

**UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

DEERE & COMPANY;

PRECISION PLANTING LLC;  
and

MONSANTO COMPANY,

*Defendants.*

Civil Action No. 1:16-cv-08515

Judge Edmond E. Chang

Magistrate Judge M. David Weisman

**ANSWER OF DEFENDANT DEERE & COMPANY**

Defendant Deere & Company (“Deere”) hereby responds to the allegations in the Complaint as set forth below. Any allegation not expressly admitted is denied.

**GENERAL RESPONSE TO PLAINTIFF’S ALLEGATIONS**

The agricultural industry will benefit from Deere’s acquisition of Precision Planting LLC (“Precision Planting”) through faster and better innovation focused on helping agricultural commodity growers increase crop yields and operate more efficiently. No competition will be lost as a result of the transaction. In fact, competition will intensify.

Rather than consider these competitive benefits, Plaintiff’s challenge stems from a Deere competitor’s fears of enhanced competition—not the best interests of the agricultural community. Tellingly, the Department of Justice, pursuant to procedures under the Hart-Scott-Rodino Act, long ago cleared this transaction to proceed, only to change its mind and bring this lawsuit when a Deere competitor protested. However, it is a fundamental maxim that

antitrust laws are meant to protect competition, not competitors. Growers deserve the benefits of this transaction and the increased innovation, competition, and consumer choice that a combination of Deere and Precision Planting will create.

Precision Planting develops and sells component products designed to help growers better execute their in-field jobs using the equipment they already own. Precision Planting customers can upgrade their planters' capabilities without having to purchase a new planter. Precision Planting's agronomically focused and innovative team will boost Deere's capacity to help growers across a wide range of crop production steps, beyond simply increasing planting speed.

Today's grower is increasingly focused on maximizing crops' potential yield in a cost-effective way. To help growers accomplish this objective, agricultural equipment companies offer a wide variety of planting products to make planting more effective and efficient. Products that enable high-speed planting provide one feature among many from which growers choose to achieve this goal. Growers also look to a wide range of other available options to meet their own unique farming needs and optimize their yield throughout the entire crop production cycle; from planning their crop, preparing the soil, planting the seed, nurturing and protecting the plants, and harvesting. Deere's core business is providing original equipment solutions addressing these in-field tasks. Combining the efforts of Deere and Precision Planting will drive innovation across all of these tasks to help growers more quickly lower their production costs and remain competitive in a global commodities market.

The transaction also will benefit growers by increasing the number of retail outlets where growers can purchase Precision Planting components. Deere's sophisticated dealer channel operates through large physical dealerships, a structure that is complementary to Precision

Planting's existing dealer network. This combination creates a unique opportunity to bring Precision Planting's innovative components to more growers, in more geographies, more quickly, across a broader range of in-field jobs.

In addition to enhancing Deere's innovation capabilities and portfolio to better serve growers, the transaction increases grower choice and creates value with Ag Leader Technology, Inc. ("Ag Leader"), a recognized innovator in the field of agricultural equipment. As part of the transaction, Ag Leader will gain the right to manufacture, sell, and even improve upon Precision Planting's SpeedTube and other components. Ag Leader's capabilities and extensive distribution network will ensure an additional independent and competitive channel for growers and OEMs to purchase Precision Planting's SpeedTube and other components, and Ag Leader's track record of innovation will provide a new path for continued improvement in these Precision Planting products.

Post-transaction, Deere's *ExactEmerge* planter technology will continue to provide growers seeking to buy new planters, as well as those that own late-model Deere planters, an opportunity to plant with greater precision at faster speeds. Meanwhile, Precision Planting's products will continue to provide retrofit solutions for a range of planter makes and models, including late-model as well as older Deere planters. And through both existing contractual commitments and Deere's agreement with Ag Leader, Deere's competitors and their customers will continue to have access to Precision Planting's SpeedTube technology for their planters as well. Ultimately, the transaction provides all growers with greater freedom of choice and more independent channels and options to buy Precision Planting components. The transaction will ensure even more robust competition to provide equipment, aftermarket components, and other means to increase growers' yields and lower costs. In short, the transaction will increase

competition and promote consumer freedom by increasing the total number of market players. Restraining this vibrant competition and greater consumer choice in the narrow interest of a particular competitor is not in the public's interest.

## **I. INTRODUCTION**

1. *Farmers in the United States plant tens of millions of acres of corn, soybeans, and other row crops every year. To do so, they rely on specialized planting equipment. Within the past three years, Deere and Precision Planting have each introduced innovative high-speed precision planting systems that represent a “True Gamechanger for Agriculture.” These systems enable farmers to plant seeds at substantially higher speeds than conventional planters without sacrificing accuracy. By allowing farmers to plant crops more quickly and accurately within the optimal planting window, high-speed precision planting systems can substantially improve crop yields. Precision Planting expects that “[h]igh speed planting will become standard in the next few years.”*

**Response:** Deere admits that farmers in the United States plant millions of acres of row crops each year and that farmers use planting equipment. Deere denies the allegations in the third, fourth, and fifth sentences of paragraph 1, and specifically asserts that the terms “high-speed precision planting systems” and “conventional planters” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere understands that Plaintiff’s use of the phrase “high-speed precision planting systems” with respect to Deere is intended to refer to certain aspects of Deere’s *ExactEmerge* planters and row units, and will respond accordingly with respect to this and other allegations in the Complaint. Deere admits that one among many features of *ExactEmerge* planters is their ability to attain

improved seed placement accuracy when operated above certain speeds as compared to certain other planters sold by Deere and others, and that such advantages may, for some farmers in certain conditions, contribute to improved yield. Deere lacks the information and knowledge to respond to allegations concerning statements attributed to Precision Planting and on that basis denies them. Deere denies all remaining allegations in this paragraph.

