansas. In this action, it seeks to represent and pursue claims on its own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

11. Denton Farms, Inc. is an Arkansas corporation located in Portia, Lawrence County, Arkansas. At all times relevant to this action, Denton Farms, Inc. was a long-grain rice producer in the State of Arkansas. In this action, it seeks to represent and pursue claims on its

own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

12. Frank Binkley, an Arkansas resident, is an individual who resides and farms in Hoxie, Lawrence County, Arkansas. At all times relevant to this action, Mr. Binkley was a long-grain rice producer in the State of Arkansas. In this action, Mr. Binkley seeks to represent and pursue claims on his own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

13. Ronald Catt, an Arkansas resident, is an individual who resides and farms in Corning, Clay County, Arkansas. At all times relevant to this action, Mr. Catt was a long-grain rice producer in the State of Arkansas. In this action, Mr. Catt seeks to represent and pursue claims on his own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

14. Jerry Catt and Donna Catt are individuals who reside and farm in Corning, Clay County, Arkansas. At all times relevant to this action, Jerry and Donna Catt were long-grain rice producers in the State of Arkansas. In this action, Jerry and Donna Catt seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

15. Rudy Hufford and Cheryl Hufford, Arkansas residents, are the partners of Hufford Farms, based in Paragould, Greene County, Arkansas. At all times relevant to this action, they and Hufford Farms were long-grain rice producers in the State of Arkansas. In this action, the partners of Hufford Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

16. Paul and Joan Stratton are individuals who reside and farm in Walnut Ridge, Lawrence County, Arkansas. At all times relevant to this action, Paul and Joan Stratton were long-grain rice producers in the State of Arkansas. In this action, they seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

17. Mark Williams and Pamela G. Williams are individuals who reside and farm in Corning, Clay County, Arkansas. At all times relevant to this action, Mark and Pamela Williams were long-grain rice producers in the State of Arkansas. In this action, they seek to represent and pursue claims on their own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

18. Guy Brinkley is an individual who resides in Piggott Arkansas and who owns a portion of the land farmed by Mark and Pamela Williams. In this action, he seeks to represent and pursue claims on his own behalf and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

19. Aylene Williams, an Arkansas resident, is the trustee for the J.L. Williams Family Trust, an Arkansas trust, that owns a portion of the land farmed by Mark and Pamela Williams. In this action, she seeks to represent and pursue claims on behalf of the J.L. Williams Family Trust, and on behalf of (a) the Arkansas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

20. The partners of Legacy Farms, the partners of Don Eifling & Son, the partners of RJR Farms, the partners of Penn Brothers Partnership, Keeter Farms, Inc., P & K, Inc., Penn Brothers Landleveling, Inc., Denton Farms, Inc., Frank Binkley, Ronald Catt, Jerry and Donna Catt, Rudy and Cheryl Hufford (d/b/a Hufford Farms), Paul and Joan Stratton, Mark and Pamela

Williams and Guy Brinkley and Aylene Williams as trustee for the J.L. Williams Family Trust are hereinafter collectively referred to as the "Arkansas Plaintiffs."

21. Robert D. Thibodeaux, Randy K. Thibodeaux, and Steven P. Thibodeaux, Louisiana residents, are the partners of Thibodeaux Brothers Farms ("Thibodeaux Brothers"), a farming partnership based in Midland, Louisiana. At all times relevant to this action, they and Thibodeaux Brothers were long-grain rice producers in the State of Louisiana. In this action, the partners of and Thibodeaux Brothers seek to represent and pursue claims on their own behalf and on behalf of (a) the Louisiana State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

22. Thibodeaux Land Co., Inc. ("Thibodeaux Land") is a Louisiana farming corporation based in Midland, Louisiana. At all times relevant to this action, it was a long-grain rice producer in the State of Louisiana. In this action, Thibodeaux Land seeks to represent and pursue claims on its own behalf and on behalf of (a) the Louisiana State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

23. Leland Dale Vidrine, Sr. and Cynthia Faye Lormand Vidrine are individuals domiciled in the Parish of Evangeline, State of Louisiana, and doing business under the name of Leland Vidrine Farm ("Vidrine Farm") based in Ville Platte, Louisiana. At all times relevant to this action, they and Vidrine Farm were long-grain rice producers in the State of Louisiana. In this action, they and Vidrine Farm seek to represent and pursue claims on their own behalf and on behalf of (a) the Louisiana State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

24. Danny Deshotels, Errol Deshotels, Benjamin Deshotels, Patrick Deshotels, and Julie E. Deshotels, Louisiana residents, and Woodside Farms, Inc. (a Louisiana corporation), D&B Plantation, LLC (a Louisiana limited liability company), P&B Plantation, LLC (a

Louisiana limited liability company), and P&E Plantation, LLC (a Louisiana limited liability company), are the partners of Deshotels Farm Management ("Deshotels Farm"), a farming partnership based in Lettsworth, Louisiana. At all times relevant to this action, they and Deshotels Farm were long-grain rice producers in the State of Louisiana. In this action, the partners of and Deshotels Farm seek to represent and pursue claims on their own behalf and on behalf of (a) the Louisiana State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

25. Thibodeaux Brothers, the partners of Thibodeaux Brothers, Deshotels Farm, the partners of Deshotels Farm, the operators of Vidrine Farm, and Thibodeaux Land are hereinafter referred to collectively as the Louisiana Plaintiffs.

26. Peter H. Dulaney and Virginia V. Dulaney, Mississippi residents, are the partners of Peter Dulaney Farms, a farming partnership based in Tunica County, Mississippi. At all times relevant to this action, they and Peter Dulaney Farms were long-grain rice producers in the State of Mississippi. In this action, the partners of and Peter Dulaney Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Mississippi State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

27. Brian Byrd, Judy Byrd, Jarett Byrd, and Jeremy Byrd, Mississippi residents, are the partners of Byrd Farms Partnership ("Byrd Farms"), a farming partnership based in Sunflower County, Mississippi. At all times relevant to this action, they and Byrd Farms were long-grain rice producers in the State of Mississippi. In this action, the partners of and Byrd Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Mississippi State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

28. Gary F. Goode, a Mississippi resident, and Trey Farms, Inc., MK Farms, Inc., ANNA Farms, Inc., and 3G Farms, Inc., Mississippi corporations, are the partners of Black Dog Planting Company ("Black Dog"), a farming partnership based in Lyon, Mississippi. At all times relevant to this action, they and Black Dog were long-grain rice producers in the State of Mississippi. In this action, the partners of and Black Dog seek to represent and pursue claims on their own behalf and on behalf of (a) the Mississippi State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

29. Gary Pongetti, a Mississippi resident, and Pongetti Farms, Inc. and EBP, Inc., Mississippi corporations, are the partners of Pongetti Farms Partnership II ("Pongetti Farms"), a farming partnership based in Cleveland, Bolivar County, Mississippi. At all times relevant to this action, they and Pongetti Farms were long-grain rice producers in the State of Mississippi. In this action, the partners of and Pongetti Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Mississippi State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

30. Phillip E. Rizzo, Phillip A. Rizzo, Paul R. Rizzo, John Michael Rizzo, Mississippi residents, and Kimball Lake, Inc., Snake Creek, Inc., and Bogue, Inc., Mississippi corporations, are the partners of Rizzo Farms Joint Venture ("Rizzo Farms"), a farming partnership located in Bolivar County, Mississippi. At all times relevant to this action, they and Rizzo Farms were long-grain rice producers in the State of Mississippi. In this action, the partners of and Rizzo Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Mississippi State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

31. The partners of and Peter Dulaney Farms, the partners of and Byrd Farms, the partners of and Black Dog, the partners of and Pongetti Farms, and the partners of and Rizzo Farms are hereinafter referred to collectively as the Mississippi Plaintiffs.

32. Kenneth Bell and Zachary Bell, Missouri residents, are the partners of Bell Planting Company, a farming partnership located in Bell City, Stoddard County, Missouri. At all times relevant to this action, they and Bell Planting Company were long-grain rice producers in the State of Missouri. In this action, the partners of Bell Planting Company seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

33. Carolyn Bell, Charles Bell, Edwin Groves, Erin Bell, Nathan Bell, A.L. Blair, Missouri residents, and Bell AGCO LLC, Shawan Farms LLC, NAKE L.L.C., ZANA L.L.C., Missouri limited liability companies, are the partners of Bottoms Farms, a farming partnership located in Dexter, Stoddard County, Missouri. At all times relevant to this action, they and Bottoms Farms were long-grain rice producers in the State of Missouri. In this action, the partners of Bottoms Farm seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

34. N E Z, Inc. is a Missouri corporation located in Bell City, Stoddard County, Missouri. At all relevant times to this action, it was a long-grain rice producer in the State of Missouri. In this action, N E Z, Inc. seeks to represent and pursue claims on its own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

35. David Haggard and Judith Haggard d/b/a Haggard Farms are Missouri citizens who reside and farm in Kennett, Missouri. At all times relevant to this action, David and Judith

Haggard were long-grain rice producers in the State of Missouri. In this action, they seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

36. Russ Hoggard and Russell D. Hoggard, Missouri residents, are the partners of Hoggard Farms, a farming partnership, located in Portageville, New Madrid/Pemiscot Counties, Missouri. At all times relevant to this action, they and Hoggard Farms were long-grain rice producers in the State of Missouri. In this action, the partners of Hoggard Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

37. B.W. & S.W. Farms, L.L.C., B.W. & D.W. Farms, L.L.C., and D.W. & S.W. Farms, L.L.C. are Missouri limited liability companies located in Essex, Stoddard County, Missouri. The members of B.W. & S.W. Farms, L.L.C. are Wilber Bradford Wheeler ("Brad Wheeler") and James Scott Wheeler ("Scott Wheeler"). The members of B.W. & D.W. Farms, L.L.C. are Brad Wheeler and David Keith Wheeler ("David Wheeler"). The members of D.W. & S.W. Farms, L.L.C. are David Wheeler and Scott Wheeler, all Missouri citizens who reside in Essex, Missouri. At all times relevant to this action, B.W. & S.W. Farms, L.L.C., B.W. & D.W. Farms, L.L.C. and D.W. & S.W. Farms, L.L.C. were long-grain rice producers in the State of Missouri. In this action, they seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

38. Kevin Cunningham is an individual who resides and farms in Fisk, Butler County, Missouri. At all times relevant to this action, Kevin Cunningham was a long-grain rice producer

in the State of Missouri. In this action, he seeks to represent and pursue claims on his own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

39. Scott E. Cunningham and Barbara K. Cunningham are individuals who reside and farm in Fisk, Butler County, Missouri. At all times relevant to this action, Scott E. and Barbara K Cunningham were long-grain rice producers in the State of Missouri. In this action, they seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

40. William C. Hunter and Laura Collins are individuals residing in Sikeston, New Madrid, Scott Counties, Missouri, and are the partners of Willow & Company located in Bell City, Stoddard County, Missouri. At all times relevant to this action, they and Willow & Company were long-grain rice producers in the State of Missouri. In this action, they seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

41. Samuel M. Hunter, a Missouri resident, is the trustee of Frances M. Hunter Insurance Trust, William P. Hunter Marital Trust, and W.P. Hunter Insurance Trust, all Missouri trusts. At all times relevant to this action, these Trusts, along with Toppertown, Inc., a Missouri corporation, and Samuel M. Hunter and David B. Dalton, partners of D.P.S. Farm Enterprises, a Missouri farming partnership, were the owners of land located in Bell City, Stoddard County, Missouri on which long-grain rice was farmed by Willow & Company. In this action, Samuel M. Hunter, as trustee for Frances M. Hunter Insurance Trust, William P. Hunter Marital Trust, and W.P. Hunter Insurance Trust, and Toppertown, Inc., and Samuel M. Hunter and David B.

Dalton, partners of D.P.S. Farm Enterprises, seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

42. J.H. Hunter Farms LLC is a Missouri limited liability company located in Essex, Stoddard County, Missouri. The member of J.H. Hunter Farms LLC is John Hunter, a Missouri citizen who resides in Essex, Missouri. At all times relevant to this action, J.H. Hunter Farms LLC was a long-grain rice producer in the State of Missouri. In this action, J.H. Hunter Farms LLC seeks to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

43. Peter Rost and Paula Rost are Missouri citizens residing in and doing business as Peter Rost Farms located in New Madrid, New Madrid County, Missouri. At all times relevant to this action, Peter and Paula Rost, d/b/a Peter Rost Farms, were long-grain rice producers in the State of Missouri. In this action, they seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

44. Peter Rost, Jr. is a Missouri citizen residing in and doing business as Peter Rost Jr. Farms located in New Madrid, New Madrid County, Missouri. At all times relevant to this action, Peter Rost, Jr. d/b/a Peter Rost Jr. Farms, was a long-grain rice producer in the State of Missouri. In this action, he seeks to represent and pursue claims on his own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

45. Peter Rost and Peter Rost, Jr., Missouri residents, are the partners of Rost & Rost Farms, a farming partnership located in New Madrid, New Madrid County, Missouri. At all

times relevant to this action, they and Rost & Rost Farms were long-grain rice producers in the State of Missouri. In this action, the partners of Rost & Rost Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

46. Johnny (Keith) Scott is an individual who resides and farms in Hornersville, Dunklin County, Missouri. At all times relevant to this action, Mr. Scott was a long-grain rice producer in the State of Missouri. In this action, he seeks to represent and pursue claims on his own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

47. Gordon (Lee) Wright is an individual who resides and farms in Qulin, Butler County, Missouri. At all times relevant to this action, Mr. Wright was a long-grain rice producer in the State of Missouri. In this action, he seeks to represent and pursue claims on his own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

48. Christopher Lee Wright is an individual who resides and farms in Qulin, Butler County, Missouri. At all times relevant to this action, Mr. Wright was a long-grain rice producer in the State of Missouri. In this action, he seeks to represent and pursue claims on his own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

49. Wright Farms of Butler Co., Inc. is a Missouri corporation located in Qulin, Butler County, Missouri. At all times relevant to this action, Wright Farms of Butler Co., Inc., was a long-grain rice producer in the State of Missouri. In this action, it seeks to represent and pursue claims on its own behalf and on behalf of (a) the Missouri State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

50. The partners of Bell Planting Company, the partners of Bottoms Farms, the partners of Hoggard Farms, N E Z, Inc., B.W. & S.W. Farms, L.L.C., B.W. & D.W. Farms, L.L.C., D.W. & S.W. Farms, L.L.C., David and Judith Haggard, Kevin Cunningham, Scott E. and Barbara K. Cunningham, the partners of Willow & Company, Samuel M. Hunter, as trustee for Frances M. Hunter Insurance Trust, William P. Hunter Marital Trust, and W.P. Hunter Insurance Trust, Toppertown, Inc., and the partners of D.P.S. Farm Enterprises, J.H. Hunter Farms LLC, Peter and Paula Rost, d/b/a Peter Rost Farms, Peter Rost Jr. d/b/a Peter Rost Jr. Farms, Peter Rost and Peter Rost Jr., as partners of Rost & Rost Farms, Johnny (Keith) Scott, Gordon (Lee) Wright, Christopher Lee Wright, and, Wright Farms of Butler Co., Inc. are hereinafter collectively referred to as the Missouri Plaintiffs.

51. Richard Lee Hafernick and Robbie Hafernick, d/b/a Lee and Robbie Hafernick Farms ("Hafernick Farms"), are residents of Edna, Jackson County, Texas. At all times relevant to this action, they were long-grain rice producers in the State of Texas. In this action, Richard Lee and Robbie Hafernick d/b/a Hafernick Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Texas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

52. Robert Shoemate, Patricia Shoemate, Harley Shoemate and Grace Shoemate, Texas residents, are the partners of Shoemate Brothers Farms, a farming partnership based in Edna, Jackson County, Texas. At all times relevant to this action, they and Shoemate Brothers Farms were long-grain rice producers in the State of Texas. In this action, the partners of and Shoemate Brothers Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Texas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

53. James Gentz, Jr. and Carol Barton Gentz ("Mr. and Mrs. Gentz") are Texas residents who farm in Hamshire, Chambers County, Texas. At all times relevant to this action, Mr. and Mrs. Gentz were long-grain rice producers in the State of Texas. In this action, Mr. and Mrs. Gentz seek to represent and pursue claims on their own behalf and on behalf of (a) the Texas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

54. Larry Buddy DeVillier, Jr. is a Texas resident who farms in China, Texas and Winnie, Chambers County, Texas. At all times relevant to this action, Larry Buddy DeVillier, Jr, doing business as Larry and Buddy DeVillier and through DCQ Farm, Inc., a Texas farming corporation, was a long-grain rice producer in the State of Texas. In this action, he seeks to represent and pursue claims on his own behalf and own behalf of (a) the Texas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

55. DCQ Farm, Inc. is a Texas farming corporation. At all times relevant to this action, DCQ, Inc. was a long-grain rice producer in the State of Texas. In this action, it seeks to represent and pursue claims on its own behalf and own behalf of (a) the Texas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

56. John Gaulding and John M. Donaho, Texas residents, are the partners of Gaulding Farms, a farming partnership located in Chambers County, Texas. At all times relevant to this action, they and Gaulding Farms were long-grain rice producers in the State of Texas. In this action, the partners of and Gaulding Farms seek to represent and pursue claims on their own behalf and on behalf of (a) the Texas State Rice Producers Class (as defined below); and (b) the Five-State Rice Producers Class (as defined below).

57. Richard Lee and Robbie Hafernick, d/b/a Hafernick Farms, the partners of and Shoemate Brothers Farms, Mr. and Mrs. Gentz, Larry Buddy DeVillier (d/b/a Larry and Buddy DeVillier), DCQ, Inc., the partners of and Gaulding Farms are hereinafter collectively referred to as the Texas Plaintiffs.

B. Defendants

58. Bayer AG is a German corporation which, through its subsidiaries and affiliates over which it exerts substantial control, engages in, among other things, the research, manufacture, testing, marketing and sale of agricultural chemicals and technologies, including the genetically-modified rice seeds or rice traits at issue here.

59. Bayer CropScience AG, a wholly-owned subsidiary of Defendant Bayer AG, is a German corporation which, through its subsidiaries and affiliates over which it exerts substantial control, engages in the research, manufacture, testing, marketing, and sale of agricultural chemicals and technologies, including the genetically-modified rice seeds or rice traits at issue here.

60. Upon information and belief, Bayer CropScience AG recently merged with Bayer CropScience GmbH. As a result of that merger, Bayer CropScience AG has succeeded to and assumed all debts, commitments, and liabilities of Bayer CropScience GmbH.