2. *High-speed precision planting technology took Deere and Precision Planting several years to develop. Precision Planting was first to announce its system, called SpeedTube, in 2014. Deere followed several weeks later with its own ExactEmerge high-speed precision planting system, which it viewed as a “revolutionary technology that marries planting speed and accuracy.” Unlike Deere, which sold its high-speed precision planting technology bundled into new planters, Precision Planting first offered SpeedTube as a set of components that could be purchased at a relatively low cost and retrofitted onto existing planters made by planter manufacturers, including, foremost, Deere.*

**Response:** Deere denies the allegations in the first, third, and fourth sentences of paragraph 2, and specifically asserts that the terms “high-speed precision planting technology” and “high-speed precision planting system” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that it developed its *ExactEmerge* planter over several years and introduced it in 2014. Deere admits that Precision Planting announced an aftermarket part called SpeedTube in 2014. To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere denies all remaining allegations in this paragraph.

3. *By offering farmers high-speed precision planting retrofit kits at a fraction of the cost of a new planter, Precision Planting posed a formidable challenge to Deere and its profitable sales of new planters. Recognizing this threat, Deere executives emphasized that Precision Planting’s “pricing strategy is a concern” and that Deere would need to “hit them from both a new and aftermarket approach in order to be fully successful.”*

**Response:** To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere denies all allegations in this paragraph.

4. *Since launching ExactEmerge and SpeedTube in 2014, Deere and Precision Planting have remained the dominant providers of high-speed precision planting systems in the United States—accounting for at least 86% of all U.S. sales. They have competed vigorously for the business of farmers. Each company has set its prices with an eye towards the other and Deere has offered aggressive discounts and other promotions to win farmers’ business. Moreover, each company responded to the other’s business strategy. In August 2015, in response to the success of Precision Planting’s retrofit offerings, Deere began offering its ExactEmerge system as a retrofit option. After Precision Planting reached an agreement to have SpeedTube factory-installed on the planters of one of Deere’s major planter rivals, Deere executives viewed it as posing an “obvious challenge to the goals of John Deere on every level.” In light of this head-to-head competition, Deere executives have recognized the formidable challenge that Precision Planting presents and have identified the company as Deere’s “number one competitor.”*

**Response:** Deere denies the allegations in the first sentence of paragraph 4, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is

any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits it began offering *ExactEmerge* planter row units for sale as retrofit kits compatible with a limited number of Deere planters in August 2015. To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere denies all remaining allegations in this paragraph.

5. *In 2015—the year after Deere and Precision Planting introduced their high-speed precision planting systems—Deere renewed discussions with Precision Planting’s parent company, Monsanto, about the possibility of Deere acquiring Precision Planting. In evaluating the benefits of acquiring Precision Planting, Deere estimated that eliminating competition from Precision Planting would allow it to avoid cutting its ExactEmerge prices by 5-15%. Moreover, the acquisition would allow Deere to protect its lucrative planter business by reserving the best and most advanced high-speed planting technology for new Deere planters while “temper[ing]” the growth of the provision of Precision Planting’s technology to Deere’s planter rivals. The acquisition would also enable Deere to temper its own growing retrofit business that it developed to compete with Precision Planting. With control over the pricing, quality, and availability of Precision Planting’s technology, Deere would control the availability of this “Gamechanger” to farmers.*

**Response:** Deere admits that it engaged in discussions with Monsanto Company (“Monsanto”) about a possible acquisition of Precision Planting in 2015. However, Deere denies all remaining allegations of the first sentence of paragraph 5, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further denies the allegations in the third sentence of paragraph 5, and specifically asserts that the term “most advanced high-speed planting

technology” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere specifically denies that “eliminating competition from Precision Planting would allow it to avoid cutting its *ExactEmerge* prices by 5-15%.” Deere denies all remaining allegations in this paragraph.

6. *If not enjoined, Deere’s proposed acquisition of Precision Planting would end the competition that exists today between Deere and Precision Planting and the competition that would otherwise continue and expand as adoption of this emerging technology increases. Deere would control nearly every method through which American farmers can acquire effective high-speed precision planting systems. Competition between Deere and Precision Planting benefits farmers through lower prices and more innovative high-speed precision planting systems in the marketplace. Accordingly, the proposed acquisition likely would lessen competition substantially, and tend to create a monopoly, in the market for high-speed precision planting systems in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.*

**Response:** Deere denies the allegations in the second, third, and fourth sentences of paragraph 6, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

## **II. DEFENDANTS AND THE PROPOSED ACQUISITION**

7. *Deere & Company is a Delaware corporation headquartered in Moline, Illinois. It manufactures and distributes a complete line of equipment and components used in*

*agriculture, construction, forestry, and turf care. In 2015, Deere's U.S. sales for planter-related equipment were approximately \$900 million. Deere is the leading seller of new planters in the U.S.*

**Response:** Deere admits it is a Delaware corporation headquartered in Moline, Illinois; that it manufactures and distributes equipment and components used in agriculture, construction, forestry, and turf care; and that it is a significant seller of new planters in the United States. Deere denies all remaining allegations in this paragraph.

8. *Precision Planting LLC is a Delaware limited liability company headquartered in Tremont, Illinois. It manufactures precision planting equipment that is retrofitted to update existing conventional planters manufactured by Deere, Kinze Manufacturing, Inc. ("Kinze"), CNH Industrial N.V. ("Case"), and AGCO Corporation ("AGCO"). Precision Planting also has non-exclusive licensing agreements with Case and AGCO that permit these planter manufacturers to integrate Precision Planting's high-speed precision planting products and technology into their new planters, which directly compete against Deere planters with factory-installed high-speed precision planting systems. In 2015, Precision Planting's U.S. sales for planter-related equipment were approximately \$100 million.*

**Response:** Deere admits, on information and belief, that Precision Planting is a Delaware limited liability company headquartered in Tremont, Illinois; that Precision Planting manufactures parts that some farmers install on planters manufactured by Deere, Kinze Manufacturing, Inc. ("Kinze"), CNH Industrial N.V. ("CNH"), and AGCO Corporation ("AGCO"); and that Precision Planting or its parent has entered into agreements allowing CNH and AGCO to install certain Precision Planting parts on certain of their new planters. Deere lacks the information and knowledge to respond to the other allegations concerning Precision

Planting in this paragraph and on that basis denies them. Deere denies the allegations in the second sentence of paragraph 8, and specifically asserts that the term “conventional planters” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further denies the allegations in the third sentence of paragraph 8, and specifically asserts that the terms “high-speed precision planting products,” “high-speed precision planting technology,” and “high-speed precision planting systems” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere specifically denies that Precision Planting’s products “directly compete” against Deere’s products. Deere denies all remaining allegations in this paragraph.

9. *Monsanto Company is a Delaware corporation headquartered in St. Louis, Missouri. It is a leading global provider of agricultural products, including seeds, herbicides, and fertilizers. Monsanto is the ultimate parent company of Precision Planting, which is currently owned by Monsanto’s wholly owned subsidiary, The Climate Corporation.*

**Response:** Deere admits, on information and belief, that Monsanto is a Delaware corporation headquartered in St. Louis, Missouri; is engaged in the agricultural business; and is the ultimate parent company of Precision Planting. Deere lacks the information and knowledge to respond to the remaining allegations in this paragraph and on that basis denies them.

10. *On November 3, 2015, Deere announced that it had agreed with The Climate Corporation to acquire Precision Planting for \$190 million, subject to a carve-out of some assets and adjustments. Concurrently, Deere announced that it and The Climate Corporation had entered into an exclusive data-sharing agreement that provides The Climate Corporation near real-time access to data collected from Deere equipment. The data-sharing agreement*

*offers Monsanto considerable value in addition to the \$190 million that it will receive from Deere.*

**Response:** Deere admits that it announced on November 3, 2015, an agreement with The Climate Corporation to acquire Precision Planting, subject to a carve-out of certain assets and adjustments. Deere further admits that the transaction included an agreement under which The Climate Corporation would be able to access certain information from certain Deere equipment. Deere denies all remaining allegations in this paragraph.

### **III. HIGH-SPEED PRECISION PLANTING OVERVIEW**

#### **A. Planters**

11. *A planter is a critical piece of farming machinery that is used to deliver seeds of row crops to the ground. Planters comprise two primary components: a planter toolbar and a set of row units. The planter toolbar, which is attached to a tractor that pulls the planter, provides the basic framework of the planter. Row units—typically 12 or 16 per planter—are attached to the toolbar. The row units draw seeds from a seed hopper, dispense the seeds with a seed meter, and deliver the seeds to trenches in the ground.*

**Response:** Deere admits that planters can be important to farmers who plant certain row crops; that planters are used to deliver seeds of row crops to the ground; that planters often are comprised of toolbars and row units; that planters can be attached to and pulled behind tractors; that some planters have 12 or 16 row units (while others have fewer or many more) attached to the toolbar; and that planter row units include seed hoppers or other equipment from which seeds are drawn, a meter or other equipment to dispense the seeds, and equipment to deliver the seeds to trenches in the ground. Deere denies all remaining allegations in this paragraph.

12. *In the United States four manufacturers account for most planter sales: Deere, Kinze, Case, and AGCO. Deere is by far the largest, accounting for more than half of new planter sales.*

**Response:** Deere admits that Deere, Kinze, CNH, and AGCO manufacture planters for sale in the United States, along with other companies including Horsch Maschinen GmbH (“Horsch”), Väderstad AB, and Great Plains Ag. Deere lacks sufficient information and knowledge regarding the remaining allegations in this paragraph and on that basis denies them.

**B. High-Speed Precision Planting Systems**

13. *High-speed precision planting systems enable farmers to plant accurately at up to twice the speed at which they would otherwise be able to plant with conventional systems—up to 10 miles per hour. Planting with accuracy is important because precise seed placement results in spacing that allows for ideal plant growth. Planting at higher speeds, while maintaining precision, is valuable because it better enables farmers to plant crops within the optimal planting window—the narrow set of days each season when planting conditions are most likely to produce high crop yields.*

**Response:** Deere denies the allegations in the first sentence of paragraph 13, and specifically asserts that the terms “high-speed precision planting systems” and “conventional systems” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that some farmers seek to plant in ways that improve productivity or yield, consistent with other factors and constraints; that planting faster can, for some farmers under certain conditions, contribute to planting within a particular number of days, along with numerous alternative means of doing so; and that accurate seed spacing and planting

within the optimal planting window can contribute to improving yield. Deere denies all remaining allegations in this paragraph.