61. Prior to its believed recent merger with Bayer CropScience AG, Bayer CropScience GmbH was a wholly-owned subsidiary of Bayer AG.

62. Bayer CropScience GmbH contracted with Louisiana State University to test rice containing the genetically-modified rice seed traits at issue here. Bayer CropScience GmbH currently is the registered owner in the United States of the "Liberty Link" trademark for certain agricultural products, including the genetically-modified rice seeds or rice traits at issue here.

63. Bayer BioScience NV, a wholly-owned subsidiary of Bayer AG, is a Belgian corporation involved in the research, development, and marketing of seeds, including the genetically-modified rice or rice traits at issue here. Founded in 1982 as a spin-off of the University of Ghent, Belgium, Bayer BioScience, NV is one of the main innovation and research centers for Bayer, as defined in Paragraph 41, below. Bayer BioScience NV is the recorded assignee of at least three U.S. patents related to the genetically-modified rice seeds or rice traits at issue here, corresponded with individuals at Louisiana State University, and was the entity to which all unused rice test seed was purportedly returned.

64. Bayer CropScience LP is a Delaware limited partnership with its principal place of business at 2 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Bayer CropScience LP is the successor, by name change, to Aventis CropScience USA, LP – which occurred when Bayer AG acquired Aventis's crop science business in or about October 2001.

65. Bayer CropScience LP, itself and through its parent, subsidiary, affiliated, and predecessor entities – including all of the defendants listed herein – produces or has produced, *inter alia*, the genetically-modified rice seeds or the seed traits at issue here.

66. Bayer CropScience LP's general partner is currently Bayer CropScience Holding, Inc., a Delaware corporation with its principal place of business in Research Triangle Park, North Carolina. Prior to its name change, Bayer CropScience LP's general partner was Aventis CropScience USA Holding, Inc. Bayer CropScience LP's limited partners are currently Bayer CropScience, Inc., a New York corporation with its principal place of business in Research Triangle Park, North Carolina, and Bayer CropScience, LLC, a Delaware limited liability company with its principal place of business in Research Triangle Park, North Carolina. Bayer Corporation is the sole owner of Bayer CropScience, LLC.

67. StarLink Logistics, Inc. ("SLLI"), formerly known as Aventis CropScience USA Holding, Inc., is a Delaware corporation with its principal place of business at One Copley Parkway, Suite 309, Morrisville, North Carolina.

68. At all times relevant to this action, there has existed, and presently exists, a unity of interest in ownership between Bayer AG, Bayer CropScience AG, Bayer CropScience GmbH, Bayer BioScience NV, Bayer Corporation, and Bayer CropScience LP. These defendants are the alter-egos of one another and, in the case of the parent corporations, exercised decision-making and control over their subsidiaries with respect to the conduct giving rise to Plaintiffs' claims. Alternatively, they have constituted a single business enterprise. In the alternative and without waiving the foregoing, one or more of Bayer CropScience LP, Bayer CropScience Inc., Bayer CropScience Holding, Inc., Bayer CropScience LLC, Bayer BioScience NV, and BCS Holding, SA, are agents of either or both Bayer CropScience AG and Bayer AG and that, in turn, Bayer CropScience AG is an agent of Bayer AG.

69. Bayer AG, Bayer CropScience AG, Bayer CropScience GmbH, Bayer BioScience NV, Bayer CropScience LP and SLLI are hereinafter collectively referred to as "Bayer" or "Defendants," unless otherwise specified.

IV. FACTUAL ALLEGATIONS

A. Rice Cultivation in the United States

70. Rice has been grown in what is now the United States for more than 300 years.

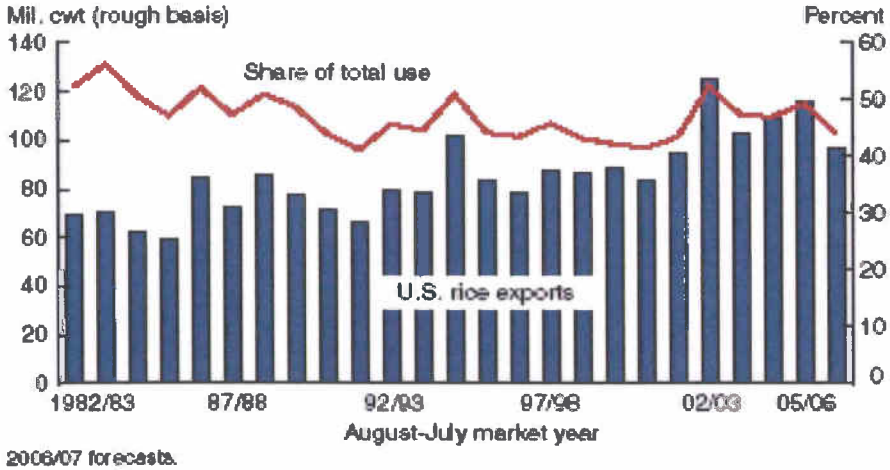
71. Marketed as a commodity both domestically and abroad, with approximately fifty percent of all U.S.-grown rice sold for export, rice sales generated close to $1.9 billion in revenues for U.S. rice producers during the 2006 crop year. According to the United States

Department of Agriculture ("USDA"), the United States is one of the largest exporters of rice in the world, supplying approximately 13 percent of the world's rice trade.

72. The U.S. rice marketing system is commodity-based, which means that rice grown throughout the U.S. is harvested, gathered, commingled, consolidated, and otherwise shipped from the thousands of farms upon which it is cultivated, through local, regional, and terminal distribution centers. To maintain the stability of the marketing relationship, it is crucial that the U.S. rice supply maintain the highest standards of purity and integrity. Prior to the incidents giving rise to this lawsuit, the U.S. rice market a reputation for purity and integrity.

73. Because nearly half of the U.S. rice crop is exported annually, *see* Figure 13 (USDA graph), the global rice market has profound impacts on U.S. price levels. The USDA expects that as a result of rising yields and only a modest expansion forecasted in the domestic market over the next decade, exports will remain critical to the economic viability of the U.S. rice market.

Figure 13
Exports typically account for slightly less than one-half of total use



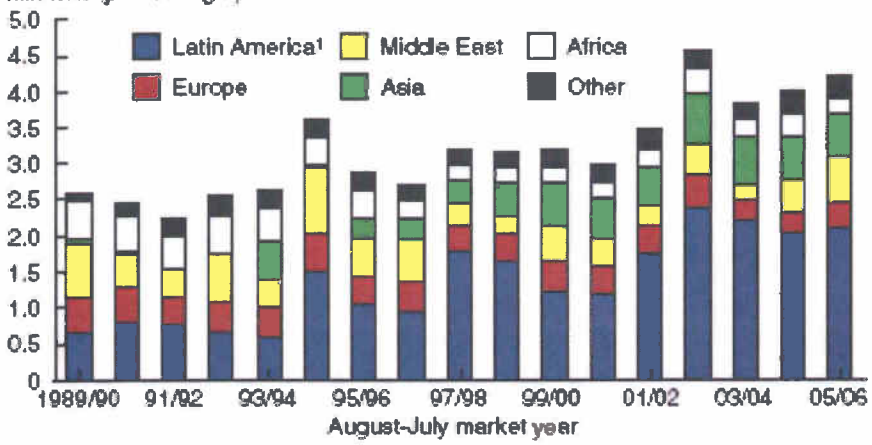
2006/07 forecasts.

Sources: 1982/83-2003/04, *2005 Rice Yearbook*, U.S. Department of Agriculture, Economic Research Service. 2004/05-2006/07, *World Agricultural Supply and Use Estimates*, U.S. Department of Agriculture, World Agricultural Outlook Board.

74. Mexico, Central America, the Caribbean, the Middle East, sub-Sahara Africa and

the European Union ("EU") are the largest markets for U.S. long-grain rice. *See* Figure 13 (USDA graph). Prior to the events giving rise to this litigation, the 25-country EU bloc alone imported an average of approximately 20,000 metric tons of long-grain rice from the United States each month. For example, in 2005, the U.S exported 224,000 metric tons of rice – worth $813 million, of which 198,000 tons was long-grain rice – to the 25-country EU.

Figure 6
Latin America is the largest market for U.S. rice exports



¹Includes Mexico.
Source: U.S. Department of Agriculture, Foreign Agricultural Service, FASonline, Foreign Agricultural Trade of the United States.

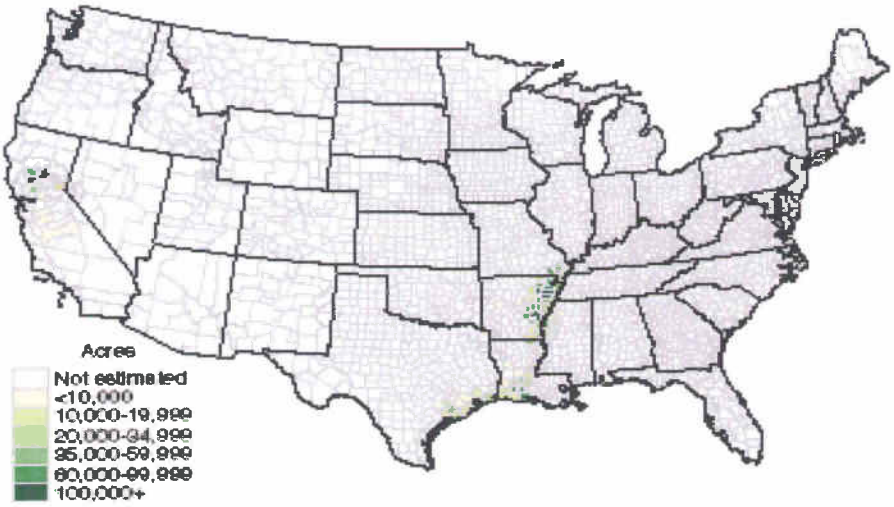
75. In the United States, rice is referred to by length of grain. Long-grain rice, grown almost exclusively in the South, accounts for nearly seventy-five percent of U.S. rice production and about eighty percent of the U.S.'s total rice exports. Medium-grain rice, grown both in California and the South, accounts for almost a fourth of the total U.S. rice production and nearly all of California's rice crop. Short-grain rice is grown mostly in California and accounts for one to two percent of the total U.S. rice crop.

76. Long-grain rice production in the United States is concentrated in five states: Arkansas, Missouri, Mississippi, Louisiana, and Texas. Arkansas, with more than fifty percent of U.S. rice acreage, produces more long-grain than any other state. Louisiana has the second

largest area devoted to rice and the second largest long-grain rice production. Missouri, Mississippi, and Texas rank third, fourth, and fifth, respectively, in both area and production of long-grain rice.

77. In the 2006 crop year, approximately 2,176,611 acres of long-grain rice were cultivated in the United States, with Arkansas cultivating 1,295,000 acres, Louisiana 331,903 acres, Missouri 214,000 acres, Mississippi 188,159 acres, and Texas 147,549 acres. *See* Figure 2 (USDA map).

Figure 2
All rice planted acres by county, 2004



U.S. Department of Agriculture, National Agricultural Statistics Service.

78. More than 34% of the approximately 2,176,611 acres of long-grain rice produced in the United States during the 2006 crop year was planted with Cheniere or BASF's Clearfield 131 ("CL 131"), two types of rice seed found to be contaminated by Bayer with LLRICE as a result of the conduct alleged herein.

B. Genetically-Modified Seeds and Seed Traits

79. Biotechnology has made it possible to introduce new genetic characteristics into

plant seeds. The genetic composition (or "genome") of a seed can be altered by transferring a transgenic "event" into the seed genome. An event contains, among other things, a specific gene that expresses a desirable characteristic in the seed. The insertion of a specific transgenic event into a seed alters or modifies a seed's genome, conferring a desired characteristic, or "trait," on the crops grown from the seed.

80. Genetically-modified seed traits are created through laboratory processes whereby genetic material from a foreign species is inserted into the Deoxyribonucleic acid ("DNA") of a traditional plant to effect a desired trait in the future generations of that plant.

81. In the United States, the first genetically-modified food product (a delayed-ripening tomato) was marketed in 1994. Since their advent and commercial introduction, genetically-modified seeds have been adopted by crop producers at unprecedented rates. During this time, genetically-modified seeds have become available for many crops, including long-grain rice, containing Bayer's regulated or otherwise restricted genetically-modified seed traits – two of which are LLRICE 601 and LLRICE 604 – and the rice seeds or crops containing those traits (collectively "LLRICE," unless otherwise noted), that caused the damages sought in this action.

82. Although the U.S. government has generally been receptive to using genetically-modified seed traits in food crops, its export partners, including the EU, Mexico, Canada, and Japan, have taken a contrary position, finding that genetic modification has not yet been proven safe and imposing tolerances, restrictions, and prohibitions on genetically-modified crops and foods.

C. Bayer's Genetically-Modified "Liberty Link" Rice Traits

83. Bayer's genetically-modified Liberty Link rice traits – including the LLRICE 601, LLRICE 604, LLRICE 06, and LLRICE 62 rice traits – were developed by AgrEvo, which

was acquired by Bayer's predecessor, Aventis CropScience USA, by genetically altering long-grain rice to become resistant to glufosinate, the active ingredient in Liberty® herbicide, another Bayer product.

84. Aventis – Bayer's predecessor – created its Liberty Link genetically-modified rice traits by inserting a *bar* gene from *Steptomyces hygroscopicus*, a bacterium, under the control of a 35S promoter sequence derived from cauliflower mosaic virus (35S CaMV) into the genome of commercial rice varieties. The *bar* gene encodes a phosphinothricin acetyltransferase ("PAT") enzyme that inactivates glufosinate ammonium, the active ingredient in Liberty® herbicide, thus making the genetically-modified organism tolerant to the herbicide. This allows rice growers to spray Liberty® herbicide over a genetically-modified Liberty Link rice field to kill all weeds, but not the rice plants grown from those Liberty Link rice seeds.

85. LLRICE 601 was first tested in greenhouse and field tests by Hoechst AG, the parent company of AgrEvo USA Company (Aventis's corporate predecessor), in Puerto Rico under USDA permits. Additional field testing of LLRICE 601 was conducted by Aventis in Puerto Rico, Arkansas, Louisiana, Mississippi, and Texas in 1998, 1999, 2000, and 2001. Following its acquisition of Aventis CropScience in or about 2001, Bayer continued to test and develop these genetically-modified rice traits.

86. As the owner of, and applicant for (either originally or as Aventis's successor), these genetically-modified rice seed traits, Bayer bore responsibility for their development, testing, handling, and use. Bayer's duties were non-delegable.

87. As genetically-modified products, LLRICE 06, LLRICE 62, LLRICE 601, and LLRICE 604 – and others – were subject to regulatory approval prior to commercialization. In 1999, AgrEvo USA sought and obtained the deregulation of LLRICE 06 and LLRICE 62 for

commercial release of those varieties. Neither AgrEvo, nor its successors Aventis or Bayer ever sold those or other genetically-modified rice traits to rice growers.

88. Prior to the August 2006 disclosure that Bayer had contaminated the U.S. rice supply with its regulated LLRICE 601 genetically-modified rice trait (*see infra*), neither Bayer nor its predecessors sought deregulation and commercialization of LLRICE 601. Bayer has never sought deregulation of LLRICE 604.

89. Bayer petitioned the USDA to deregulate LLRICE 601 only after Bayer disclosed that it had contaminated the U.S. rice supply with its LLRICE 601 genetically-modified rice seed trait. On November 24, 2006, the USDA agreed to deregulate LLRICE 601, notwithstanding Bayer's unswerving position that it had (and continues to have) no interest or intention of commercializing LLRICE 601.

90. Moreover, and as more fully discussed below, the USDA's after-the-fact deregulation of LLRICE 601 does not mitigate the injuries caused to Plaintiffs and Class members or lessen their damages because the U.S.'s rice export partners – including the EU, Russia, and many other countries (*see* chart following Paragraph 88, *infra*) continue to prohibit or otherwise refuse shipments of U.S. rice.

91. Neither Bayer nor its predecessors have ever sought deregulation of LLRICE 604 – Bayer's genetically-modified rice strain discovered in or about March 2007 to have infiltrated and contaminated BASF's Clearfield 131 ("CL 131") rice. This discovery led to the USDA's ban on the planting of CL 131 in the 2007 crop year and its further prohibition on the sale or use of CL 131 seeds held from the 2005 and 2006 crop years.

92. In testing, growing, transporting, storing, and disposing of LLRICE, Bayer failed to comply with responsible practices.

93. Bayer knew that it was virtually impossible as a practical matter to completely

isolate LLRICE from other varieties of rice and that rice seeds or crops containing those traits could cross-pollinate with other rice plants.

94. Furthermore, given the nature of the U.S. grain handling system, Bayer was aware that its genetically-modified rice could easily contaminate the entire U.S. rice crop and infiltrate the general U.S. rice supply unless strict precautionary measures were implemented and followed at all levels from planting through the distribution, transportation, storage, and disposal chain.

D. Bayer Knew LLRICE Could Easily Contaminate The U.S. Rice Supply Because Bayer Contaminated the U.S. Corn Supply Only a Few Years Ago

95. Bayer's contamination of the U.S. rice supply with LLRICE – upon which the claims in this action are based – was not the first time that Bayer or its corporate predecessor(s) contaminated the supply of a U.S. commodity crop. In 2000, it was disclosed that Aventis CropScience – Bayer CropScience's corporate predecessor – had contaminated the U.S. corn supply with StarLink corn, a corn seed genetically modified to contain a pesticidal protein, which the United States Environmental Protection Agency ("EPA") deemed unfit for human consumption.

96. Violating the terms of the limited registration that the EPA had issued for the use, handling, and commercialization of StarLink corn, Aventis, *inter alia*, failed to take the steps mandated to prevent cross-pollination with non-StarLink corn and the contamination of the U.S. corn supply. As Reuters reported on October 27, 2001, "the USDA felt strongly that Aventis had not undertaken enough measures to keep [StarLink] in proper channels." When it was disclosed that Aventis's conduct had led to the contamination of the U.S. corn supply, market reaction was swift and severe and U.S. corn producers sustained significant damages resulting therefrom.

97. Compared with the StarLink situation, Bayer's contamination of the U.S. rice supply with LLRICE is even more suspect and damaging in that, unlike StarLink, those traits

were neither deregulated nor approved for commercial use. Correspondingly, in light of the StarLink situation, Bayer was on notice of the dangers of improper testing and handling of unapproved genetically-modified seed traits and the foreseeable – indeed virtually inevitable – effects of supply chain contamination arising therefrom.

98. On May 22, 2001, the *Houston Chronicle* reported on problems relating to rice containing Bayer's genetically-modified rice traits. Steve Olafson, *Lacking EPA Approval, Millions of Pounds of Biotech Rice Go to Texas Landfill*, Houston Chron., May 22, 2001, at A13. The article reported that Aventis (Bayer's predecessor) had buried five million pounds of rice containing its genetically-modified rice traits to avoid contamination of the U.S. rice supply with its genetically-modified rice traits. *Id.*

99. In pertinent part, the article stated:

> One by one Monday, 18-wheel trucks began hauling away nearly 5 million pounds of genetically modified rice from a Brazoria County farm to a landfill for burial.
>
> The rice, the first to be genetically enhanced, was approved by the US Food and Drug Administration and the United States Department of Agriculture, but approval by the Environmental Protection Agency is pending. Without EPA approval, the rice cannot be served as food, say officials with Aventis CropScience which developed the biotech rice.
>
> The rice could have been marketed for human consumption had it remained in storage bins until the EPA granted approval, but ***Aventis wanted to be sure it could properly manage the experimental crop and track its location***, said Peg Cherny, a company spokeswoman.
>
> ***Aventis has been criticized for losing track of some of its genetically modified StarLink corn, which reached consumers before it had received government approval.***
>
> ***Aventis 'didn't want to create an issue' with its biotech rice***, Cherny said. The rice has been dubbed 'LibertyLink' because it is resistant to Liberty herbicide, a weedkiller commonly used on corn and canola.
>
> * * *

> Harvested last August, about 250,000 pounds will be retained for Aventis to use for testing. The rest, about 4.75 million pounds, will be buried.

Id. (emphasis added).

100. Confirming Aventis's (and, correspondingly, Bayer's) knowledge of the effect that contamination of the U.S. rice supply with its unapproved genetically-modified rice traits would have on the U.S. rice market – as well as its potential liability therefor – the Houston Chronicle reported, on May 18, 2001, that "***Aventis officials have said they don't want to risk the liability that could result if some of the rice should reach markets outside the United States***, ..." Steve Olafson, *Aventis to Bury Almost 5 Million Pounds of Biotech Rice in Texas Landfill*, Houston Chron., May 18, 2001, at A1 (emphasis added).

101. The Houston Chronicle articles illustrate that Aventis and, correspondingly, its successor, Bayer, were acutely aware of the problems that could arise if Bayer's genetically-modified rice traits were commingled with or otherwise contaminated the U.S. rice supply.

102. Despite this knowledge – and Defendants' 2001 claim that they "didn't want to create an issue" with their genetically-modified rice – as a result of the wrongful conduct alleged herein, Defendants caused the contamination of the U.S. rice supply – and are directly responsible for the damages arising therefrom – with their unapproved, genetically-modified rice traits – including LLRICE 601 and LLRICE 604.

E. Bayer's Contamination of the U.S. Rice Supply With LLRICE 601

103. On August 18, 2006, U.S. Secretary of Agriculture Mike Johanns (head of the USDA), announced that unapproved genetically-modified rice had been found in supplies destined for human consumption and export. Specifically, the USDA announced that Bayer CropScience had notified the USDA and the Food and Drug Administration that trace amounts of LLRICE 601 had been detected in samples taken from commercial long-grain rice.

104. That same day, Riceland Foods ("Riceland"), a producer-owned cooperative based in Stuttgart, Arkansas, issued its own "Statement Regarding Genetically Engineered Material in Rice." Press Release, Riceland Foods, Statement Regarding Genetically Engineered Material in Rice, (Aug. 18, 2006), *available at* http://www.riceland.com/about/ge_docs/Statement%20Regarding%20Material%20in%20Rice%20Updated.pdf (last visited May 16, 2007). In that statement, Riceland disclosed that rice samples from its five-state rice growing region – Arkansas, Louisiana, Mississippi, Missouri and Texas – had tested positive for LLRICE 601. USDA officials later said the LLRICE 601 had been found in bins in Arkansas and Missouri that held rice from the 2005 crop, although the rice in those bins might have come from other states.

105. In its August 18, 2006 statement, Riceland disclosed that the existence of a genetically-modified product in its rice had been discovered in January 2006 by one of its export customers. *Id.* Riceland stated that because genetically-modified rice was not grown commercially in the United States, it initially thought that a small amount of genetically-modified corn or another crop had been mixed in with rice, perhaps through the use of a common means of transportation.

106. In its statement, Riceland also disclosed that, by May 2006, it had found traces of LLRICE 601 contamination in grain storage bins at several sites. Riceland stated that it had advised Bayer of its findings. Bayer then confirmed those findings and found that the LLRICE 601 was present at levels equivalent to six out of every 10,000 grains. Despite this admission, Bayer did not report this contamination to the U.S. government until July 31, 2006.

107. The global markets reacted swiftly and severely to the USDA's August 2006 disclosure of the contamination of the U.S. rice supply with Bayer's unapproved LLRICE 601 genetically-modified seed trait. On or about August 20, 2006, Japan banned the import of long-

grain rice from the United States. In addition, on August 23, 2006, the EU announced that it would not accept further shipments of long-grain rice from the U.S. unless the rice is tested and certified to be free of genetically-modified grains. Under the EU's regulations, promulgated as a direct result of the LLRICE 601 contamination, U.S. rice exporters must expressly certify that their rice shipments are free from the contamination by Bayer's genetically-modified rice seed traits.

108. Specifically, the EU issued the following statement:

> The European Commission has today adopted a decision requiring imports of long-grain rice from the USA to be certified as free from the unauthorized GMO [genetically-modified organism ("GMO")] LL Rice 601. The decision has been taken in light of the recent announcement by the US authorities that this unauthorized GMO had been found in samples of commercial rice on the US market (see MEX/06/0821). The emergency measures adopted by the Commission today mean that, with immediate effect, only consignments of US long-grain rice that have been tested by an accredited laboratory using a validated testing method and accompanied by a certificate assuring the absence of LL Rice 601, can enter the EU.
>
> Markos Kyprianou, Commissioner for Health and Consumer Protection, said "We have strict legislation in place in the EU to ensure that any GM product put on the European market has undergone a thorough authorization procedure based on scientific assessment. There is no flexibility for unauthorized GMOs - these cannot enter the EU food and feed chain under any circumstances. The measures we have taken today will ensure that unauthorized GM rice is not inadvertently imported. EU consumers can rely on the high level of protection that our GM rules afford them."
>
> Under EU food safety legislation, only GMOs which have undergone a thorough scientific assessment and authorization procedure may be put on the EU market. The decision adopted today therefore aims to prevent the unauthorized LL Rice 601 from reaching EU consumers, by ensuring that only rice certified as free from this GMO enters the EU. The measures will enter into effect immediately, and are expected to be reviewed after 6 months.
>
> Member States[']' authorities are responsible for controlling the imports at their borders and for preventing any contaminated

> consignments from being placed on the market. In addition, they should carry out controls on products already on the market, to ensure that they are free from LL Rice 601. Business operators importing rice from the USA also have responsibility for ensuring that LL Rice 601 does not enter the EU food chain and that imports are certified as free from this unauthorized GMO, in accordance with the EU food law principle that operators are responsible for the safety of the food or feed that they place on the market.

Press Release, European Union, Commission Requires Certification of US Rice Exports to Stop Unauthorized GMO Entering the EU, (Aug. 23, 2006), *available at* http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1120 (last visited May 16, 2007).

109. In trading on the Chicago Board of Trade, the prices of rough rice futures contracts dropped significantly upon news of the contamination and resulting bans or new testing protocols promulgated by the EU, Japan, and other countries. After the news of the LLRICE 601 contamination emerged, the absorption of that negative information into the rice futures market caused those rice futures prices to drop approximately fourteen percent.

110. A trend analysis conducted by the U.S. Rice Producers Association showed that, in response to the USDA's August 18, 2006 disclosure of Bayer's contamination of the U.S. rice supply with LLRICE 601, rice futures prices dropped sharply. U.S. Rice Prodrs. Ass'n, *USRPA Updates USDA, Agriculture and Food Industry on Rice Price Trends after LL601*, The Rice Advocate, Oct. 20, 2006, at 1, 3. Indeed, according to that organization, the decline in rice futures prices on August 21-22, 2006 alone cost U.S. rice producers approximately $150 million.

111. Correspondingly, on August 22, 2006, the Wall Street Journal reported:

> Trading partners abroad began tightening their controls on American-grown rice after the discovery of an accidental release of a genetically modified variety unapproved for sale by U.S. regulators.
>
> Prices of rice futures contracts sank yesterday as countries such as Japan and South Korea moved to prevent the genetically modified

Part 2 of 4

To

Master Consolidated Amended Class Action Complaint

> rice from coming into their markets from the U.S., which counts on foreign customers to buy roughly half of its annual production.
>
> * * *
>
> In trading at the Chicago Board of Trade yesterday, the price of the rough rice contract for November delivery dropped 26 cents a hundredweight to settle at $9.84 a hundredweight.

Scott Kilman & Jane Von Reppert-Bismarck, *U.S. Trade Partners Back Off Rice*, Wall St. J., Aug. 22, 2006.

112. Global public awareness of the LLRICE 601 contamination crisis continued to spread. Despite the EU's ban on contaminated U.S. rice, the genetically-modified rice nevertheless entered the European market. On September 11, 2006, Reuters reported that LLRICE 601 had found its way into the EU's retail food sector. A Chief Executive of a German mill suspected to have sold the contaminated rice reportedly stated that this problem was not unique to his mill but, rather, was "a problem affecting every rice mill in Europe which has imported U.S. rice."

113. On September 14, 2006, Deutsche Welle updated its earlier reports that the European Commission had confirmed that EU imports of long-grain U.S. rice contained traces of LLRICE 601, some of which made it on to shelves of a German supermarket chain. *German Authorities Confirm GM Rice Findings*, Deutsche Welle, Sept. 14, 2006, *available at* http://www.dw-world.de/dw/article/0,2144,2171602,00.html (last visited May 16, 2007). All consignments that tested positive were recalled or withheld from the market. The same article also reported that France and Sweden had found LLRICE 601 in imported U.S. rice. Discoveries of LLRICE 601 contamination in U.S. rice exported to Europe continue to the present day.

114. On September 12, 2006, the Associated Press reported that tests by the European Commission on three barges containing rice from the United States had revealed the shipments

to contain LLRICE 601. EU officials stated that consignments found to contain illegal strains either were being destroyed or returned to the United States.

115. That same day, the Associated Press also reported that the largest supermarket chain in Switzerland had blocked the sale of U.S. long-grain rice after traces of LLRICE 601 were found. The same article reported that the European Commission said on September 12, 2006 that 33 of 162 samples of U.S. rice imports tested by European rice millers contained illegal genetically-altered strains and had been recalled or withheld from the market.

116. Other countries soon followed the lead of the EU and Japan in restricting their import of U.S. rice. For example, in December 2006, Russia halted the importation of U.S. rice. In March 2007, Mexico – the largest importer of U.S. rice – detained shipments of U.S. rice at the border, demanding that the rice be certified to be free of genetically-modified seed. Bayer's contamination of the U.S. rice market with LLRICE 601 has detrimentally affected all of the major U.S. rice export markets and has a negative impact on more than 60% of U.S. rice exports. In addition to the EU, Japan, Korea, and Russia, other nations that have imposed testing requirements or halted the importation of U.S. rice include Canada, the Philippines, Taiwan, and Iraq. *See generally* chart, *infra* (detailing outright bans and restrictions of imports of U.S. rice) (available at http://www.usarice.com/industry/communication/exportimpact.pdf).

U.S. RICE EXPORT MARKETS IMPACTED BY THE PRESENCE OF LLRICE601

2006 Ranking	Country	2006 Exports (million)	Importer Reaction to Presence of LL601	Trade Impacted
1	Mexico	$205	GM certification required; trade disrupted	X
2	Japan	$169	Testing required	X
3	Iraq	$145	Testing required; 1% sensitivity	X
4	Haiti	$112	Trade continues	
5	Canada	$107	Testing @ 0.5%	X
6	EU	$69	Trade in LG stopped	X
7	Saudi Arabia	$42	Trade continues; labeling for presence >1%	
8	Nicaragua	$40	Trade continues	
9	Cuba	$40	Trade disrupted; situation uncertain	X
10	Honduras	$39	Trade continues	
12	Korea	$32	Testing required; tender complications	X
16	Philippines	$20	Trade stopped	X
18	Taiwan	$20	Testing required	X
	Global	$1,289	Share of global exports impacted 1/	63%

1/ Additionally, Russia has banned all U.S. rice imports, and the UAE importers seeking a "GE free" certificate on U.S. rice.

117. As a result of these restrictions and prohibitions – which were directly caused by Bayer's conduct alleged herein – as of March 2007, total U.S. grain exports during 2006/2007 were down 476,000 metric tons, or approximately 20 percent, from one year earlier. David Bennett, *Ban on CL 131 Not Easy Decision*, Delta Farm Press, Mar. 6, 2007, *available at* http://deltafarmpress.com/rice/070306-cl131-ban/ (last visited May 17, 2007).

118. The vast majority of that drop-off involves long-grain rice – the rice at issue in this litigation – with U.S. long-grain milled rice exports being down 399,000 metric tons, or 35 percent, and U.S. long-grain brown rice exports being down 167,000 metric tons, or 77 percent, from the previous crop year. David Bennett, *Ban on CL 131 Not Easy Decision*, Delta Farm Press, Mar. 6, 2007, *available at* http://deltafarmpress.com/rice/070306-cl131-ban/ (last visited May 17, 2007).

119. Correspondingly, from the time of the August 18, 2006 disclosure of Bayer's contamination of the U.S. rice supply, December wheat futures contracts gained 95 cents per bushel, or up 25 percent; December corn futures contracts gained $1.2575 per bushel, or up 54 percent; and January soybean contracts gained $1.34 per bushel, or up 23 percent. In contrast, however, January 2007 rice futures contracts – "during one of the greatest grain rallies in history," according to Keith Glover, president and CEO of Producers Rice Mill, the second largest rice co-op in the state of Arkansas – dropped 20 cents per hundredweight, or two percent. Likewise, during that same time period, the USDA weekly world price, which is a reflection of world rice prices outside the United States for rice, rose fifteen percent since the August 18, 2006 contamination disclosure, while the March 2007 rough rice futures dropped five percent. David Bennett, *Ban on CL 131 Not Easy Decision*, Delta Farm Press, Mar. 6, 2007, *available at* http://deltafarmpress.com/rice/070306-cl131-ban/ (last visited May 17, 2007).

120. Rather than take steps to address the LLRICE 601 contamination problem by, among other things, (a) removing the contaminated rice from the U.S. rice supply; and (b) restoring global confidence in the purity and integrity of U.S. rice, Bayer concentrated, instead, on pursuing a retroactive deregulation of its LLRICE 601 trait and a finding that it was not harmful in any manner. Bayer filed its deregulation petition with the USDA on or about August 17, 2006 – one day prior to the public disclosure of Bayer's LLRICE 601 contamination of the U.S. rice supply.

121. On November 24, 2006, the USDA deregulated LLRICE 601. The USDA's November 2006 decision to retroactively deregulate LLRICE 601 at Bayer's request, which was rendered notwithstanding Bayer's continued assertion that it did not intend to commercialize rice containing that trait, had no effect on the above-referenced global bans and restrictions on the

importation, handling, and use of U.S. rice. Those bans and restrictions on U.S. rice remain in place around the world.

122. Bayer's conduct, as alleged herein, has tarnished and devalued the extraordinarily valuable perception in the world markets of the quality and purity of U.S. rice. This has further diminished the willingness of foreign markets to accept U.S. rice and the price they are willing to pay for it – and, on information and belief, in some instances resulted in the likely long-term loss of U.S. rice export markets to foreign competitors.

F. Bayer's Further Contamination of the U.S. Rice Seed Supply With LLRICE 601 and LLRICE 604

1. Bayer's Contamination of Cheniere Seed with LLRICE 601

123. The economic disaster visited upon rice producers – including Plaintiffs and the other members of the proposed Classes – by Bayer's contamination of the U.S. rice supply with LLRICE, is not limited to rice harvested for sale.

124. As a result of Bayer's conduct, two of the most heavily used and highest yielding rice seed varieties in the U.S. – Cheniere and CL 131 – have been contaminated by Bayer's genetically-modified rice seed traits and have thus been banned from planting in, at least, the 2007 crop year. This has led to significant rice seed shortages, increases in the price of rice seed, and has forced rice farmers to plant rice seed varieties with lower yields or less lucrative crops on land previously graded and groomed for rice production. For example, rice producers who have been forced to plant soybeans on land on which they would have planted rice but for Bayer's contamination of the rice seed supply stand to lose several hundred dollars per acre of revenue on the 2007 crop alone.

125. In September 2006, LLRICE 601 was found in the seed of Cheniere rice, a popular and high-yielding long-grain variety planted throughout the southern United States. In

November 2006 – approximately three months after the public disclosure of Bayer's contamination of the U.S. rice supply with LLRICE 601 – the Arkansas State Plant Board unanimously recommended that the State of Arkansas ban the planting of Cheniere rice in 2007. Soon thereafter, on December 28, 2006, the Arkansas State Plant Board passed new regulations that ban the planting of Cheniere rice in the state in 2007 and 2008, and require testing of all seed for the LLRICE trait at the 0.01% level (*i.e.*, one grain out of every 10,000). This ban – directly caused by Bayer's conduct – left rice producers with the unenviable choice of planting less desirable rice varieties or planting less profitable crops on their land. Similar prohibitions were adopted throughout the rice belt, with substantially similar effects and results.

2. Bayer's Contamination of CL 131 Seed with LLRICE 604

126. Bayer's contamination of the U.S. rice supply was not limited to that caused by its LLRICE 601 genetically-modified rice trait. In early 2007, it was disclosed that Bayer had further contaminated the U.S. rice seed supply with its LLRICE 604 genetically-modified rice seed trait – a regulated rice trait that was not approved for commercial use or dissemination at any time.

127. Independent testing by the Arkansas State Plant Board in January 2007 indicated that CL 131 rice seed – a non-genetically-modified rice seed created and marketed by BASF and designed to combat "red rice" weed problems – tested positive for contamination by an unapproved genetically-modified rice seed trait. Bayer's LLRICE 604 genetically-modified seed trait was later disclosed as the source of that contamination.

128. The non-genetically-modified, herbicide-tolerant rice trait found in CL 131 was created and developed by BASF Ag Products, a Bayer competitor. BASF first registered this trait with the USDA in 2001 and fully released it for production and commercial sale in 2002.