14. *High-speed precision planting systems comprise several critical components that are incorporated in planter row units. These components typically include a seed delivery cartridge, an advanced seed meter, an electric drive, and a control system.*

**Response:** Deere denies the allegations in the first sentence of paragraph 14, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that some planters may include a seed tube or other method of seed delivery, a seed meter, a drive, and/or a control system among their row unit components. Deere denies all remaining allegations in this paragraph.

15. *These components together offer several important advantages over conventional planting technology. Conventional planting systems are typically limited to planting at around 5 miles per hour to assure accurate seed placement. These systems often have mechanically driven seed meters, which do not offer the speed, precision, or row-by-row control necessary to maintain proper seed placement, especially at higher speeds. Conventional planting systems also employ hollow seed tubes that allow seeds to ricochet through the tube and tumble after reaching the ground, providing less accurate seed placement in the trench, particularly at higher speeds. High-speed precision planting systems correct for these deficiencies by using electrically driven seed meters that offer precise, row-by-row control for more accurate seed placement, and by using seed-delivery cartridges that control the seed from the meter to the seed*

*trench. As a result of these features, seeds are delivered to the seed trench with consistent, accurate spacing at speeds up to twice conventional planting speeds.*

**Response:** Deere denies the allegations in the first, second, fourth, and fifth sentences of paragraph 15, and specifically asserts that the terms “conventional planting technology,” “conventional planting systems,” and “high-speed precision planting systems” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere also denies that there is any particular range of planter operating speeds that constitutes “conventional planting speeds.” Deere admits that there are planters and planting equipment used in the United States that have mechanically driven seed meters and/or hollow seed tubes, as well as planters and planting equipment that have electrically driven seed meters and seed-delivery methods other than seed tubes, such as the Brush Belt seed delivery system used on Deere’s *ExactEmerge* planters, designed to control the seed from the meter to the seed trench, along with numerous other components in myriad combinations. Deere denies all remaining allegations in this paragraph.

16. *Farmers can acquire high-speed precision planting systems by purchasing a retrofit kit to update their conventional planter, or by purchasing a new planter with a high-speed precision planting system factory-installed. Farmers purchase these systems from dealers located across the row-crop-growing regions of the United States. Effective dealer networks have a wide breadth of coverage with dealers in close proximity to the farmers themselves. This proximity ensures that if a problem arises with a farmer’s high-speed precision planting system during the narrow optimum planting window, the farmer can resolve that problem quickly.*

**Response:** Deere denies the allegations in the first and fourth sentences of paragraph 16, and specifically asserts that the terms “conventional planter” and “high-speed precision planting system[s]” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that some farmers purchase components to update their planter, that some farmers may buy a new planter, and that some farmers do neither of these things and may instead invest in other improvements to their individual crop production processes. Deere further admits that farmers can purchase planters through authorized dealers and that there are many authorized Deere and competitive dealers of planting equipment located throughout the row-crop growing regions of the United States. Deere denies all remaining allegations in this paragraph.

**C. Competition in the High-Speed Precision Planting Systems Market**

17. *Precision Planting and Deere spent years developing high-speed precision planting technology. In 2014, Precision Planting was first to announce its SpeedTube high-speed precision planting system, which it offered as a kit of components that could be retrofitted onto existing conventional Deere and Kinze planters. Several weeks later, Deere introduced new planters equipped with its ExactEmerge high-speed precision planting system. Both Deere’s ExactEmerge and Precision’s SpeedTube systems use newly developed seed delivery cartridges that are critical to high-speed precision planting. Strong patent protections, in part, ensure that Deere and Precision Planting are the only two firms offering these seed delivery cartridges.*

**Response:** Deere denies the allegations in the first, second, third, and fourth sentences of paragraph 17, and specifically asserts that the terms “conventional . . . planters,” “high-speed

precision planting technology,” “high-speed precision planting system,” and “high-speed precision planting” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that it developed its *ExactEmerge* planter, which incorporates a seed delivery method among many other features, over several years and introduced it in 2014 for new planters. Deere admits that Precision Planting announced the SpeedTube product in 2014. Deere admits that it holds patents related to various features of the *ExactEmerge* planter and row unit. Deere denies all remaining allegations in this paragraph.

18. *Deere has been concerned about Precision Planting’s technology exerting competitive pressure on Deere’s profitable ExactEmerge planter sales and on the pricing premium for those planters because Precision Planting’s retrofit solutions enable farmers to upgrade their conventional planters with the latest high-speed planting technology without purchasing a new planter. Thus, a farmer who might otherwise spend over one hundred and fifty thousand dollars to purchase a new ExactEmerge planter from Deere could achieve the same results at one-fifth the cost by upgrading a conventional planter with Precision Planting’s retrofit components.*

**Response:** Deere denies the allegations in paragraph 18, and specifically asserts that the terms “conventional planter[s]” and “high-speed planting technology” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

19. *Deere also has been concerned that Precision Planting's technology could commoditize the planter toolbar. Deere fears that, because Precision Planting's high-speed precision planting retrofit components can be attached to existing planter toolbars, they would foster farmers' indifference to the brand of the planter toolbar and exert competitive pressure on Deere's planter sales.*

**Response:** Deere denies the allegations in the second sentence of paragraph 19, and specifically asserts that the term "high-speed precision planting retrofit components" is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of "high-speed precision planting systems." Deere denies all remaining allegations in this paragraph.