CL 131 is designed to resist and control red rice, a weed that poses a substantial threat to U.S. rice producers. By 2006, CL 131 comprised approximately 34% of all rice planted in Louisiana.

129. Following the Arkansas State Plant Board's CL 131 contamination findings, the Animal and Plant Health Inspection Service of the USDA ("APHIS") conducted its own tests on CL 131 and, in or about early March 2007, confirmed that trace levels of genetically-modified material were present in CL 131 rice seed.

130. On March 2, 2007 the Arkansas State Plant Board banned the planting of CL 131 rice seed in the state. Shortly thereafter, on March 4, 2007, APHIS issued an Emergency Action Notification ("EAN") with respect to CL 131 rice seed. In its March 5, 2007 press release, APHIS described the then-indefinite hold being placed on the CL 131 rice that Bayer had contaminated with LLRICE:

> [APHIS] is taking action to prevent the planting and distribution of a long-grain rice seed known as Clearfield CL131 because testing by a private company has revealed the possible presence of trace levels of genetic material not yet approved for commercialization.
>
> APHIS began issuing emergency action notifications (EANs) yesterday, March 4, to inform distributors that this seed, scheduled for planting this spring, must be held until APHIS can verify and identify the presence of additional genetic material. APHIS directed distributors to begin notifying producers yesterday. Additional EANs are being issued to affected producers as they are identified.
>
> APHIS is taking this action because the genetic material detected in Clearfield CL131 seed might be regulated, in which case it would not be approved for commercial use. The issuance of EANs will keep any additional CL131 seed from being planted until a determination can be made concerning the identity of this genetic material and the appropriate risk assessment can be conducted. USDA, through its own testing, is in the process of confirming the results reported by BASF Corporation.
>
> This action is prompted by test results informally reported to APHIS by Horizon Ag last Wednesday evening, with written results being provided to APHIS by BASF Corporation and Horizon Ag on Thursday. Clearfield is a registered trademark of BASF. Clearfield

> CL131 was not developed as a genetically engineered product. Horizon Ag is licensed by BASF Corporation to market this seed. Both companies are fully cooperating with APHIS.

News Release, USDA Animal & Plant Inspection Service, Statement by Dr. Ron DeHaven Regarding APHIS Hold on Clearfield CL131 Long-Grain Rice Seed, (Mar. 5, 2007), *available at* http://www.aphis.usda.gov/newsroom/content/2007/03/ge_riceseed_statement.shtml (last visited May 16, 2007).

131. Four days later, on March 9, 2007, APHIS issued an update to its prior CL 131 announcement, confirming the presence of unapproved genetically-modified materials therein and prohibiting further distribution or planting of 2005, 2006, or 2007 CL 131 rice seed, stating, *inter alia*:

> Testing by [APHIS] has confirmed the presence of trace levels of genetic material not yet approved for commercialization in Clearfield 131 (CL131) rice seed. ***Based on these test results, further distribution or planting of 2005, 2006, or 2007 registered or certified CL131 seed is prohibited. This seed is not an option for planting this crop season.***
>
> These test results confirm results received from private testing that were announced on Monday, March 5.
>
> ***APHIS is issuing emergency action notifications (EANs) to distributors of 2005, 2006, or 2007 registered or certified CL131 rice seed--and producers who are known to have received it – to stop the further distribution and planting of this seed. And, APHIS is working with the rice industry to inform distributors and farmers with saved CL131 rice seed from prior crop years that they cannot further distribute or plant it.***
>
> ***Producers who have already planted CL131 seed this season prior to this announcement have several options, including treating with an herbicide or mechanically destroying the plants after emergence. A different variety of rice or a broadleaf crop such as soybeans can then be planted in its place.*** For further information about these options, please contact Thomas Sim, Director of Regulatory Operations for APHIS' Biotechnology Regulatory Services program, at (301) 734-7324.

> APHIS will provide additional information next week regarding options for any producers or distributors currently holding saved CL131 seed from previous crop years.

News Release, USDA Animal & Plant Inspection Service, Update for Rice Industry Regarding Clearfield 131 Long-Grain Rice Seed, (Mar. 9, 2007), *available at* http://www.aphis.usda.gov/newsroom/content/2007/03/CL131update3-9-07.shtml (last visited May 16, 2007) (emphasis added). APHIS further required that the seed be kept separate from other rice seed to prevent any mixing, and that it be kept in a secured area marked "DO NOT SELL OR DISTRIBUTE."

132. On March 22, 2007, APHIS announced that the genetically-modified material contaminating the CL 131 seeds was Bayer's LLRICE 604 genetically-modified rice seed trait – a regulated seed trait, of the same lineage as Bayer's LLRICE 601 trait, and not approved for commercial use or dissemination of any kind. News Release, USDA Animal & Plant Inspection Service, USDA Identifies Safe Protein in Clearfield 131 Rice Seed, (Mar. 22, 2007), *available at* http://www.aphis.usda.gov/newsroom/content/2007/03/protein_clearfield131rice.shtml (last visited May 16, 2007).

133. In so concluding, APHIS reiterated its prohibition on the distribution and planting of CL 131, stating, *inter alia*:

> At this time, APHIS has not received a petition from Bayer to deregulate LLRICE604. ***Because LLRICE604 remains a regulated article, producers will not be permitted to plant any CL131 seed that is currently on hold. The EANs that have been issued will remain in place for regulatory reasons until APHIS can ensure the untreated rice seed has gone through a process that eliminates the possibility it can be germinated or grown.***

Id. (emphasis added).

3. The Significant and Continuing Harm Caused by Bayer's Contamination of the U.S. Rice Seed Supply.

134. The disclosure of Bayer's further contamination of the U.S. rice seed supply with another of its mishandled, regulated, and unapproved genetically-modified rice seed traits, threw the U.S. rice market into even greater upheaval and caused continuing and increased market-based and other losses to Plaintiffs and other members of the Classes.

135. Given that the Cheniere and CL 131 rice seed varieties accounted for a significant percentage of long-grain rice acres planted in the U.S. in the 2006 crop year (as well as in prior crop years) – the banning of those seed varieties, which was the direct result of Bayer's contamination of the U.S. rice supply with LLRICE has led to severe rice seed shortages in 2007.

136. This problem was particularly acute in light of the fact that, at the time of the CL 131 seed prohibition, the rice planting season had already begun or was about to begin across the affected area, and rice producers had taken delivery of or already ordered their rice seed for the 2007 crop year – including, but not limited to, the now-banned CL 131 rice seed.

137. In light of the foregoing, many rice producers were left with the unattractive options of planting other, less profitable crops on their land or, to the extent they were able to find any uncontaminated replacement rice seed at all, planting lower-yielding rice seed varieties that were less suitable for their land or required greater input costs (or obtaining lower yields due to their inability to combat their red rice weed problems with CL 131). Moreover, given that the supply of rice seed has decreased dramatically, the price of rice seed itself has risen.

G. Damages Caused By Bayer's Conduct

138. Bayer knew that once its LLRICE infiltrated and contaminated the U.S. rice and rice seed supplies, identification, determination, and segregation of the entire U.S. rice supply would be required in order to prevent rice seeds and crops containing those traits from entering

the domestic and international food supply channels; that such a situation would involve material disruptions in the rice trade; impose significant added costs on all participants in the U.S. rice market – costs that will ultimately be borne, or have been borne, by U.S. rice producers; and would detrimentally impact market prices for U.S. rice, causing severe financial damage to U.S. rice producers, including Plaintiffs and the other members of the proposed Classes.

139. The experiences with StarLink corn by Bayer and its predecessor Aventis placed Bayer on *direct* notice of these specific risks, dangers, and potential consequences. Bayer knew that if its unapproved, genetically-modified rice seed traits were to escape and contaminate the U.S. rice supply, the financial and other ramifications, effects, results, and damages arising therefrom – and the manner in which they would generally arise – would be devastating to U.S. rice producers, including Plaintiffs and the other members of the proposed Classes.

140. Despite these facts, Bayer tested its LLRICE without adequate safeguards to prevent their release into the general U.S. rice supply – a course of conduct that led directly to the loss of certain export markets for U.S. rice and the other aforementioned injuries.

141. Bayer failed to adequately instruct, oversee, or control test growers, who were Bayer's agents, to ensure that seeds and crops containing its regulated or otherwise restricted genetically-modified seed traits – including LLRICE 601 or LLRICE 604 – were adequately segregated or contained adequate buffer zones or other protections to prevent the escape of those traits into the U.S. rice supply.

142. Bayer failed to adequately oversee the entire rice testing, production, storage, and distribution chain – from Bayer to distributor to grower to storage facility and beyond – to prevent commingling of LLRICE with the general U.S. rice supply. Bayer's course of conduct caused the contamination of the U.S. rice supply and proximately caused the damages alleged herein.

143. Bayer's conduct also led to the direct introduction of contaminated rice into the U.S. consumer market – where it has never been commercially grown and distributed before.

144. Such wrongful and, at a minimum, reckless conduct by Bayer led directly to the contamination of the U.S. rice and rice seed supplies with Bayer's LLRICE and the market deterioration and other problems arising therefrom that damaged Plaintiffs and the other members of the proposed Classes.

145. Due to the commodity-based structure of the U.S. long-grain rice production and marketing chain and the fungible and interchangeable nature of the rice within that production and marketing chain, physical contamination or damage to any part of the chain is physical contamination or damage to the entire chain – and all of the long-grain rice therein. Bayer's conduct thus directly led to and proximately caused the infiltration and physical contamination of the U.S. rice supply and rice seed supply with LLRICE.

146. Bayer's conduct thus directly and proximately caused physical harm to the entire U.S. rice supply and rice seed supply, including Plaintiffs' and other Class members' rice and rice seeds.

147. In addition, Bayer's contamination of the U.S. rice and rice seed supplies has caused physical harm to the real and personal property, including the land, crops, machinery, transportation equipment, and storage bins, of those rice producers who purchased or produced Cheniere and CL 131 seed varieties during the period of time relevant to this action.

148. As a result of the unapproved presence of LLRICE in the U.S. rice and rice seed supplies, including rice destined for export markets, global confidence in the integrity and purity of the U.S. rice crop has evaporated in those markets, particularly in the EU, Mexico, and Japan, three of the largest importers of U.S. rice. Even U.S. purchasers of rice, who utilize the rice in products shipped abroad, are now concerned about the purity of U.S. rice and may be forced to

purchase foreign-grown rice in the future, which would further diminish and damage the U.S. rice market, further injuring U.S. rice producers, including Plaintiffs and the other members of the proposed Classes.

149. Due to Bayer's wrongful conduct, U.S. rice destined for export markets has been contaminated with LLRICE and has been rejected for the purpose for which it was intended or has been substantially discounted in price, thereby detrimentally impacting the domestic and global rice markets and damaging Plaintiffs and other members of the proposed Classes.

150. As a result of Bayer's wrongful conduct, Japan has prohibited all imports of U.S. rice, while the EU and Mexico have prohibited all U.S. rice imports unless they have been scientifically tested and determined not to be contaminated with LL601. Bayer's contamination of the U.S. long-grain rice supply with LLRICE has detrimentally affected the majority of U.S. rice exports.

151. Furthermore, as a result of Bayer's wrongful conduct, other rice processors and food manufacturers are concerned about the presence of LLRICE in raw products coming into their food manufacturing facilities, thereby further softening the market for U.S. grown rice and further damaging Plaintiffs and the other members of the proposed Classes.

152. Rice producers who planted or were scheduled to plant CL 131 rice seed in the 2007 crop year – and who are now prohibited from doing so due to the contamination of CL 131 with Bayer's unapproved LLRICE 604 genetically-modified rice seed trait and the concomitant ban on such plantings by APHIS resulting directly therefrom – also sustained the additional damages set forth above.

153. Bayer's conduct with respect to the events giving rise to the above-described contamination of the U.S. rice supply is particularly egregious, in light of the fact that Bayer (by its predecessor company, Aventis CropScience USA), created the same type of contamination of

the U.S. corn market less than seven years ago with its genetically-modified StarLink corn seed product.

154. Bayer's contamination of the U.S. rice supply with LLRICE has also detrimentally affected the ability of Plaintiffs and the other members of the proposed Classes to move their rice into export channels through storage, handling, processing, and export companies.

155. In addition, many rice exporters must now undertake expensive and time-consuming testing of all rice crops prior to sale or acceptance into foreign export markets to confirm that they are not contaminated with LLRICE 601 or LLRICE 604 – pursuant to the testing standards imposed by those countries – all of which were known to Bayer prior to the events alleged herein.

156. The economic burden of testing commercial rice crops and segregating rice contaminated with LLRICE from the U.S. rice supply have, and will continue to be, shifted to U.S. rice producers – including Plaintiffs and the other members of the Classes – by diminished bids for long-grain rice brought to market or increased basis points that must be paid by U.S. rice producers.

157. The impact of rice testing imposes an additional burden on rice producers by potentially requiring loads of rice that test positive to be destroyed, barred from export, re-routed to alternative markets, or otherwise subjected to steps, procedures, or restrictions that diminish its value.

158. Furthermore, the cost of segregating non-genetically-modified rice from rice containing Bayer's regulated or otherwise unapproved genetically-modified seed traits – including LLRICE 601 or LLRICE 604 – is significant. As a result of Bayer's wrongful conduct, U.S. rice producers, including Plaintiffs and the other members of the proposed Classes,

will be required to take extra steps and incur additional expenses in an effort to preserve the integrity and economic value of their rice crops – including, but not limited to, increased storage costs.

159. U.S. rice producers have also sustained damages to their property as a result of Bayer's wrongful conduct, through the contamination of the entire rice farming and production chain, including, but not limited to, farmland, farming equipment, storage facilities, harvesting equipment, and transportation facilities and equipment.

160. Commodities traders, financial reporters, and agricultural officials have stated that Bayer's above-described contamination of the U.S. rice supply with LLRICE has and will continue to detrimentally impact rice market values and prices, rice futures prices, and U.S. rice exports. *See, e.g.*, Jeff Wilson, *Rice Falls After Bayer Finds Unapproved Gene in U.S. Stockpiles*, Bloomberg.com, Aug. 21, 2006, *available at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aBnXEmRGb2sc ("Japan suspended U.S. rice imports and the market is discounting prices,' said Bill Nelson, a vice president at A.G. Edwards Inc. in St. Louis. 'Rice is tainted like mad-cow disease . . . .'"; "Before today, rice had risen 49 percent in the past year as world inventories as a percentage of use fell to the lowest since 1982."; "'The market is worried that Europe may ban U.S. rice imports,' Nelson said.") (last visited May 16, 2007); Stephen Clapp, *Industry and Advocates File Clashing Comments on LLRICE601*, Food Chem. News, Nov. 13, 2006, at 7 ("Perhaps most significant is the continued erosion of international confidence in the wholesomeness of the U.S. food supply occasioned by repeated contamination debacles involving unapproved genetically engineered crops.").

161. Plaintiffs and the other members of the proposed Classes have been damaged and are at continuing risk of further damages arising out of Bayer's wrongful conduct alleged herein,

because of Bayer's contamination of the U.S. rice supply with LLRICE and from the continued detrimental market effects of that contamination on the U.S. futures market and, concomitantly, U.S. long-grain rice prices.

V. CLASS ACTION ALLEGATIONS

162. Plaintiffs bring this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure ("Rules" or, individually, "Rule"), on behalf of themselves and a number of classes (collectively, "the Classes"), consisting of all persons and entities, either in Plaintiffs' respective states or, collectively, in the Five-State Rice Producers Class (defined below), who during the relevant time period, were long-grain rice producers in the United States and who sustained damages resulting from the above-described conduct.

163. Plaintiffs – in the manner(s) described in Paragraphs 4 - 29 (*supra*) – respectively assert claims against all Defendants, individually and on behalf of the following statewide rice producer Classes (collectively the "State Classes"), for Defendants' violations of the state statutory or common laws set forth below:

(a) the Arkansas State Rice Producers Class;

(b) the Louisiana State Rice Producers Class;

(c) the Mississippi State Rice Producers Class;

(d) the Missouri State Rice Producers Class; and

(e) the Texas State Rice Producers Class.

Excluded from each of these state classes are the Court and its officers, employees, and relatives; Defendants and their subsidiaries, officers, directors, employees, contractors, and agents; and governmental entities.

164. The Classes also include a five-state class, hereinafter referred to as the "Five-State Rice Producers Class." The Five-State Rice Producers Class consists of those persons and

entities described above, who assert claims individually and on behalf of all long-grain rice producers in Arkansas, Louisiana, Mississippi, Missouri, and Texas during the Relevant Time Period, against all Defendants for Defendants' violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq*. Excluded from the Five-State Rice Producers Class are the Court and its officers, employees, and relatives; Defendants and their subsidiaries, officers, directors, and employees, contractors, and agents; and governmental entities.

165. The requirements of Rule 23(a) are satisfied for each of the foregoing Classes because the members of each Class are so numerous and geographically dispersed that joinder of all its members is impracticable. Although they cannot ascertain the exact number and identity of each Class member, there are hundreds, if not thousands, of members of each Class located either – in the case of the Five-State Rice Producers Class – throughout the five-state region described above or, in the case of the statewide Classes described above, in the respective state of each of those Classes. The "numerosity" requirement of Rule 23(a)(1) is, therefore, satisfied.

166. The "commonality" requirement of Rule 23(a)(2) is satisfied because there are questions of law or fact common to each of the respective Plaintiffs and the other members of each of the Classes they respectively seek to represent. Among those common questions of law or fact are:

(a) whether Defendants, through their acts or omissions, caused LLRICE to contaminate the U.S. rice and U.S. rice seed supplies;

(b) whether Defendants are legally responsible for contaminating the U.S. rice and U.S. rice seed supplies under one or more of the legal theories asserted in this complaint;

(c) whether the members of each of the statewide rice producer Classes have sustained or continue to sustain damages as a result of Defendants' wrongful conduct, and, if so, the proper measure and appropriate formula to be applied in determining such

damages for each of the respective state Classes;

(d) whether the members of the Five-State Rice Producers Class have sustained or continue to sustain damages in their business or property by reason of Defendants' violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq*., and, if so, the proper measure and appropriate formula to be applied in determining such damages;

(e) whether the members of the Classes are entitled to compensatory, treble, statutory, exemplary, or punitive damages; and

(f) whether the members of the Classes are entitled to declaratory, injunctive, or other equitable relief.

167. Plaintiffs' claims are typical of the claims of all other members of each of the respective Classes that they seek to represent, as described above, because they arise from the same course of conduct by Defendants and are based on the same legal theories – as do the claims of all other members of each of the respective Classes. Moreover, Plaintiffs seek the same forms of relief for themselves as they do on behalf of absent Class members. Accordingly, Plaintiffs have satisfied the "typicality" requirements of Rule 23(a)(3) with respect to each of the Classes they respectively seek to represent.

168. Because their claims are typical of the respective Classes that they seek to represent, Plaintiffs have every incentive to pursue those claims vigorously. Plaintiffs have no conflicts with, or interests antagonistic to, the rice producers comprising the other members of the Classes they respectively seek to represent relating to the claims set forth herein. Also, Plaintiffs' commitment to the vigorous prosecution of this action is reflected in their retention of competent counsel experienced in litigation of this nature to represent them and the other members of each of the Classes. Indeed, as the Court preliminarily recognized in its April 18, 2007 Order Appointing Leadership Counsel (Doc. 182), Plaintiffs' counsel satisfy the requirements of Rule 23(g) to serve as counsel for each of the proposed Classes. Plaintiffs' counsel will fairly and adequately represent the interests of each of the proposed Classes, and (a)

have identified and thoroughly investigated the claims set forth herein; (b) are highly experienced in the management and litigation of class actions and complex litigation in general, including litigation of similar types of claims; (c) have extensive knowledge of the applicable law; and (d) possess the resources to commit to the vigorous prosecution of this action on behalf of the proposed Classes. Accordingly, Plaintiffs satisfy the adequacy of representation requirements of Rule 23(a)(4) with respect to each of the proposed Classes.

169. In addition, this action meets the requirements of Rule 23(b)(1). Absent a representative class action, members of the proposed Classes would continue to suffer the harms described herein, for which they would have no remedy. Even if separate actions could be brought by individual rice producers, 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 rice producers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendants.

170. This action also meets the requirements of Rule 23(b)(2), in that Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of each of the proposed Classes, thereby making final injunctive or corresponding declaratory relief with respect to each respective Class appropriate.

171. This action additionally meets the requirements of Rule 23(b)(3). Common questions of law or fact, including those enumerated above, exist as to the claims of all members of each of the respective Classes and predominate over questions affecting only individual Class members of each such Class, and a class action is the superior (if not the only) method for the fair and efficient adjudication of this controversy. Class treatment will permit large numbers of similarly-situated persons to prosecute their respective class claims in a single forum

simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce. Furthermore, while damages to members of each of the proposed Classes are substantial in the aggregate, the damages to any individual member of any of the proposed Classes may be insufficient to justify individually controlling the prosecution of separate actions against Defendants.

172. This case is manageable as a class action, and a class trial – either in the aggregate or separately after this Court's remand of the transferred actions to the transferor courts – will be manageable. Notice may be provided to members of the respective Classes by first-class mail and through the alternative means of publication and the Internet. Moreover, the Five-State Rice Producers Class members' claims will be decided under the substantive law of only one state, North Carolina., and the State Classes' claims will likewise be decided under the substantive law of only one state, that of the respective state of each of those five classes. Thus, the Court will not have to grapple with the application of multiple jurisdictions' laws to the members of any single Class.

VI. PLAINTIFFS' CLAIMS FOR RELIEF

A. CLAIMS ASSERTED BY THE ARKANSAS PLAINTIFFS ON BEHALF OF THE ARKANSAS STATE RICE PRODUCERS CLASS (Counts 1 - 8)

Count 1 – Common Law Public Nuisance (On Behalf of the Arkansas State Rice Producers Class)

173. The Arkansas Plaintiffs incorporate by reference Paragraphs 1 - 161 as though fully alleged herein.

174. Through its conduct alleged above, Bayer has created a public nuisance by causing widespread contamination of the U.S. rice supply and rice seed supplies with LLRICE (as defined above). This constitutes an unreasonable and substantial interference with rights common to the general public.

175. This unreasonable interference is imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE (a) without adequate precautions to prevent contamination of the U.S. rice and rice seed supplies; (b) with the knowledge that there was a substantial risk that it would contaminate the U.S. rice and rice seed supplies; or (c) with the knowledge that there was a substantial risk it would contaminate U.S. and foreign food supplies.

176. Bayer has unreasonably interfered with the public's right to expect compliance with the federal laws governing the testing, growing, storing, transporting, disposing of and otherwise disseminating LLRICE. Bayer has further unreasonably interfered with the public's right to expect that the rice sold to the general public is free from contamination with LLRICE as well as the public's right to be notified of whether the rice sold to the public is contaminated with genetically-modified organisms – including LLRICE 601 or LLRICE 604 – so that the public has the freedom to choose to purchase and consume non-contaminated long-grain rice.

177. This interference is unreasonable in that it involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience. It is also unreasonable in that it is proscribed by federal and state law, is of a continuing nature, and has produced a permanent or long-lasting effect.

178. The Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class have suffered harm caused by Bayer's public nuisance distinct from and different than that suffered by the general public in that, as described above, they have suffered business losses in the form of, among other things, the rejection of their crops by certain markets; reduced or restricted demand for their crops in certain markets; reduced prices for their crops at market; added costs for segregation, testing, or certification in order to sell their crops; added

costs for the decontamination of their property; diminished value of their property; increased costs for rice seed; and inability to find sufficient or suitable rice seed to plant resulting in lower rice crop yields or planting other crops that generate less revenue.

179. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. Bayer nonetheless continued such conduct in reckless disregard of or conscious indifference to those consequences.

Count 2 – Common Law Private Nuisance
(On Behalf of the Arkansas State Rice Producers Class)

180. The Arkansas Plaintiffs incorporate by reference Paragraphs 1 - 161 and each of the preceding counts brought on behalf of the Arkansas State Rice Producers Class, as though fully alleged herein.

181. By its conduct alleged above concerning the testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer also created a private nuisance.

182. The Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class have property rights and are privileged in respect to the use and enjoyment of the land on which they produce rice.

183. Bayer's contamination of the U.S. rice and rice seed supplies has unreasonably interfered with, and will unreasonably interfere with and will substantially impair, the Arkansas Plaintiffs' and the other Arkansas State Rice Producers Class members' use and enjoyment of their interests in the land on which they grow or may grow rice.

184. Bayer's conduct was committed with conscious or reckless disregard of the rights of the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class,

and was grossly negligent and unreasonable. The gravity of the harm far outweighs the utility of Bayer's conduct.

185. As a direct and proximate result of Bayer's conduct, the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

186. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. Bayer, nonetheless, continued such conduct in reckless disregard of or conscious indifference to those consequences.

Count 3 – Common Law Absolute Liability – Ultrahazardous Activity
(On Behalf of the Arkansas State Rice Producers Class)

187. The Arkansas Plaintiffs incorporate by reference Paragraphs 1 - 161 and each of the preceding counts brought on behalf of the Arkansas State Rice Producers Class, as though fully alleged herein.

188. Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE constituted and continues to constitute an abnormally dangerous activity or ultrahazardous activity because such activities create a high degree of risk of harm, the harm has been and will be significant, the risk cannot be eliminated by the exercise of reasonable care, the activity is not a matter of common usage, the value to the community is outweighed by its dangerous attributes, and the activity resulted in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. In addition, the activity was unduly dangerous and inappropriate for the places where it was conducted.

189. The type of harm suffered by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class is the kind of harm the possibility of which makes the activity abnormally dangerous.

190. As a direct and proximate result of Bayer's ultrahazardous or abnormally dangerous activities, the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

191. Bayer is thus strictly liable to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class for all damages which have resulted or will result from its abnormally dangerous activities with respect to LLRICE.

192. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. Bayer, nonetheless, continued such conduct in reckless disregard of or conscious indifference to those consequences.

Count 4 – Common Law Negligence *Per Se* - Violation of the Arkansas Rice Certification Act, Ark. Code § 2-15-201 *et seq.*
(On Behalf of the Arkansas State Rice Producers Class)

193. The Arkansas Plaintiffs incorporate by reference Paragraphs 1 - 161 and each of the preceding counts brought on behalf of the Arkansas State Rice Producers Class, as though fully alleged herein.

194. The Arkansas Rice Certification Act, Ark. Code § 2-15-201 *et seq.*, provides in pertinent part:

> As used in this subchapter:
>
> (1) "Characteristics of commercial impact" means characteristics that may adversely affect the marketability of rice in the event of commingling with any other rice and includes, but is not limited to, those characteristics:
>
> (A) That cannot be identified without the aid of specialized equipment or testing;

> (B) That create a significant economic impact in their removal from commingled rice; and
>
> (C) Whose removal from commingled rice is not feasible; and
>
> (2) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, firm, company, or any other entity doing business in Arkansas.
> Section 2-15-202, Ark. Code
>
> No person may introduce, sell, plant, produce, harvest, transport, store, process, or otherwise handle rice identified as having characteristics of commercial impact, except in compliance with the provisions of this subchapter and the rules adopted by the State Board.
>
> Ark. Code § 2-15-203.

195. Given that LLRICE had "characteristics of commercial impact," Bayer was required to comply with the provisions of the above-referenced subchapter and the rules adopted by the State Board.

196. Bayer's conduct, as alleged above, violated, at a minimum, Ark. Code § 2-15-203 in that Bayer did not comply with provisions in the above-referenced subchapter and the rules adopted by the State Board in at least the following respects:

(a) Bayer did not obtain a permit as required by Sections VII (13), (VI) and (VII) of the Regulations on Plant Diseases and Pests; and

(b) Bayer did not file documents with the Plant Board declaring ownership of the characteristic of commercial impact as required by Section VII (13), (II)(a) of the Regulations on Plant Diseases and Pests.

197. Bayer had a duty not to violate Ark. Code § 2-15-203

198. The injuries and damages sustained by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class, as described above, are the type that Ark. Code § 2-15-203 was designed to prevent, and the Arkansas Plaintiffs and the other members of

the Arkansas State Rice Producers Class are among the class of persons that this law was intended to protect.

199. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

200. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class.

201. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. Bayer, nonetheless, continued such conduct in reckless disregard of or conscious indifference to those consequences.

Count 5 – Common Law Negligence *Per Se* - Violation of the Arkansas Crop & Research Facilities Protection Act, Ark. Code § 2-15-201 *et seq.*
(On Behalf of the Arkansas State Rice Producers Class)

202. The Arkansas Plaintiffs incorporate by reference Paragraphs 1 - 161 and each of the preceding counts brought on behalf of the Arkansas State Rice Producers Class, as though fully alleged herein.

203. Ark. Code § 2-15-101 provides, in pertinent part:

> (b)(1) Any person or entity who willfully and knowingly damages or destroys any field crop product that is grown for personal or commercial purposes or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility or university or any federal, state, or local government agency shall be liable for twice the value of the crop damaged or destroyed.
>
> (2) In awarding damages under this section, the courts shall consider:
>
> (A) The market value of the crop prior to damage or destruction; and
>
> (B) Production, research, testing, replacement, and crop development costs directly related to the crop that has been damaged or destroyed as part of the value of the crop.

204. Bayer had a duty not to violate Ark. Code § 2-15-101.

205. The injuries and damages sustained by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class, as described above, are the type that Ark. Code § 2-15-101 was designed to prevent, and the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class are among the class of persons that this law was intended to protect.

206. Bayer breached its statutory duty by knowingly damaging the Arkansas Plaintiffs' and the other members of the Arkansas State Rice Producers Class's field crops as alleged above.

207. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

208. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class.

209. The Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class are entitled to double damages and reasonable attorneys' fees pursuant to Ark. Code § 2-15-101.

Count 6 – Common Law Negligence *Per Se* – Violation of the Plant Protection Act and 7 C.F.R. Part 340
(On Behalf of the Arkansas State Rice Producers Class)

210. The Arkansas Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Arkansas State Rice Producers Class, as though fully alleged herein.

211. Between at least 1998 and 2001, Bayer conducted LLRICE field trials.

212. During the time period relevant to this action, Bayer's LLRICE 601 and LLRICE 604 genetically-modified rice seed traits were (and, in the case of LLRICE 604 and other of Bayer's LLRICE traits, continue to be) "regulated article[s]," as defined by 7 C.F.R. § 340.1:

> Any organism which has been altered or produced through genetic engineering, if the donor organism, recipient organism, or vector or vector agent belongs to any genera or taxa designated in Sec. 340.2 and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product which contains such an organism, or any other organism or product altered or produced through genetic engineering which the Administrator, determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions

213. Under 7 C.F.R. § 340.0(a)(1) and (2), no person shall "introduce" a "regulated article" except by permit or pursuant to notification and such introduction "is in conformity with all other applicable restrictions in this part." *See also* 7 U.S.C. §7711(a), (c); 7 U.S.C. §7712(a), (c).

214. "Introduce" is defined by 7 C.F.R. § 340.1 as "[t]o move in or through the United States, to release into the environment, to move interstate, or any attempt there at." "Move" is defined as "[t]o ship, offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved into, through or within the United States." *Id.* "Release into the environment" is defined as "[t]he use of a regulated article outside the constraints of physical confinement that are found in a laboratory, contained greenhouse, or a fermenter or other contained structure." *Id.*

215. The "applicable restrictions" for "regulated articles" "introduced" in the United States include the following:

> (1) If the plant or plant materials are shipped, they must be shipped in such a way that the viable plant material is unlikely to be disseminated while in

transit and must be maintained at the destination facility in such a way that there is no release into the environment.

(2) When the introduction is an environmental release, the regulated article must be planted in such a way that they are not inadvertently mixed with non-regulated plant materials of any species which are not part of the environmental release.

(3) The plants and plant parts must be maintained in such a way that the identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(4) There must be no viable vector agent associated with the regulated article.

(5) The field trial must be conducted such that:

(i) The regulated article will not persist in the environment, and
(ii) No offspring can be produced that could persist in the environment.

(6) Upon termination of the field test:

(i) No viable material shall remain which is likely to volunteer in subsequent seasons, or
(ii) Volunteers shall be managed to prevent persistence in the environment.

7 C.F.R. § 340.3(c).

216. Bayer had a duty not to violate the Plant Protection Act or the regulations at 7 C.F.R. Part 340.

217. The injuries and damages sustained by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class, as described above, are the type that the Plant Protection Act and 7 C.F.R. Part 340 were designed to prevent, and the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class are among the class of persons that the Act and the regulations were intended to protect.

218. Bayer breached its duties under the Plant Protection Act and 7 C.F.R. Part 340 by shipping, planting, maintaining, testing, growing, disposing of, or otherwise disseminating

LLRICE in violation of these regulatory standards, including but not limited to introducing LLRICE without a permit or notification and/or also:

(1) Not shipping LLRICE 601 or LLRICE 604 "in such a way that the viable plant is unlikely to be disseminated while in transit";

(2) Not maintaining LLRICE 601 or LLRICE 604 "at the destination city in such a way that there is no release into the environment";

(3) Not planting LLRICE 601 or LLRICE 604 "in such a way that they [were] not inadvertently mixed with non-regulated plant materials";

(4) Not maintaining LLRICE 601 or LLRICE 604 "in such a way that the identity of all material [was] known while in use, and that [the LLRICE was not] contained or devitalized when no longer in use";

(5) Not conducting its field tests of LLRICE 601 or LLRICE 604 "such that (i) [the LLRICE 601 or LLRICE 604] will not persist in the environment, and (ii) [n]o offspring can be produced that could persist in the environment"; and

(6) Not terminating the field tests of LLRICE 601 or LLRICE 604 such that "(i) [n]o viable material shall remain with is likely to volunteer in subsequent seasons, or (ii) [v]olunteers shall be managed to prevent persistence in the environment."

219. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

220. As a direct and proximate result of Bayer's breaches, the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

221. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. Bayer, nonetheless, continued such conduct in reckless disregard of or conscious indifference to those consequences.

Part 3 of 4

To

Master Consolidated Amended Class Action Complaint

Count 7 – Common Law Negligence
(On Behalf of the Arkansas State Rice Producers Class)

222. The Arkansas Plaintiffs incorporate by reference Paragraphs 1 - 161 and each of the preceding counts brought on behalf of the Arkansas State Rice Producers Class, as though fully alleged herein.

223. With respect to its testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer had a duty to utilize its professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar circumstances by a person or entity in Bayer's business.

224. As alleged above, Bayer breached this duty by failing to exercise the requisite degree of care in testing, growing, storing, growing, transporting, disposing of, or otherwise disseminating LLRICE to prevent it from contaminating the U.S. rice supply and the U.S. rice seed supply.

225. As further alleged above, Bayer additionally breached this duty by failing to notify the USDA and the public in a timely fashion after it first learned of its contamination of the U.S. rice and rice seed supplies with LLRICE.

226. Bayer breached its duties, as alleged above, breached the requisite standard of care, and was thereby negligent.

227. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class.

228. In the alternative, with respect to the injuries and damages sustained by the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class, Bayer's

contamination of the U.S. rice and rice seed supplies would not occur in the normal course of events if Bayer had used the highest degree of care while the rice was in its control.

229. Bayer had control of – or the right to control – LLRICE, and was in a superior position to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class to know or have means of explaining the course or reason for such occurrence. Bayer is presumed negligent under the doctrine of *res ipsa loquitur*.

230. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. Bayer, nonetheless, continued such conduct in reckless disregard of or conscious indifference to those consequences.

Count 8 – Common Law Strict Liability – Products Liability
(On Behalf of the Arkansas State Rice Producers Class)

231. The Arkansas Plaintiffs incorporate by reference Paragraphs 1- 161 and each of the preceding counts brought on behalf of the Arkansas State Rice Producers Class, as though fully alleged herein.

232. Bayer was a supplier of LLRICE and was in the business of manufacturing, assembling, selling, leasing, or otherwise distributing that product.

233. As alleged above, Bayer supplied LLRICE in a defective condition. LLRICE was unreasonably dangerous when put to a reasonably anticipated use.

234. LLRICE was used in a manner reasonably anticipated.

235. Any benefit derived from Bayer's test cultivation of LLRICE is greatly outweighed by the harms resulting from Bayer's contamination of the U.S. rice and rice seed supplies with LLRICE.

236. As a direct and proximate result of the defective and unreasonably dangerous condition of LLRICE as it existed when Bayer supplied it, the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class have sustained the injuries and damages alleged above.

237. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Arkansas Plaintiffs and the other members of the Arkansas State Rice Producers Class. Bayer, nonetheless, continued such conduct in reckless disregard of conscious indifference to those consequences.

B. CLAIMS ASSERTED BY THE LOUISIANA PLAINTIFFS ON BEHALF OF THE LOUISIANA STATE RICE PRODUCERS CLASS (Counts 9 - 12)

Count 9 – Common Law Negligence
(On Behalf of the Louisiana State Rice Producers Class)

238. The Louisiana Plaintiffs incorporate by reference Paragraphs 1 -161 as though fully alleged herein.

239. With respect to its testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer had a duty to utilize its professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar circumstances by an expert in Bayer's business.