20. *Precision Planting considered Deere's ExactEmerge system when it set the price of its high-speed precision planting system and pursued a strategy of offering a lower-priced alternative to Deere. Precision Planting set the initial dealer price of its high-speed precision planting system so that its prices would be lower than Deere's. Deere, in turn, watched Precision Planting's pricing strategy closely, recognizing that "Precision is a tough competitor" that was "aggressively pricing these offerings."*

**Response:** Deere denies the allegations in the first and second sentences of paragraph 20, and specifically asserts that the term "high-speed precision planting system" is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of "high-speed precision planting systems." Deere lacks the information and knowledge to respond to the allegations regarding Precision Planting's pricing strategy and on that basis denies them. To the extent this paragraph purports

to quote from a document, the content of that document speaks for itself. Deere denies all remaining allegations in this paragraph.

21. *Precision Planting also has partnered with two of Deere’s planter manufacturer rivals—Case and AGCO—to enable them to factory-install Precision Planting’s high-speed precision planting system on their new planters. Deere expressed alarm about these new partnerships because they would introduce competition in factory-installed high-speed precision planting systems. As one executive explained, Precision Planting’s partnership with Case “is an obvious challenge to the goals of John Deere on every level. . . . I cannot state more emphatically how much of a threat this news is as Precision Planting now views their agreement with Case IH as an opportunity to move into the new planter category.”*

**Response:** Deere denies the allegations in the first and second sentences of paragraph 21, and specifically asserts that the term “high-speed precision planting system[s]” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that Precision Planting and/or its corporate parent have agreements with CNH and AGCO relating to the installation of Precision Planting components on certain of those companies’ new planters. To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere denies all remaining allegations in this paragraph.

22. *In response to competition from Precision Planting, in August 2015, Deere started offering its ExactEmerge system also as a retrofit option to compete with Precision Planting’s SpeedTube retrofit offerings. Just as Precision Planting had looked to Deere’s*

*ExactEmerge system in setting the price of its SpeedTube solution, Deere looked to Precision Planting's SpeedTube solution in setting the price of its new ExactEmerge retrofit kits.*

**Response:** Deere denies the allegations in this paragraph.

23. *In addition to looking to one another in setting prices, Deere and Precision Planting have also competed through a series of promotions in which each attempted to gain sales with aggressive financial packages. Precision Planting, for example, introduced a rebate and 36-month 0% financing offer on its equipment ahead of Deere's 2015 planter early-order program, timing that Deere viewed as "No coincidence." After hearing reports of deep discounting by Precision Planting dealers, Deere responded by introducing a rebate incentive and offered its own 0% financing offer that bettered Precision Planting's offer by 12 months.*

**Response:** To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere denies the allegations in this paragraph.

24. *Similarly, Deere and Precision Planting have competed intensely for farmers' business through advertising campaigns and industry events in which each attempted to highlight the benefits of its own high-speed solutions over the other's, citing field tests and independent studies that each firm had commissioned to compare the performance of the two systems.*

**Response:** Deere denies the allegations in paragraph 24, and specifically asserts that the term "high-speed solutions" is vague and ambiguous, and on that further basis Deere denies these allegations. Deere admits that certain of its advertising has addressed the performance of its *ExactEmerge* planters, including advertising based on testing commissioned by Deere, and has compared outcomes from *ExactEmerge* planters to outcomes achieved using certain of Precision Planting's products. Deere denies all remaining allegations in this paragraph.

25. *Overall, farmers have benefitted from the innovative product offerings, aggressive discounts and promotions, and lower prices that have resulted from the intense head-to-head competition between Deere and Precision Planting to sell high-speed precision planting systems.*

**Response:** Deere denies the allegations in paragraph 25, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

## **II. RELEVANT MARKETS**

### **A. Relevant Product Market**

26. *High-speed precision planting systems constitute a relevant product market and line of commerce under Section 7 of the Clayton Act. This market includes both high-speed precision planting systems that are factory-installed on new planters, and systems that are retrofitted onto new and used conventional planters.*

**Response:** This paragraph asserts legal conclusions to which no response is required. To the extent a response is required, Deere denies the allegations in paragraph 26, and specifically asserts that the terms “conventional planters” and “high-speed precision planting systems” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

27. *These revolutionary systems incorporated in planter row units offer increased planting productivity over conventional planters, enabling farmers to plant more crops within the narrow optimal planting window. Defendants themselves recognize the unique and*

*groundbreaking advantages that high-speed precision planting systems offer over conventional planting systems. Deere, for example, has described ExactEmerge as “breakthrough, revolutionary technology” that “will revolutionize the corn and soybean industry as we know it.” Precision Planting has similarly recognized that its SpeedTube system represents a “True Gamechanger for Agriculture” and predicted that “[h]igh speed planting will become standard in the next few years.”*

**Response:** Deere denies the allegations in the first and second sentences of paragraph 27, and specifically asserts that the terms “high-speed precision planting systems,” “conventional planters,” and “conventional planting systems” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that the *ExactEmerge* planter may enable some farmers under certain conditions to achieve improvements in productivity relative to certain other planting equipment sold by Deere and others. To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere lacks the information and knowledge to respond to allegations concerning statements attributed to Precision Planting and on that basis denies them. Deere denies all remaining allegations in this paragraph.