240. As alleged above, Bayer breached this duty by failing to exercise the requisite degree of care in testing, growing, storing, growing, transporting, disposing of, or otherwise disseminating LLRICE to prevent it from contaminating the U.S. rice and rice seed supplies.

241. As further alleged above, Bayer breached this duty by failing to notify the USDA and the public in a timely fashion after it first learned of its contamination of the U.S. rice and the rice seed supplies with LLRICE.

242. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

243. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class.

244. The injuries and damages sustained by the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class were caused by Bayer's negligent acts or omissions.

245. Those acts and omissions were within Bayer's knowledge and control – there being no other possible conclusion that the contamination of the U.S. rice and rice seed supplies with LLRICE, as alleged above, would not have resulted but for Bayer's negligence.

246. Furthermore, the injuries and damages sustained by the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class caused by Bayer's above-described conduct would not have occurred had Bayer exercised the high degree of care imposed on it in its testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE. Bayer is presumed negligent under the doctrine of *res ipsa loquitur*.

Count 10 – Statutory Private Nuisance
(On Behalf of the Louisiana State Rice Producers Class)

247. The Louisiana Plaintiffs incorporate by reference Paragraphs 1-161 and each of the preceding counts brought on behalf of the Louisiana State Rice Producers Class, as though fully alleged herein.

248. The Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class have vested property rights to the use and enjoyment of the land on which they farm.

249. The Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class have claims under La. Civ. Code arts. 667-69 as a consequence of Bayer's conduct and actions alleged above.

250. By its conduct alleged above concerning the testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer also created a private nuisance.

251. The Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class have property rights and are privileged in respect to the use and enjoyment of the land on which they produce rice.

252. Bayer's contamination of the U.S. rice and rice seed supplies has substantially interfered with, and will substantially interfere with and substantially impair, the Louisiana Plaintiffs' and the other members of the Louisiana State Rice Producers Class's use and enjoyment of their interests in the land on which they grow or may grow rice.

253. Bayer's conduct was intentionally committed or committed with conscious or reckless disregard of the rights of the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class and was grossly negligent and unreasonable. The gravity of the harm alleged above far outweighs the utility of Bayer's conduct.

254. As a direct and proximate result of Bayer's conduct, the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

Count 11 – Common Law Public Nuisance
(On Behalf of the Louisiana State Rice Producers Class)

255. The Louisiana Plaintiffs incorporate by reference Paragraphs 1- 161 and each of the preceding counts brought on behalf of the Louisiana State Rice Producers Class, as though fully alleged herein.

256. Through its conduct alleged above, Bayer has created a public nuisance by causing widespread contamination of the U.S. rice and rice seed supplies with LLRICE. By this conduct, Bayer unreasonably and substantially interfered with rights common to the general public.

257. Bayer's unreasonable interference has been – and continues to be – imposed on the community at large and on a considerably diverse number of persons and entities. It arises from Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE (a) without adequate precautions to prevent contamination of the U.S. rice and rice seed supplies; (b) with the knowledge that there was a substantial risk that it would contaminate the U.S. rice and rice seed supplies; or (c) with the knowledge that there was a substantial risk it would contaminate U.S. and foreign food supplies.

258. Bayer has unreasonably interfered with the public's right to expect compliance with the federal laws governing the testing, growing, storing, transporting, disposing of, and otherwise disseminating LLRICE. Bayer has further unreasonably interfered with the public's right to expect that the rice sold to the general public is free from contamination of LLRICE as well as the public's right to be notified of whether the rice sold to the public is contaminated with genetically-modified organisms – including LLRICE 601 or LLRICE 604 – so that the public has the freedom to choose to purchase and consume non-contaminated long-grain rice.

259. Bayer's interference is unreasonable in that it involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience. Bayer's interference is also unreasonable in that it is proscribed by federal and state law, is of a continuing nature, and has produced a permanent or long-lasting effect.

260. The Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class have sustained injuries and damages proximately caused by Bayer's public nuisance distinct from and different than that suffered by the general public, in that, as described above, they have suffered business losses in the form of, among other things, the rejection of their crops by certain markets; reduced or restricted demand for their crops in certain markets; reduced prices for their crops at market; added costs for segregation, testing, or certification in order to sell their crops; added costs for the decontamination of their property; diminished value of their property; increased costs for rice seed; and inability to find sufficient or suitable rice seed to plant resulting in lower rice crop yields or planting other crops that generate less revenue.

Count 12 – Common Law Negligence *Per Se* – Violation of the Plant Protection Act and 7 C.F.R. Part 340
(On Behalf of the Louisiana State Rice Producers Class)

261. The Louisiana Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Louisiana State Rice Producers Class, as though fully alleged herein.

262. Between at least 1998 and 2001, Bayer conducted LLRICE field trials.

263. During the time period relevant to this action, Bayer's LLRICE 601 and LLRICE 604 genetically-modified rice seed traits were (and, in the case of LLRICE 604 and other of Bayer's LLRICE traits, continue to be) "regulated article[s]," as defined by 7 C.F.R. § 340.1:

> Any organism which has been altered or produced through genetic engineering, if the donor organism, recipient organism, or vector or vector agent belongs to any genera or taxa designated in Sec. 340.2

> and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product which contains such an organism, or any other organism or product altered or produced through genetic engineering which the Administrator, determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions

264. Under 7 C.F.R. § 340.0(a)(1) and (2), no person shall "introduce" a "regulated article" except by permit or pursuant to notification and such introduction "is in conformity with all other applicable restrictions in this part." *See also* 7 U.S.C. §7711(a), (c); 7 U.S.C. §7712(a), (c).

265. "Introduce" is defined by 7 C.F.R. § 340.1 as "[t]o move in or through the United States, to release into the environment, to move interstate, or any attempt there at." "Move" is defined as "[t]o ship, offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved into, through or within the United States." *Id.* "Release into the environment" is defined as "[t]he use of a regulated article outside the constraints of physical confinement that are found in a laboratory, contained greenhouse, or a fermenter or other contained structure. *Id.*

266. The "applicable restrictions" for "regulated articles" "introduced" in the United States include the following:

> (1) If the plant or plant materials are shipped, they must be shipped in such a way that the viable plant material is unlikely to be disseminated while in transit and must be maintained at the destination facility in such a way that there is no release into the environment.
>
> (2) When the introduction is an environmental release, the regulated article must be planted in such a way that they are not inadvertently mixed with non-regulated plant materials of any species which are not part of the environmental release.

(3) The plants and plant parts must be maintained in such a way that the identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(4) There must be no viable vector agent associated with the regulated article.

(5) The field trial must be conducted such that:

(i) The regulated article will not persist in the environment, and
(ii) No offspring can be produced that could persist in the environment.

(6) Upon termination of the field test:

(i) No viable material shall remain which is likely to volunteer in subsequent seasons, or
(ii) Volunteers shall be managed to prevent persistence in the environment.

7 C.F.R. § 340.3(c).

267. Bayer had a duty not to violate the Plant Protection Act or the regulations at 7 C.F.R. Part 340.

268. The injuries and damages sustained by the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class, as described above, are the type that the Plant Protection Act and 7 C.F.R. Part 340 were designed to prevent, and the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class are among the class of persons that the Act and the regulations were intended to protect.

269. Bayer breached its duties under the Plant Protection Act and 7 C.F.R. Part 340 by shipping, planting, maintaining, testing, growing, disposing of, or otherwise disseminating LLRICE in violation of these regulatory standards, including but not limited to introducing LLRICE without a permit or notification and/or also:

(1) Not shipping LLRICE 601 or LLRICE 604 "in such a way that the viable plant is unlikely to be disseminated while in transit";

(2) Not maintaining LLRICE 601 or LLRICE 604 "at the destination city in such a way that there is no release into the environment";

(3) Not planting LLRICE 601 or LLRICE 604 "in such a way that they [were] not inadvertently mixed with non-regulated plant materials";

(4) Not maintaining LLRICE 601 or LLRICE 604 "in such a way that the identity of all material [was] known while in use, and that [the LLRICE was not] contained or devitalized when no longer in use";

(5) Not conducting its field tests of LLRICE 601 or LLRICE 604 "such that (i) [the LLRICE 601 or LLRICE 604] will not persist in the environment, and (ii) [n]o offspring can be produced that could persist in the environment"; and

(6) Not terminating the field tests of LLRICE 601 or LLRICE 604 such that "(i) [n]o viable material shall remain with is likely to volunteer in subsequent seasons, or (ii) [v]olunteers shall be managed to prevent persistence in the environment."

270. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

271. As a direct and proximate result of Bayer's conduct, the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

272. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Louisiana Plaintiffs and the other members of the Louisiana State Rice Producers Class. Bayer, nonetheless, continued such conduct in reckless disregard of or conscious indifference to those consequences.

C. CLAIMS ASSERTED BY THE MISSISSIPPI PLAINTIFFS ON BEHALF OF THE MISSISSIPPI STATE RICE PRODUCERS CLASS (Counts 13 - 19)

Count 13 – Common Law Public Nuisance
(On Behalf of the Mississippi State Rice Producers Class)

273. The Mississippi Plaintiffs incorporate by reference Paragraphs 1 - 161 as though fully alleged herein.

274. Through its conduct alleged above, Bayer has created a public nuisance by causing widespread contamination of the U.S. rice and rice seed supplies with LLRICE. By this conduct, Bayer unreasonably and substantially interfered with rights common to the general public.

275. Bayer's unreasonable interference has been – and continues to be – imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE (a) without adequate precautions to prevent contamination of the U.S. rice and rice seed supplies; (b) with the knowledge that there was a substantial risk that it would contaminate the U.S. rice and rice seed supplies; or (c) with the knowledge that there was a substantial risk it would contaminate U.S. and foreign food supplies.

276. Bayer has unreasonably interfered with the public's right to expect compliance with the federal laws governing the testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE. Bayer has further unreasonably interfered with the public's right to expect that the rice sold to the general public is free from contamination of LLRICE as well as the public's right to be notified of whether the rice sold to the public is contaminated with genetically-modified organisms – including LLRICE 601 or LLRICE 604 – so that the public has the freedom to choose to purchase and consume non-contaminated long-grain rice.

277. Bayer's interference is unreasonable in that it involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience. Bayer's interference is also unreasonable in that it is proscribed by federal and state law, is of a continuing nature, and has produced a permanent or long-lasting effect.

278. The Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class have sustained injuries and damages proximately caused by Bayer's public nuisance distinct from and different than that suffered by the general public, in that, as described above, they have suffered business losses in the form of, among other things, the rejection of their crops by certain markets; reduced or restricted demand for their crops in certain markets; reduced prices for their crops at market; added costs for segregation, testing, or certification in order to sell their crops; added costs for the decontamination of their property; diminished value of their property; increased costs for rice seed; and inability to find sufficient or suitable rice seed to plant resulting in lower rice crop yields or planting other crops that generate less revenue.

279. Bayer's conduct was grossly negligent and evidenced a reckless disregard for the rights of others – including the Mississippi Plaintiffs and other members of the Mississippi State Rice Producers Class – thereby justifying an award of punitive damages.

Count 14 – Common Law Private Nuisance
(On Behalf of the Mississippi State Rice Producers Class)

280. The Mississippi Plaintiffs incorporate by reference Paragraphs 1 - 161 and each of the preceding counts brought on behalf of the Mississippi State Rice Producers Class, as though fully alleged herein.

281. By its conduct alleged above concerning the testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer also created a private nuisance.

282. The Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class have property rights and are privileged in respect to the use and enjoyment of the land on which they produce rice.

283. Bayer's contamination of the U.S. rice and rice seed supplies has substantially interfered with, and will substantially interfere with and substantially impair, the Mississippi Plaintiffs' and the other Mississippi State Rice Producers Class members' use and enjoyment of their interests in the land on which they grow or may grow rice.

284. Bayer's conduct was intentionally committed or committed with a conscious or reckless disregard for the rights of the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class, and was grossly negligent and unreasonable. The gravity of the harm far outweighs the utility of Bayer's conduct.

285. As a direct and proximate result of Bayer's conduct, the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

286. Bayer's conduct was grossly negligent and evidenced a reckless disregard for the rights of others – including the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class – thereby justifying an award of punitive damages.

Count 15 – Common Law Negligence
(On Behalf of the Mississippi State Rice Producers Class)

287. The Mississippi Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Mississippi State Rice Producers Class, as though fully alleged herein.

288. With respect to its testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer had a duty to utilize its professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar circumstances by an expert in Bayer's business.

289. As alleged above, Bayer breached this duty by failing to exercise the requisite degree of care in testing, growing, storing, growing, transporting, disposing of, or otherwise disseminating LLRICE to prevent it from contaminating the U.S. rice and rice seed supplies.

290. As further alleged above, Bayer breached this duty by failing to notify the USDA and the public in a timely fashion after it first learned of its contamination of the U.S. rice and rice seed supplies with LLRICE.

291. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

292. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class.

293. In the alternative, with respect to the injuries and damages sustained by the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class, Bayer's contamination of the U.S. rice and rice seed supplies would not ordinarily occur absent negligence.

294. Bayer had control of – or the right to control – LLRICE, and was in a superior position to the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class to know or have means of explaining the course or reason for such occurrence. Bayer is presumed negligent under the doctrine of *res ipsa loquitur*.

295. Bayer's conduct was grossly negligent and evidenced a reckless disregard for the rights of others – including the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class – thereby justifying an award of punitive damages.

Count 16– Common Law Negligence *Per Se* based on Mississippi Law Violations (On Behalf of the Mississippi State Rice Producers Class)

296. The Mississippi Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Mississippi State Rice Producers Class, as though fully alleged herein.

297. Under Miss. Code § 69-49-1, it is illegal for any person or company to destroy the field crop of another. Specifically, that statute provides that

> (1) [a]ny person or entity who willfully and knowingly damages or destroys any field crop product that is grown for personal or commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local government agency, shall be liable for twice the value of the crop damaged or destroyed.
>
> (2) In awarding damages under this section, the courts shall consider the market value of the crop prior to damage or destruction and production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed as part of the value of the crop.
>
> (3) Damages available under this section shall be limited to twice the market value of the crop prior to damage or destruction plus twice the actual damages involving production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed.
>
> (4) For the purposes of this section, "field crop" means any product grown, developed or raised for purposes, including, but not limited to, human or animal consumption, research, industrial, commercial or pharmacological purposes.

Miss. Code § 69-49-1.

298. Bayer has violated Miss. Code § 69-49-1 and is liable under its provisions. The injuries and damages sustained by the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class, as described above, are the type that Miss. Code § 69-49-1 was designed to prevent, and the Mississippi Plaintiffs and the other members of the

Mississippi State Rice Producers Class are among the class of persons that this statute was intended to protect.

299. Bayer breached its duty by knowingly damaging the Mississippi Plaintiffs' and the other members of the Mississippi State Rice Producers Class's field crops as alleged above.

300. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

301. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class.

302. The Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class are entitled to double damages and reasonable attorneys' fees pursuant to Miss. Code § 69-49-1.

Count 17 – Common Law Negligence *Per Se* – Violation of the Plant Protection Act and 7 C.F.R. Part 340
(On Behalf of the Mississippi State Rice Producers Class)

303. The Mississippi Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Mississippi State Rice Producers Class, as though fully alleged herein.

304. Between at least 1998 and 2001, Bayer conducted LLRICE field trials.

305. During the time period relevant to this action, Bayer's LLRICE 601 and LLRICE 604 genetically-modified rice seed traits were (and, in the case of LLRICE 604 and other of Bayer's LLRICE traits, continue to be) "regulated article[s]," as defined by 7 C.F.R. § 340.1:

> Any organism which has been altered or produced through genetic engineering, if the donor organism, recipient organism, or vector or vector agent belongs to any genera or taxa designated in Sec. 340.2 and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product

> which contains such an organism, or any other organism or product altered or produced through genetic engineering which the Administrator, determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions

306. Under 7 C.F.R. § 340.0(a)(1) and (2), no person shall "introduce" a "regulated article" except by permit or pursuant to notification and such introduction "is in conformity with all other applicable restrictions in this part." *See also* 7 U.S.C. §7711(a), (c); 7 U.S.C. §7712(a), (c).

307. "Introduce" is defined in 7 C.F.R. § 340.1 as "[t]o move in or through the United States, to release into the environment, to move interstate, or any attempt there at." "Move" is defined as "[t]o ship, offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved into, through or within the United States." *Id.* "Release into the environment" is defined as "[t]he use of a regulated article outside the constraints of physical confinement that are found in a laboratory, contained greenhouse, or a fermenter or other contained structure." *Id.*

308. The "applicable restrictions" for "regulated articles" "introduced" in the United States include the following:

> (1) If the plant or plant materials are shipped, they must be shipped in such a way that the viable plant material is unlikely to be disseminated while in transit and must be maintained at the destination facility in such a way that there is no release into the environment.
>
> (2) When the introduction is an environmental release, the regulated article must be planted in such a way that they are not inadvertently mixed with non-regulated plant materials of any species which are not part of the environmental release.
>
> (3) The plants and plant parts must be maintained in such a way that the identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(4) There must be no viable vector agent associated with the regulated article.

(5) The field trial must be conducted such that:

(i) The regulated article will not persist in the environment, and
(ii) No offspring can be produced that could persist in the environment.

(6) Upon termination of the field test:

(i) No viable material shall remain which is likely to volunteer in subsequent seasons, or
(ii) Volunteers shall be managed to prevent persistence in the environment.

7 C.F.R. § 340.3(c).

309. Bayer had a duty not to violate the Plant Protection Act or regulations at 7 C.F.R. Part 340.

310. The injuries and damages sustained by the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class, as described above, are the type that the Plant Protection Act and 7 C.F.R. § 340 were designed to prevent, and the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class are among the class of persons that the Act and the regulations were intended to protect.

311. Bayer breached its duties under the Plant Protection Act and 7 C.F.R. Part 340 by shipping, planting, maintaining, testing, growing, disposing of, or otherwise disseminating LLRICE in violation of these regulatory standards, including but not limited to introducing LLRICE without a permit or notification and/or also:

(1) Not shipping LLRICE 601 or LLRICE 604 "in such a way that the viable plant is unlikely to be disseminated while in transit";

(2) Not maintaining LLRICE 601 or LLRICE 604 "at the destination city in such a way that there is no release into the environment";

(3) Not planting LLRICE 601 or LLRICE 604 "in such a way that they [were] not inadvertently mixed with non-regulated plant materials";

(4) Not maintaining LLRICE 601 or LLRICE 604 "in such a way that the identity of all material [was] known while in use, and that [the LLRICE was not] contained or devitalized when no longer in use";

(5) Not conducting its field tests of LLRICE 601 or LLRICE 604 "such that (i) [the LLRICE 601 or LLRICE 604] will not persist in the environment, and (ii) [n]o offspring can be produced that could persist in the environment"; and

(6) Not terminating the field tests of LLRICE 601 or LLRICE 604 such that "(i) [n]o viable material shall remain with is likely to volunteer in subsequent seasons, or (ii) [v]olunteers shall be managed to prevent persistence in the environment."

312. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

313. As a direct and proximate result of Bayer's conduct, the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

314. In light of the surrounding circumstances, Bayer knew or should have known that its conduct would naturally or probably result in injuries and damages to the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class. Bayer nonetheless continued such conduct in the reckless disregard of or conscious indifference to those consequences.

315. As a direct and proximate result of Bayer's breaches of this regulatory duty, the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

316. Bayer's conduct was grossly negligent and evidenced a reckless disregard for the rights of others - - including the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class - - thereby justifying an award of punitive damages.

Count 18 – Common Law Strict Liability – Products Liability
(On Behalf of the Mississippi State Rice Producers Class)

317. The Mississippi Plaintiffs incorporate by reference Paragraphs 1- 161 and each of the preceding counts brought on behalf of the Mississippi State Rice Producers Class, as though fully alleged herein.

318. Bayer was a producer of LLRICE and was in the business of manufacturing, assembling, selling, leasing, or otherwise distributing that product.

319. As alleged above, Bayer supplied LLRICE in a defective condition. LLRICE was unreasonably dangerous when put to a reasonably anticipated use.

320. LLRICE was used in a manner reasonably anticipated.

321. As a direct and proximate result of the defective and unreasonably dangerous condition of LLRICE as it existed when Bayer supplied it, the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class have sustained the injuries and damages alleged above.

322. Bayer's conduct was grossly negligent and evidenced a reckless disregard for the rights of others – including the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class – thereby justifying an award of punitive damages.

Count 19 – Common Law Absolute Liability – Inherently Dangerous, Extrahazardous, Abnormally Dangerous, and Ultrahazardous Activity
(On Behalf of the Mississippi State Rice Producers Class)

323. The Mississippi Plaintiffs incorporate by reference Paragraphs 1 - 161 and each of the preceding counts brought on behalf of the Mississippi State Rice Producers Class, as though fully alleged herein.

324. Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE constituted and continues to constitute an abnormally dangerous activity or ultrahazardous activity, because such activities create a high degree of risk of harm, the harm has been and will be great, the risk cannot be eliminated by the exercise of reasonable care, the activity is not a matter of common usage, the value to the community is outweighed by its dangerous attributes, and the activity resulted in injuries and damages to the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class. In addition, the activity was unduly dangerous and inappropriate for the places where it was conducted.

325. The type of harm suffered by the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class is the kind of harm the possibility of which makes the activity abnormally dangerous.

326. As a direct and proximate result of Bayer's ultrahazardous or abnormally dangerous activities, the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

327. Bayer is thus strictly liable to the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class for all injuries and damages which have resulted or will result from its abnormally dangerous activities with respect to LLRICE.

328. Bayer's conduct was grossly negligent and evidenced a reckless disregard for the rights of others – including the Mississippi Plaintiffs and the other members of the Mississippi State Rice Producers Class – thereby justifying an award of punitive damages.

D. CLAIMS ASSERTED BY THE MISSOURI PLAINTIFFS ON BEHALF OF THE MISSOURI STATE RICE PRODUCERS CLASS (Counts 20 - 27)

Count 20 – Common Law Public Nuisance (On Behalf of the Missouri State Rice Producers Class)

329. The Missouri Plaintiffs incorporate by reference Paragraphs 1 - 161 as though fully alleged herein.

330. By its conduct alleged above, Bayer has created a public nuisance by causing widespread contamination of the U.S. rice and rice seed supplies with LLRICE (as defined above). This constitutes an unreasonable and substantial interference with rights common to the general public.

331. This unreasonable interference is imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE (a) without adequate precautions to prevent contamination of the U.S. rice and rice seed supplies; (b) with the knowledge that there was a substantial risk that it would contaminate the U.S. rice and rice seed supplies; or (c) with the knowledge that there was a substantial risk it would contaminate U.S. and foreign food supplies.

332. Bayer has unreasonably interfered with the public's right to expect compliance with the federal laws governing the testing, growing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE. Bayer has further unreasonably interfered with the public's right to expect that the rice sold to the general public is free from contamination with LLRICE as well as the public's right to be notified of whether the rice sold to the public is

contaminated with genetically-modified organisms – including LLRICE 601 or LLRICE 604 – so that the public has the freedom to choose to purchase and consume non-contaminated long-grain rice.

333. This interference is unreasonable in that it involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience. It is also unreasonable in that it is proscribed by federal and state law, is of a continuing nature, and has produced a permanent or long-lasting effect.

334. The Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class have suffered harm caused by Bayer's public nuisance distinct from and different than that suffered by the general public in that, as described above, they have suffered business losses in the form of, among other things, the rejection of their crops by certain markets; reduced or restricted demand for their crops in certain markets; reduced prices for their crops at market; added costs for segregation, testing, or certification in order to sell their crops; added costs for the decontamination of their property; diminished value of their property; increased costs for rice seed; and inability to find sufficient or suitable rice seed to plant resulting in lower rice crop yields or planting other crops that generate less revenue.

335. Bayer's conduct showed a complete indifference to or conscious disregard of the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

Count 21 – Common Law Private Nuisance
(On Behalf of the Missouri State Rice Producers Class)

336. The Missouri Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Missouri State Rice Producers Class, as though fully alleged herein.

337. By its conduct alleged above concerning the testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer also created a private nuisance.

338. The Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class have property rights and are privileged in respect to the use and enjoyment of the land on which they produce rice.

339. Bayer's contamination of the U.S. rice and rice seed supplies has substantially interfered with, and will substantially interfere with and substantially impair, the Missouri Plaintiffs' and the other Missouri State Rice Producers Class members' use and enjoyment of their interests in the land on which they grow or may grow rice.

340. Bayer's conduct was intentionally committed or committed with a conscious or reckless disregard for the rights of the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class, and was grossly negligent and unreasonable. The gravity of the harm far outweighs the utility of Bayer's conduct.

341. As a direct and proximate result of Bayer's conduct, the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

342. Bayer's conduct showed a complete indifference to or conscious disregard of the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

Count 22 – Common Law Negligence *Per Se* – Violation of the Plant Protection Act and 7 C.F.R. Part 340
(On Behalf of the Missouri State Rice Producers Class)

343. The Missouri Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Missouri State Rice Producers Class, as though fully alleged herein.

344. Between at least 1998 and 2001, Bayer conducted LLRICE field trials.

345. During the time period relevant to this action, Bayer's LLRICE 601 and LLRICE 604 genetically-modified rice seed traits were (and, in the case of LLRICE 604 and other of Bayer's LLRICE traits, continue to be) "regulated article[s]," as defined by 7 C.F.R. § 340.1:

> Any organism which has been altered or produced through genetic engineering, if the donor organism, recipient organism, or vector or vector agent belongs to any genera or taxa designated in Sec. 340.2 and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product which contains such an organism, or any other organism or product altered or produced through genetic engineering which the Administrator, determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions

346. Under 7 C.F.R. § 340.0(a)(1) and (2), no person shall "introduce" a "regulated article" except by permit or pursuant to notification and such introduction "is in conformity with all other applicable restrictions in this part." *See also* 7 U.S.C. §7711(a), (c); 7 U.S.C. §7712(a), (c).

347. "Introduce" is defined in 7 C.F.R. § 340.1 as "[t]o move in or through the United States, to release into the environment, to move interstate, or any attempt there at." "Move" is defined as "[t]o ship, offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved into, through or within the United States.

Id. "Release into the environment" is defined as "[t]he use of a regulated article outside the constraints of physical confinement that are found in a laboratory, contained greenhouse, or a fermenter or other contained structure." *Id.*

348. The "applicable restrictions" for "regulated articles" "introduced" in the United States include the following:

(1) If the plant or plant materials are shipped, they must be shipped in such a way that the viable plant material is unlikely to be disseminated while in transit and must be maintained at the destination facility in such a way that there is no release into the environment.

(2) When the introduction is an environmental release, the regulated article must be planted in such a way that they are not inadvertently mixed with non-regulated plant materials of any species which are not part of the environmental release.

(3) The plants and plant parts must be maintained in such a way that the identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(4) There must be no viable vector agent associated with the regulated article.

(5) The field trial must be conducted such that:

(i) The regulated article will not persist in the environment, and
(ii) No offspring can be produced that could persist in the environment.

(6) Upon termination of the field test:

(i) No viable material shall remain which is likely to volunteer in subsequent seasons, or
(ii) Volunteers shall be managed to prevent persistence in the environment.

7 C.F.R. § 340.3(c).

349. Bayer had a duty not to violate the Plant Protection Act or the regulations at 7 C.F.R. Part 340.

350. The injuries and damages sustained by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class, as described above, are the type that the Plant Protection Act and 7 C.F.R. Part 340 were designed to prevent, and the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class are among the class of persons that the Act and the regulations were intended to protect.

351. Bayer breached its duties under the Plant Protection Act and 7 C.F.R. Part 340 by shipping, planting, maintaining, testing, growing, disposing of, or otherwise disseminating LLRICE in violation of these regulatory standards, including but not limited to introducing LLRICE without a permit or notification, and/or also:

(1) Not shipping LLRICE 601 or LLRICE 604 "in such a way that the viable plant is unlikely to be disseminated while in transit";

(2) Not maintaining LLRICE 601 or LLRICE 604 "at the destination city in such a way that there is no release into the environment";

(3) Not planting LLRICE 601 or LLRICE 604 "in such a way that they [were] not inadvertently mixed with non-regulated plant materials";

(4) Not maintaining LLRICE 601 or LLRICE 604 "in such a way that the identity of all material [was] known while in use, and that [the LLRICE was not] contained or devitalized when no longer in use";

(5) Not conducting its field tests of LLRICE 601 or LLRICE 604 "such that (i) [the LLRICE 601 or LLRICE 604] will not persist in the environment, and (ii) [n]o offspring can be produced that could persist in the environment"; and

(6) Not terminating the field tests of LLRICE 601 or LLRICE 604 such that "(i) [n]o viable material shall remain with is likely to volunteer in subsequent seasons, or (ii) [v]olunteers shall be managed to prevent persistence in the environment."

352. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

353. As a direct and proximate result of Bayer's breaches, the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

354. Bayer's conduct showed a complete indifference to or conscious disregard of the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

Count 23 – Common Law Negligence *Per Se* - Violation of the Missouri Crop Protection Act, Mo. Rev. Stat. § 578.416
(On Behalf of the Missouri State Rice Producers Class)

355. The Missouri Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Missouri State Rice Producers Class, as though fully alleged herein.

356. The Missouri Crop Protection Act provides, in pertinent part, that:

> No person shall:
>
> (1) Intentionally cause the loss of any crop;
>
> (2) Damage, vandalize, or steal any property in or on a crop;
>
> (3) Obtain access to a crop by false pretenses for the purpose of performing acts not authorized by the landowner;
>
> (4) Enter or otherwise interfere with a crop with the intent to destroy, alter, duplicate or obtain unauthorized possession of such crop;
>
> (5) Knowingly obtain, by theft or deception, control over a crop for the purpose of depriving the rightful owner of such crop, or for the purpose of destroying such crop; or
>
> (6) Enter or remain on land on which a crop is located with the intent to commit an act prohibited by this section.

Mo. Rev. Stat. § 578.416.

357. Bayer had a duty not to violate Mo. Rev. Stat. § 578.416.

358. Bayer's conduct, as alleged above, violated, at a minimum, Mo. Rev. Stat. § 578.416 in that Bayer knowingly or intentionally damaged property in or on the Missouri Plaintiffs' or the other members of the Missouri State Rice Producers Class's crops.

359. The injuries and damages sustained by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class, as described above, are the type that Mo. Rev. Stat. § 578.416 was designed to prevent, and the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class are among the class of persons that that it was intended to protect.

360. Bayer breached its duty by knowingly damaging the Missouri Plaintiffs' and the other members of the Missouri State Rice Producers Class's field crops as alleged above.

361. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

362. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class.

363. Bayer's conduct showed a complete indifference to or conscious disregard of the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

Count 24 – Common Law Negligence *Per Se* -Violation of Mo. Rev. Stat. § 537.353
(On Behalf of the Missouri State Rice Producers Class)

364. The Missouri Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Missouri State Rice Producers Class, as though fully alleged herein.

365. Mo. Rev. Stat. § 537.353 provides that:

1. [a]ny person or entity who knowingly damages or destroys any field crop product that is grown for personal or commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility, a university, or any federal, state or local government agency, shall be liable for double damages pursuant to this section.

2. In awarding damages pursuant to this section, the courts shall consider the following:

   (1) The market value of the crop prior to damage or destruction; and

   (2) The actual damages involving production, research, testing replacement and crop development costs directly related to the crop that has been damaged or destroyed.

3. In addition, the court may award court costs, including reasonable attorneys fees.

Mo. Rev. Stat. § 537.353.

366. Bayer had a duty not to violate Mo. Rev. Stat. § 537.353.

367. As alleged above, Bayer breached its duty not to violate the provisions of Mo. Rev. Stat. § 537.353 by knowingly damaging the Missouri Plaintiffs' and the other members of the Missouri State Rice Producers Class's crops.

368. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

369. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class.

370. As alleged above, Bayer knowingly damaged the rice grown by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class.

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371. The Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class are thus entitled to double damages and reasonable attorneys' fees pursuant to Mo. Rev. Stat. § 537.353.

372. Bayer's conduct showed a complete indifference to or conscious disregard for the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

Count 25 – Common Law Negligence
(On Behalf of the Missouri State Rice Producers Class)

373. The Missouri Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Missouri State Rice Producers Class, as though fully alleged herein.

374. With respect to its testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, Bayer had a duty to utilize its professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar circumstances by an expert in Bayer's business.

375. As alleged above, Bayer breached this duty by failing to exercise the requisite degree of care in testing, growing, storing, growing, transporting, disposing of, or otherwise disseminating LLRICE to prevent it from contaminating the U.S. rice and rice seed supplies.

376. As further alleged above, Bayer breached this duty by failing to notify the USDA and the public in a timely fashion after it first learned of its contamination of the U.S. rice and the rice seed supplies with LLRICE.

377. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

378. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class.

379. In the alternative, with respect to the injuries and damages sustained by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class, Bayer's contamination of the U.S. rice and rice seed supplies would not ordinarily occur absent negligence.

380. Bayer had control of – or the right to control – LLRICE and was in a superior position to the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class to know or have means of explaining the course or reason for such occurrence. Bayer is presumed negligent under the doctrine of *res ipsa loquitur*.

381. Bayer's conduct showed a complete indifference to or conscious disregard of the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

Count 26– Common Law Strict Liability in Tort – Ultrahazardous Activity (On Behalf of the Missouri State Rice Producers Class)

382. The Missouri Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Missouri State Rice Producers Class, as though fully alleged herein.

383. Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE constituted and continues to constitute an abnormally dangerous activity or ultrahazardous activity, because such activities create a high degree of risk of harm, the harm has been and will be significant, the risk cannot be eliminated by the exercise of reasonable care, the activity is not a matter of common usage, the value to the community is

outweighed by its dangerous attributes, and the activity resulted in injuries and damages to the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class. In addition, the activity was unduly dangerous and inappropriate for the places where it was conducted.

384. The type of harm suffered by the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class is the kind of harm the possibility of which makes the activity abnormally dangerous.

385. As a direct and proximate result of Bayer's ultrahazardous or abnormally dangerous activities, the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

386. Bayer is thus strictly liable to the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class for all injuries and damages that have resulted or will result from its abnormally dangerous activities with respect to LLRICE.

387. Bayer knew of the danger and its conduct showed complete indifference to or conscious disregard of the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

Count 27 – Common Law Strict Liability in Tort – Product Liability
(On Behalf of the Missouri State Rice Producers Class)

388. The Missouri Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Missouri State Rice Producers Class, as though fully alleged herein.

389. Bayer was a supplier of LLRICE and was in the business of manufacturing, assembling, selling, leasing, or otherwise distributing that product.

390. As alleged above, Bayer supplied LLRICE in a defective condition. LLRICE was unreasonably dangerous when put to a reasonably anticipated use.

391. LLRICE was used in a manner reasonably anticipated.

392. Any benefit derived from Bayer's test cultivation of LLRICE is greatly outweighed by the harms resulting from Bayer's contamination of the U.S. rice and rice seed supplies with LLRICE.

393. As a direct and proximate result of the defective and unreasonably dangerous condition of LLRICE as it existed when Bayer supplied it, the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class have sustained the injuries and damages alleged above.

394. Bayer knew of the defective condition and danger and its conduct showed complete indifference to or conscious disregard of the rights of others – including the Missouri Plaintiffs and the other members of the Missouri State Rice Producers Class – thereby justifying an award of punitive damages.

E. CLAIMS ASSERTED BY THE TEXAS PLAINTIFFS ON BEHALF OF THE TEXAS STATE RICE PRODUCERS CLASS (Counts 28 - 32)

Count 28 – Common Law Negligence *Per Se* – Failure to Comply with Standards of Care Imposed by the Plant Protection Act and 7 C.F.R. Part 340 (On Behalf of the Texas State Rice Producers Class)

395. The Texas Plaintiffs incorporate by reference Paragraphs 1- 161 as though fully alleged herein.

396. Between at least 1998 and 2001, Bayer conducted LLRICE field trials.

397. During the time period relevant to this action, Bayer's LLRICE 601 and LLRICE 604 genetically-modified rice seed traits were (and, in the case of LLRICE 604 and other of Bayer's LLRICE traits, continue to be) "regulated article[s]," as defined by 7 C.F.R. § 340.1:

> Any organism which has been altered or produced through genetic engineering, if the donor organism, recipient organism, or vector or vector agent belongs to any genera or taxa designated in Sec. 340.2 and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product which contains such an organism, or any other organism or product altered or produced through genetic engineering which the Administrator, determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions

398. Under 7 C.F.R. § 340.0(a)(1) and (2), no person shall "introduce" a "regulated article" except by permit or pursuant to notification and such introduction "is in conformity with all other applicable restrictions in this part." *See also* 7 U.S.C. §7711(a), (c); 7 U.S.C. §7712(a)(, (c).