28. *No reasonably interchangeable substitutes exist for high-speed precision planting systems. Wider conventional planters are not effective substitutes for planters equipped with high-speed precision planting systems because wider planters are less maneuverable; are more expensive to purchase, operate, and maintain; have lower resale value; and have other detrimental effects on the planting process. Precision Planting’s own website, for example, acknowledges that “[t]here can be huge costs with upsizing a planter,” and that “larger*

*planters are not the answer to growing farm sizes.” Similarly, multiple conventional planters are not effective substitutes for a single planter equipped with a high-speed precision planting system because multiple conventional planters are significantly more expensive to purchase and maintain than a single planter equipped with a high-speed precision planting system, and using multiple planters requires additional specialized labor, which is often not a viable option.*

**Response:** Deere denies the allegations in the first, second, and fourth sentences of paragraph 28, and specifically asserts that the terms “high-speed precision planting system[s]” and “conventional planters” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere lacks the information and knowledge to respond to allegations concerning statements attributed to Precision Planting and on that basis denies them. Deere denies all remaining allegations in this paragraph.

29. *There are no reasonable substitutes for high-speed precision planting systems, and a hypothetical monopolist over high-speed precision planting systems likely would be able to profitably impose at least a small but significant and non-transitory increase in prices over those that would prevail if Deere and Precision Planting continued to compete. Thus, the market for high-speed precision planting systems is a relevant antitrust market.*

**Response:** This paragraph asserts legal conclusions to which no response is required. To the extent a response is required, Deere denies the allegations in paragraph 29, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

**B. Relevant Geographic Market**

30. *The relevant geographic market is no larger than the United States. Deere and Precision Planting have a supply chain and network of dealers covering the row-crop-growing regions of the United States to offer farmers convenient sales and timely service. Farmers rely on dealers to provide service and replacement parts for their high-speed precision planting systems, and they generally do not frequent dealers that are not located near their farms because those dealers cannot deliver service and replacement parts as quickly as local dealers.*

**Response:** This paragraph asserts legal conclusions to which no response is required. To the extent that a response is required, Deere denies the allegations in the third sentence of paragraph 30, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that it has a network of authorized dealers located across the United States, including in regions where corn, soybeans, and other row crops are grown, that provide customers with sales, support, and other customer service, including access to replacement parts, that are designed to meet the needs of customers. Deere denies all remaining allegations in this paragraph.

**IV. MARKET CONCENTRATION AND ANTICOMPETITIVE EFFECTS**

31. *Deere and Precision Planting are the only two meaningful providers of high-speed precision planting systems in the United States. Deere’s planned acquisition of Precision Planting, if permitted, would eliminate all competition between the two firms and likely result in substantially reduced competition in the market for high-speed precision planting systems.*

**Response:** Deere denies the allegations in paragraph 31, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

32. *Though two firms—Kinze and Horsch Maschinen GmbH (“Horsch”)—claim to offer comparable solutions in the United States, their planters’ use of a conventional seed tube instead of a seed-delivery cartridge makes them incapable of delivering the same accuracy at high speeds as Deere’s and Precision Planting’s high-speed precision technology. As such, neither Deere nor Precision Planting view the Horsch or Kinze offerings as true high-speed precision planting systems. Even assuming these other firms offer truly high-speed precision planting systems, Deere’s and Precision Planting’s sales of high-speed precision planting systems are substantially higher than the sales of these other firms.*

**Response:** Deere denies the allegations in paragraph 32, and specifically asserts that the terms “high-speed precision planting systems,” “true high-speed precision planting systems,” and “high-speed precision technology” are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that Kinze and Horsch, along with other manufacturers, offer planters for sale in the United States that are marketed as capable of operating with acceptable levels of precision at a variety of speeds. Deere denies all remaining allegations in this paragraph.

33. *The proposed acquisition would result in a single firm with a dominant share of the high-speed precision planting systems market. Even counting Kinze’s and Horsch’s systems*

*that lack seed-delivery cartridges as high-speed precision planting systems, their shares of the high-speed precision planting systems market in 2015 were approximately 12% and 2%, respectively. Deere's share of the market, on the other hand, was approximately 44%, and Precision Planting's was approximately 42%. Therefore, even if Kinze and Horsch were included, post-merger, Deere would control 86%, or nearly all of the relevant market. If these two firms are excluded, consistent with Defendants' own understanding of the market, Deere would control 100% of the market— a complete monopoly.*

**Response:** Deere denies the allegations in the first and second sentences of paragraph 33, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

34. *The proposed combination of the two largest competitors in the highly concentrated high-speed precision planting systems market creates a presumption that the acquisition likely substantially lessens competition and tends to create a monopoly. As articulated in the Horizontal Merger Guidelines, the Herfindahl-Hirschman Index (“HHI”) is a measure of market concentration. Changes in market concentration are often a useful indicator of the likely competitive effects of a merger. When a market is highly concentrated, and a merger would increase concentration in that market, it is more likely that a transaction would result in harm. Transactions that increase the HHI by more than 200 points in highly concentrated markets where the post-merger HHI is above 2500 are presumed likely to enhance market power. Here, even accounting for Kinze's and Horsch's shares, the HHI for the high-speed precision planting systems market today exceeds 3,800, and with the acquisition the*

*HHI would exceed 7,600. Deere's acquisition of Precision Planting is therefore presumptively anticompetitive.*

**Response:** Deere denies the allegations in the first and sixth sentences of paragraph 34, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that the Herfindahl-Hirschman Index (“HHI”) is used by Plaintiff as a measure of market concentration under its Horizontal Merger Guidelines, which otherwise speak for themselves. The allegation that Deere’s acquisition of Precision Planting is presumptively anticompetitive is a legal conclusion to which no response is required. To the extent a response is required, Deere denies the allegation. Deere denies all remaining allegations in this paragraph.

35. *The proposed acquisition would likely result in higher prices in the market for high-speed precision planting systems than would exist absent the transaction. Deere estimated that its acquisition of Precision Planting would avert the need for Deere to reduce ExactEmerge pricing by 5-15% to maintain ExactEmerge’s market share. Deere calculates that the “strategic value” of the acquisition—that it would retain from not having to compete with Precision Planting—ranges between \$70 million and \$210 million.*

**Response:** Deere denies the allegations in the first sentence of paragraph 35, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies that “its acquisition of Precision Planting would avert the need for Deere to reduce

*ExactEmerge* pricing by 5-15% to maintain *ExactEmerge*'s market share." Deere denies all remaining allegations in this paragraph.

36. *The proposed acquisition is also likely to reduce the quality of some of the high-speed precision planting options in the market. Post-acquisition, Deere will likely seek to reposition Precision Planting's offerings to maximize the profitability of Deere's high-speed precision planters and to reduce competition between Deere's and Precision Planting's retrofit solutions. To this end, Deere executives have recommended to "temper" both Deere's growing retrofit business and Precision Planting's growing factory-install business with Case and AGCO, both of which would cannibalize Deere's high-speed precision planters business.*

**Response:** Deere denies the allegations in paragraph 36, and specifically asserts that the terms "high-speed precision planting options" and "high-speed precision planters" are vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of "high-speed precision planting systems." To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere denies all remaining allegations in this paragraph.

37. *The proposed acquisition could also enable Deere to weaken competition from rival planter manufacturers. Deere is by far the largest manufacturer of new planters in the United States, responsible for over half of new planter sales. Deere plans to structure future product development such that only new Deere planters will offer the best and most technologically advanced solutions, relegating the high-speed precision planting systems that would be integrated in Case's and AGCO's planters to a lower tier of quality and features. If the acquisition were consummated, Deere would likely set the price, technology, and go-to-market timing of high-speed precision planting systems supplied to competitors to not*

*undercut its planter sales. This strategy would likely harm Deere's rivals, entrench Deere as the dominant provider of high-speed precision planting systems, and limit competitive choices available to farmers.*

**Response:** Deere denies the allegations in the third, fourth, and fifth sentences of paragraph 37, and specifically asserts that the term "high-speed precision planting systems" is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of "high-speed precision planting systems." Deere denies all remaining allegations in this paragraph.

38. *The proposed acquisition has already led Deere to scale back competition with Precision Planting. After the acquisition was announced, when discussing studies designed to highlight for farmers the distinctions between ExactEmerge and SpeedTube, Deere's then-chief agronomist recognized that "the urgency of differentiating [ExactEmerge] from [SpeedTube]" had diminished. Similarly, Deere's marketing team had planned an advertising campaign targeting Precision Planting that would have highlighted results of tests Deere had commissioned comparing ExactEmerge to SpeedTube. Shortly after the deal announcement, Deere's marketing team "was put in a difficult position given the Precision Planting purchase. As such, [Deere] had to chuck [its] entire campaign." As the Deere marketing manager responsible for the campaign explained: "At the time of testing, they were our main competitor. As such, the results of the tests were intended to help build our competitive advertising campaign. You can imagine then that after the purchase, we had to scrap that approach."*

**Response:** To the extent this paragraph purports to quote from documents, the content of those documents speaks for itself. Deere denies all remaining allegations in this paragraph.

39. *Overall, head-to-head competition between Deere and Precision Planting has spurred innovation, quality improvements, and lower prices in the market for high-speed precision planting systems. That competition would likely intensify as sales grow in this nascent market. The proposed acquisition would eliminate this important competitive pressure and allow Deere to control nearly every method through which American farmers can reasonably acquire effective high-speed precision planting systems, as Deere would be able to set price, output, quality, and features without the constraints of market competition.*

**Response:** Deere denies the allegations in the first and third sentences of paragraph 39, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

#### **V. LACK OF COUNTERVAILING FACTORS**

40. *Barriers to economically meaningful entry or expansion in the high-speed precision planting systems market are high, and thus new entry or expansion by existing competitors is unlikely to prevent or counteract the planned acquisition’s likely anticompetitive effects. Deere and Precision Planting took years to develop the technology for their respective high-speed precision planting systems and make them available to farmers. Other firms seeking to enter the market or expand would similarly need to spend a significant amount of time and money to develop their own products, establish a well known brand, and assemble a network of dealers with sufficient coverage to serve farmers effectively.*

**Response:** Deere denies the allegations in the first and second sentences of paragraph 40, and specifically asserts that the term “high-speed precision planting systems” is vague and

ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that it developed its *ExactEmerge* planter over several years. Deere denies all remaining allegations in this paragraph.