399. "Introduce" is defined in 7 C.F.R. § 340.1 as meaning "[t]o move in or through the United States, to release into the environment, to move interstate, or any attempt there at." "Move" is defined as "[t]o ship, offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved into, through or within the United States. *Id.* "Release into the environment" is defined as "[t]he use of a regulated article outside the constraints of physical confinement that are found in a laboratory, contained greenhouse, or a fermenter or other contained structure." *Id.*

400. The "applicable restrictions" for "regulated articles" "introduced" in the United States include the following:

> (1) If the plant or plant materials are shipped, they must be shipped in such a way that the viable plant material is unlikely to be disseminated while in transit and must be maintained at the destination facility in such a way that there is no release into the environment.
>
> (2) When the introduction is an environmental release, the regulated article must be planted in such a way that they are not inadvertently mixed with

non-regulated plant materials of any species which are not part of the environmental release.

(3) The plants and plant parts must be maintained in such a way that the identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(4) There must be no viable vector agent associated with the regulated article.

(5) The field trial must be conducted such that:

(i) The regulated article will not persist in the environment, and
(ii) No offspring can be produced that could persist in the environment.

(6) Upon termination of the field test:

(i) No viable material shall remain which is likely to volunteer in subsequent seasons, or
(ii) Volunteers shall be managed to prevent persistence in the environment.

7 C.F.R. § 340.3(c).

401. Bayer had a duty to comply with the standards of care established by the Plant Protection Act and 7 C.F.R. Part 340.

402. The injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class, as described above, are the type that the Plant Protection Act and 7 C.F.R. Part 340 were designed to prevent, and the Texas Plaintiffs and the other members of the Texas State Rice Producers Class are among the class of persons that the Act and the regulations were intended to protect.

403. Bayer did not comply with the standards of care set by the Plant Protection Act and 7 C.F.R. Part 340, by shipping, planting, maintaining, testing, growing, disposing of, or otherwise disseminating LLRICE in violation of these regulatory standards, including but not limited to introducing LLRICE without a permit or notification and/or also:

(1) Not shipping LLRICE 601 or LLRICE 604 "in such a way that the viable plant is unlikely to be disseminated while in transit";

(2) Not maintaining LLRICE 601 or LLRICE 604 "at the destination city in such a way that there is no release into the environment";

(3) Not planting LLRICE 601 or LLRICE 604 "in such a way that they [were] not inadvertently mixed with non-regulated plant materials";

(4) Not maintaining LLRICE 601 or LLRICE 604 "in such a way that the identity of all material [was] known while in use, and that [the LLRICE was not] contained or devitalized when no longer in use";

(5) Not conducting its field tests of LLRICE 601 or LLRICE 604 "such that (i) [the LLRICE 601 or LLRICE 604] will not persist in the environment, and (ii) [n]o offspring can be produced that could persist in the environment"; and

(6) Not terminating the field tests of LLRICE 601 or LLRICE 604 such that "(i) [n]o viable material shall remain with is likely to volunteer in subsequent seasons, or (ii) [v]olunteers shall be managed to prevent persistence in the environment."

404. Bayer breached its duties, as alleged above, breached the requisite standard of care, and was thereby negligent.

405. As a direct and proximate result of Bayer's breaches, the Texas Plaintiffs and the other members of the Texas State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

406. Bayer's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, of which Bayer was aware, but Bayer nevertheless proceeded to engage in the conduct with conscious indifference to the rights, safety, or welfare of others – including the Texas Plaintiffs and the other members of the Texas State Rice Producers Class – thereby justifying an award of punitive damages.

Count 29 – Common Law Negligence
(On Behalf of the Texas State Rice Producers Class)

407. The Texas Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Texas State Rice Producers Class, as though fully alleged herein.

408. With respect to its testing, growing, storage, transportation, disposal or otherwise dissemination of LLRICE, Bayer had a duty to utilize its professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar circumstances by an expert in Bayer's business.

409. As alleged above, Bayer breached this duty by failing to exercise the requisite degree of care in testing, growing, storing, growing, transporting, disposing of, or otherwise disseminating LLRICE to prevent it from contaminating the U.S. rice and rice seed supplies.

410. As further alleged above, Bayer breached this duty by failing to notify the USDA and the public in a timely fashion after it first learned of its contamination of the U.S. rice and the rice seed supplies with LLRICE.

411. Bayer breached its duties (as alleged above) and the requisite standard of care, and was thereby negligent.

412. Bayer's breaches are a direct and proximate cause of the injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class.

413. In the alternative, Bayer owed a duty to exercise ordinary care with respect to its testing, growing, storing, transporting, disposing of, or otherwise disseminating LLRICE.

414. Bayer breached this duty by failing to prevent LLRICE from contaminating the U.S. rice and rice seed supplies.

415. Bayer's breach of its duty is a direct and proximate cause of the injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class.

416. In addition or in the alternative, the manufacturer of a product has a duty to give a reasonable and adequate warning of dangers inherent or reasonably foreseeable in the use of the product.

417. As the manufacturer of regulated or otherwise restricted rice seed traits, including LLRICE 601 and LLRICE 604, Bayer violated its duty to give a reasonable and adequate warning of the dangers inherent and reasonably foreseeable in the use and testing of LLRICE. Bayer's failure to give such warnings constitutes negligence.

418. Bayer's inadequate warnings with respect to the dangers inherent and reasonably foreseeable in the use and testing of LLRICE were a proximate cause of the harm to the Texas Plaintiffs and the other members of the Texas State Rice Producers Class.

419. Bayer is liable for all injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class proximately caused by its acts or omissions, including, specifically, the injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class to their real and personal property.

420. In addition or in the alternative, Bayer further had the duty to properly instruct and train those who tested, grew, stored, transported, disposed of, or otherwise disseminated LLRICE. A manufacturer of a product has a duty to give reasonable and adequate instructions with respect to the conditions and methods of its safe use when danger is reasonably foreseeable in its use, unless the danger is known to the user or is reasonably discovered by him.

421. Bayer failed to properly instruct and train those who tested, grew, stored, transported, disposed of, or otherwise disseminated LLRICE. Such failure constitutes negligence on the part of Bayer.

422. Bayer's failure to properly instruct and train those who tested, grew, stored, transported, disposed of, or otherwise disseminated LLRICE was a proximate cause of the harm to the Texas Plaintiffs and the other members of the Texas State Rice Producers Class.

423. Bayer is liable for all injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class proximately caused by its actions and omissions, including, specifically, the injuries and damages sustained by the Texas Plaintiffs' and the other members of the Texas State Rice Producers Class's real and personal property.

424. In the alternative, with respect to the injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class, Bayer's contamination of the U.S. rice and rice seed supplies would not ordinarily occur absent Bayer's negligence.

425. Bayer had control of – or the right to control – LLRICE, and was in a superior position to the Texas Plaintiffs and the other members of the Texas State Rice Producers Class to know or have means of explaining the course or reason for such occurrence. Bayer is presumed negligent under the doctrine of *res ipsa loquitur*.

426. Furthermore, Bayer's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, of which Bayer was aware, but Bayer nevertheless proceeded to engage in the conduct with conscious indifference to the rights, safety or welfare of others – including the Texas Plaintiffs and the other members of the Texas State Rice Producers Class – thereby justifying an award of punitive damages.

Count 30 – Common Law Public Nuisance
(On Behalf of the Texas State Rice Producers Class)

427. The Texas Plaintiffs incorporate by reference Paragraphs 1- 161 and each of the preceding counts brought on behalf of the Texas State Rice Producers Class, as though fully alleged herein.

428. Through its conduct alleged above, Bayer has created a public nuisance by causing widespread contamination of the U.S. rice supply and rice seed supplies with LLRICE (as defined above). This constitutes an unreasonable and substantial interference with rights common to the general public.

429. This unreasonable interference is imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Bayer's testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE (a) without adequate precautions to prevent contamination of the U.S. rice and rice seed supplies; (b) with the knowledge that there was a substantial risk that it would contaminate the U.S. rice and rice seed supplies; or (c) with the knowledge that there was a substantial risk it would contaminate U.S. and foreign food supplies.

430. Bayer has unreasonably interfered with the public's right to expect compliance with the federal laws governing the testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE. Bayer has further unreasonably interfered with the public's right to expect that the rice sold to the general public is free from contamination with LLRICE as well as the public's right to be notified of whether the rice sold to the public is contaminated with genetically-modified organisms – including LLRICE 601 or LLRICE 604 – so that the public has the freedom to choose to purchase and consume non-contaminated long-grain rice.

431. This interference is unreasonable in that it involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience. It is also unreasonable in that it is proscribed by federal and state law, is of a continuing nature, and has produced a permanent or long-lasting effect.

432. The Texas Plaintiffs and the other members of the Texas State Rice Producers Class have suffered harm caused by Bayer's public nuisance distinct from and different than that suffered by the general public in that, as described above, they have suffered business losses in the form of, among other things, the rejection of their crops by certain markets; reduced or restricted demand for their crops in certain markets; reduced prices for their crops at market, added costs for segregation, testing, or certification in order to sell their crops; added costs for the decontamination of their property; diminished value of their property; increased costs for rice seed, and inability to find sufficient or suitable rice seed to plant resulting in lower rice crop yields or planting other crops that generate less revenue.

433. Bayer's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, of which Bayer was aware, but Bayer nevertheless proceeded to engage in the conduct with conscious indifference to the rights, safety, or welfare of others – including the Texas Plaintiffs and the other members of the Texas State Rice Producers Class – thereby justifying an award of punitive damages.

Count 31 – Common Law Private Nuisance
(On Behalf of the Texas State Rice Producers Class)

434. The Texas Plaintiffs incorporate by reference Paragraphs 1 – 161 and each of the preceding counts brought on behalf of the Texas State Rice Producers Class, as though fully alleged herein.

435. The Texas Plaintiffs and the other members of the Texas State Rice Producers Class are the owners or lessees of land and improvements located in the State of Texas on which the Texas Plaintiffs and the other members of the Texas State Rice Producers Class produce long-grain rice.

436. The Texas Plaintiffs and the other members of the Texas State Rice Producers Class have property rights and are privileged in respect to the use and enjoyment of the land on which they produce rice.

437. By its conduct alleged above, Bayer also created a private nuisance through the testing, growing, storage, transportation, disposal, or otherwise dissemination of LLRICE, which Bayer knew or should have known involved an unreasonable risk of interfering with the Texas Plaintiffs' and the other members of the Texas State Rice Producers Class's use and enjoyment of their real property.

438. In the alternative, Bayer intentionally and unreasonably interfered with the Texas Plaintiffs' and the other members of the Texas State Rice Producers Class's use and enjoyment of their real property because Bayer knew, or was substantially certain, that an unreasonable interference with the Texas Plaintiffs' and the other members of the Texas State Rice Producers Class's use and enjoyment would result from its conduct.

439. Bayer's contamination of the U.S. rice and rice seed supplies has substantially interfered with, and will substantially interfere with and substantially impair, the Texas Plaintiffs' and the other Texas State Rice Producers Class members' use and enjoyment of their interests in the land on which they grow or may grow rice.

440. Bayer's conduct was intentionally committed or committed with a conscious or reckless disregard for the rights of the Texas Plaintiffs and the other members of the Texas State

Rice Producers Class, and was grossly negligent and unreasonable. The gravity of the harm far outweighs the utility of Bayer's conduct.

441. As a direct and proximate result of Bayer's conduct, the Texas Plaintiffs and the other members of the Texas State Rice Producers Class have sustained substantial injuries and damages, including those alleged above.

442. Bayer's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, of which Bayer was aware, but Bayer nevertheless proceeded to engage in the conduct in a grossly negligent manner and with conscious indifference to the rights, safety, or welfare of others – including the Texas Plaintiffs and the other members of the Texas State Rice Producers Class – thereby justifying an award of punitive damages.

Count 32 – Common Law Strict Liability in Tort – Manufacturing Defect
(On Behalf of the Texas State Rice Producers Class)

443. The Texas Plaintiffs incorporate by reference Paragraphs 1- 161 and each of the preceding counts brought on behalf of the Texas State Rice Producers Class, as though fully alleged herein.

444. Bayer manufactured and distributed LLRICE genetically-modified rice seed traits, including LLRICE 601 and LLRICE 604.

445. Neither LLRICE 601 nor LLRICE 604 is marketable or otherwise commercially available. Prior to November 24, 2006, LLRICE 601 was regulated and thus unapproved by the required federal authorities for commercial sale or human consumption. LLRICE 604 remains regulated and has never been approved by federal authorities for commercial sale or human consumption.

446. Bayer's regulated or otherwise restricted genetically-modified rice seed traits – including LLRICE 601 and LLRICE 604 – are also defective and unreasonably dangerous because they have already damaged, and are reasonably likely to damage in the future, the property and products they contact, rendering such property and products unmarketable, defective – and, prior to the November 24, 2006 deregulation of LLRICE 601 – unapproved by the required federal authorities for sale or human consumption in any manner.

447. LLRICE was used in a manner reasonably anticipated.

448. The defects in LLRICE 601 also caused the Cheniere "foundation" seed sold into the marketplace by those who have grown or distributed such "foundation" seed to become contaminated and, therefore, unreasonably dangerous and defective.

449. The defects in LLRICE 604 also caused the CL 131 seed sold into the marketplace by those who have grown or distributed such seed to become contaminated and, therefore, unreasonably dangerous and defective.

450. The defects in Bayer's regulated or otherwise restricted genetically-modified rice seed traits – including LLRICE 601 and LLRICE 604 – were, and continue to be, proximate causes of the injuries and damages sustained by the Texas Plaintiffs and the other members of the Texas State Rice Producers Class, including injuries and damages to the Texas Plaintiffs' and the other members of the Texas State Rice Producers Class's property.

451. Bayer's conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, of which Bayer was aware, but Bayer nevertheless proceeded to engage in the conduct in a grossly negligent manner and with conscious indifference to the rights, safety or welfare of others – including the Texas Plaintiffs and the other members of the Texas State Rice Producers Class – thereby justifying an award of punitive damages.

F. CLAIM ASSERTED BY PLAINTIFFS ON BEHALF OF THE FIVE-STATE RICE PRODUCERS CLASS (Count 33)

Count 33 – Violation of the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1 (On Behalf of the Five-State Rice Producers Class Against All Defendants)

452. Plaintiffs incorporate by reference Paragraphs 1 - 161 as though fully alleged herein.

453. The North Carolina Unfair and Deceptive Practices Act ("UDTPA"), codified at N.C. Gen. Stat. § 75-1.1 *et seq*., declares unlawful "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."

454. Bayer's conduct, as alleged above, constitutes violations of the UDTPA.

455. Bayer, at all times relevant to this litigation, has engaged in "commerce" within the meaning of N.C. Gen. Stat. § 75-1.1(b).

456. Bayer's acts and conduct were devised in and emanated from its North Carolina U.S. headquarters. Bayer's North Carolina-based conduct thus directly resulted in the wrongs alleged herein.

457. As a North Carolina company, Bayer is required not to engage in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." N.C. Gen. Stat. § 75-1.1. Those acts are unlawful under the provisions of the UDTPA.

458. A practice is "unfair" under the statute when it offends established public policy, is immoral, unethical, oppressive, unscrupulous, or is substantially injurious to consumers.

459. Bayer engaged in unfair and deceptive acts or practices in or affecting commerce through, *inter alia*, its negligent, reckless, and willful and wanton conduct that led to the

contamination of the U.S. rice supply with its regulated LLRICE seed traits, in violation of federal and state law; and its failure to timely disclose the contamination about which it knew.

460. By the acts and conduct alleged above, Bayer engaged in unfair and deceptive acts or practices affecting commerce by interfering with normal economic market conditions for rice.

461. Through the acts and conduct alleged above, Bayer engaged in unfair and deceptive acts or practices in or affecting commerce, in violation of N.C. Gen. Stat. § 75-1.1.

462. By reason of Bayer's violation of N.C. Gen. Stat. § 75.1-1, Plaintiffs and the other members of the Five-State Rice Producers Class have sustained injuries and damages.

463. Bayer's violations of N.C. Gen. Stat. § 75.1-1 entitle Plaintiffs and the other members of the Five-State Rice Producers Class to an award of injunctive relief and compensatory damages with interest thereon plus the costs of this action.

464. Bayer's violations of N.C. Gen. Stat. § 75.1-1 further entitle Plaintiffs and the other members of the Five-State Rice Producers Class to treble damages pursuant to N.C. Gen. Stat. § 75-16.

465. Bayer's violations of N.C. Gen. Stat. § 75.1-1 further entitle Plaintiffs and the other members of the Five-State Rice Producers Class to reasonable attorneys' fees to be calculated as costs of this action pursuant to N.C. Gen. Stat. § 75-16.1, because Bayer has "willfully engaged in the act or practice" that violates N.C. Gen. Stat. § 75-1.1 and has given its "unwarranted refusal to fully resolve the matter which constitutes the basis of th[is] suit." *Id.* § 75-16 (1).

VII. DEMAND FOR JUDGMENT

All Plaintiffs, on behalf of themselves and their respective Classes, demand judgment from Defendants for:

(a) All monetary and compensatory relief to which they are entitled and will be entitled at the time of trial;

(b) Appropriate injunctive relief restraining Bayer from engaging in further conduct that is substantially likely to lead to additional contamination of the U.S. rice and rice seed supplies and directing Bayer to take affirmative steps to remediate the contamination that it has already caused;

(c) Punitive damages;

(d) Treble damages pursuant to N.C. Gen. Stat. § 75-16; or, alternatively, for the Arkansas Plaintiffs, Mississippi Plaintiffs, and Missouri Plaintiffs and their respective classes, double damages pursuant to Ark. Code § 2-15-101, Miss. Code § 69-49-1, and Mo. Rev. Stat. § 537.353, respectively;

(e) Attorneys' fees pursuant to , N.C. Gen. Stat. § 75-16; or, alternatively, for the Arkansas Plaintiffs, Mississippi Plaintiffs, and Missouri Plaintiffs and their respective classes, attorneys' fees pursuant to , Ark. Code § 2-15-101, Miss. Code § 69-49-1, and Mo. Rev. Stat. § 537.353, respectively;

(f) Prejudgment interest;

(g) The costs of this action; and

(h) Such other and further relief as is appropriate.

Dated: January 5, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this 5th day of January, 2009, electronically filed a copy of the foregoing with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/ Don M. Downing