41. *The extensive intellectual property rights held by the Defendants, which prevent other firms from adopting important aspects of their respective high-speed precision planting systems, further inhibit entry. Precision Planting’s own executives, for example, have recognized that the company’s “IP is rock solid,” and “necessary to gain a foothold in the high speed market.”*

**Response:** Deere denies the allegations in the first sentence of paragraph 41, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that it holds certain intellectual property rights, which by definition may grant it the power to prevent certain other firms from manufacturing or selling certain planting equipment. To the extent this paragraph purports to quote from a document, the content of that document speaks for itself. Deere denies all remaining allegations in this paragraph.

42. *The proposed acquisition is unlikely to generate verifiable, merger-specific efficiencies that would offset the planned acquisition’s likely anticompetitive effects in the high-speed precision planting systems market.*

**Response:** Deere denies the allegations in paragraph 42, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic

market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

## **VI. VIOLATION ALLEGED**

43. *The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. This Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25.*

**Response:** This paragraph asserts legal conclusions to which no response is required. To the extent any response is required, Deere denies that its acquisition of Precision Planting violates the Clayton Act in any way and denies all remaining allegations in this paragraph.

44. *Defendants Deere and Precision Planting are engaged in interstate commerce and in activities substantially affecting interstate commerce. Deere and Precision Planting sell high-speed precision planting systems throughout the United States. They are engaged in a regular, continuous, and substantial flow of interstate commerce, and their high-speed precision planting system sales have had a substantial effect on interstate commerce.*

**Response:** This paragraph asserts legal conclusions to which no response is required. To the extent any response is required, Deere denies the allegations in the second and third sentences of paragraph 44, and specifically asserts that the term “high-speed precision planting system[s]” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere admits that it and Precision Planting sell goods in many parts of the United States and engage in interstate commerce and activities substantially affecting interstate commerce. Deere denies all remaining allegations in this paragraph.

45. *This Court has personal jurisdiction over each Defendant. Both Deere and Precision Planting are corporations that transact business within the Northern District of Illinois through, among other things, their sales of agricultural equipment to farmers through dealerships located in this district. Monsanto, the ultimate parent of Precision Planting, also transacts business within the Northern District of Illinois.*

**Response:** This paragraph asserts legal conclusions to which no response is required. To the extent any response is required, Deere admits that it is a corporation that transacts business within the Northern District of Illinois. Deere lacks information and knowledge sufficient to respond to the remaining allegations of this paragraph and on that basis denies them.

46. *Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22.*

**Response:** This paragraph asserts legal conclusions to which no response is required.

47. *If allowed to proceed, Deere's proposed acquisition of Precision Planting would likely lessen competition substantially, and tend to create a monopoly, in the market for high-speed precision planting systems in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.*

**Response:** This paragraph asserts legal conclusions to which no response is required. To the extent a response is required, Deere denies the allegations in paragraph 47, and specifically asserts that the term "high-speed precision planting systems" is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of "high-speed precision planting systems." Deere denies all remaining allegations in this paragraph.

48. *Among other things, the transaction would:*
- (a) *eliminate significant present and future head-to-head competition between Deere and Precision Planting in the market for high-speed precision planting systems;*
  - (b) *bring control of high-speed precision planting systems under one firm;*
  - (c) *likely cause prices of high-speed precision planting systems to be higher than they would be otherwise;*
  - (d) *likely cause the quality of high-speed precision planting systems to decrease; and*
  - (e) *likely result in the elimination of innovation rivalry by the two leading innovators in the high-speed precision planting systems market.*

**Response:** Deere denies the allegations in paragraph 48, and specifically asserts that the term “high-speed precision planting systems” is vague and ambiguous, and on that further basis Deere denies these allegations. Deere further specifically denies that there is any meaningful economic market consisting of “high-speed precision planting systems.” Deere denies all remaining allegations in this paragraph.

**REQUEST FOR RELIEF**

49. *The United States requests:*
- (a) *that Deere’s proposed acquisition of Precision Planting be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;*
  - (b) *that the Defendants be permanently enjoined and restrained from carrying out the planned acquisition of Precision Planting by Deere or any other transaction that would combine the two companies;*

- (c) *that the United States be awarded costs of this action; and*
- (d) *that the United States be awarded such other relief as the Court may deem just and proper.*

**Response:** Deere denies that Plaintiff is entitled to any of the relief requested and requests that Deere be awarded its costs incurred in defending this action and such other relief as the Court may deem just and proper.

#### **DEFENDANT'S AFFIRMATIVE DEFENSES**

Defendant Deere asserts the following defenses:

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint fails adequately to allege any relevant antitrust product market or geographic market.
3. The proposed acquisition, taken together with Deere's commitments to CNH and AGCO, and its license grants, technology transfers, and other commitments to Ag Leader that will become effective immediately upon Deere's completion of the acquisition, is procompetitive. It will increase consumer choice, result in substantial merger-specific efficiencies and other procompetitive effects, and will directly benefit growers. These benefits greatly outweigh any alleged anticompetitive effects.
4. The potential for market entry or expansion will prevent the exercise of market power and avoid any anticompetitive effects.
5. Granting the relief sought is contrary to the public interest.
6. Deere reserves the right to assert any other defenses as they become known to Deere.

Dated: October 12, 2016

MORRISON & FOERSTER LLP

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**CERTIFICATE OF SERVICE**

I, David L. Meyer, certify that on October 12, 2016, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send notice of the electronic filing to all counsel of record.

/s/ David L. Meyer  
David L. Meyer